4–23–99
Vol. 64 No. 78
Pages 19863–20140

Federal Register

Friday
April 23, 1999

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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 1951

RIN 0560–AF80

Suspension of Collection of Recapture Amount for Borrowers With Certain Shared Appreciation Agreements

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule.

SUMMARY: The Farm Service Agency (FSA) is amending the shared appreciation agreement requirements to allow certain Farm Loan Program (FLP) borrowers with such agreements that end prior to December 31, 2000, to have the obligation to pay all or part of the recapture amount due under the agreement suspended for up to 3 years. This rule will allow those borrowers to suspend their obligation to pay the recapture amount to give them time to recover from the current situation of depressed commodity prices.

DATES: Effective April 23, 1999. Comments on this rule and on the information collections must be submitted by June 22, 1999 to be assured consideration.

ADDRESSES: Submit written comments to the Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250–0523.

FOR FURTHER INFORMATION CONTACT: David Spillman, Branch Chief, or Veldon Hall, telephone (202) 720–0900; electronic mail: david__spillman@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 and 602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, a regulatory flexibility analysis is not required and was not performed.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' The issuing agency has determined that this action does not affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (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 because it will not affect agreements, entered into prior to the effective date of the rule, to pay the shared appreciation amount due under a shared appreciation agreement; and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule. This rule will only allow certain borrowers who are obligated to pay a sum certain at the maturity date of the shared appreciation agreement to delay that payment.

Executive Order 12372

For reasons set forth in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs within this rule are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with ''Federal mandates'' that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under Title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

The amendments to 7 CFR part 1951 set forth in this interim rule require a revision to the information collection requirements that were previously approved by OMB under the provisions of chapter 35 of title 44 of the United States Code. Since this interim rule will be effective as soon as it is published, FSA has submitted a request for emergency approval of the information collections of this rule to OMB. Still, the agency is seeking public comments on the information collection estimates and subsequent revisions may be made based on the comments received.

Title: 7 CFR 1951–S, Farmer Program Account Servicing Policies.

OMB Control Number: 0560–0161.

Expiration Date of Approval: March 31, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collected under OMB Number 0560–0161, as identified above, is needed for FSA to effectively administer the regulations relating to the servicing of delinquent

direct FSA farm loans. The information is collected by the loan official in order to document the borrower's eligibility for specific loan servicing actions. The reporting requirements imposed on the public by the regulations contained in 7 CFR part 1951–S are necessary to administer the loan program in accordance with statutory requirements, are consistent with commonly performed lending practices, and are necessary to protect the Government's financial interest.

This rule, which provides for the suspension of the borrower's obligation to pay the recapture payment due under a shared appreciation agreement in 1999 and 2000, will result in an information collection burden for borrower's seeking such a suspension. Each borrower who wishes to suspend a recapture payment obligation will be required to request a suspension, read and sign a suspension agreement, and provide cash flow projections documenting that they are unable to pay for 2 years subsequent to the suspension. The revision to the information collection requirements approved under 0560–0161 also requests approval of an existing requirement associated with this program. The currently approved information collection contains no burden estimates for the information collection requirements contained in 7 CFR 1951.914(e). Specifically, paragraphs 1951.914(e)(1) and (8) require a borrower that wishes to amortize the recapture due to present a feasible plan documenting their ability to pay the recapture in installments plus interest and to execute a promissory note for the amount due.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.51 hours per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 9,453.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 14,309 hours.

Proposed topics for comment include: (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 burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to 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. Comments regarding this information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to David Spillman, Branch Chief, USDA, FSA, Farm Loan Programs Loan Servicing Division, Farm Service Agency, USDA, 1400 Independence Avenue, SW, STOP 0523, Washington, D.C. 20250–0523. A copy and explanation of the information collection requirements of this rule may be obtained from Mr. Spillman at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance.

10.407—Farm Ownership Loans

Discussion of the Interim Rule

The Farm Service Agency (FSA) publishes this amendment to subpart S of part 1951 for immediate affect because of the emergency nature of the program and the eligibility requirements involved. Publication as a proposed rule for notice and comment is impractical and contrary to the public interest as discussed below.

In late 1988, the Agricultural Credit Act of 1987 amended § 353 of the Consolidated Farm and Rural Development Act (Con Act) by inserting subsection (e) (7 U.S.C. 2001(e)) to allow the Farmers Home Administration (which later became part of FSA), to begin restructuring debts with debt write-downs and entering into shared appreciation agreements with borrowers. Under these agreements, a borrower is required to make a recapture payment equal to a specified portion of any appreciation in the value of the real estate between the date of the agreement and the earlier of the following dates: (1) The date the real estate securing the borrower's loan with the agency is sold, (2) the repayment of the loan, (3) the date the borrower ceases farming operations, or (4) the date 10 years after the borrower and the agency entered into the agreement. The recapture payment is 75% of the appreciation in the case of agreements that lasted 4 years or less and 50% of the appreciation in the case of all other agreements.

Many of these agreements have now matured. However, the prices for many agricultural commodities for the 1998 crop are at depressed levels. Such depressed prices are expected to continue for at least another year. In certain cases, the prices farmers are receiving for the agricultural commodities they produce have fallen by more than 50% over the last 3 years. This situation has led to a substantial fall in farm income across nearly all sectors of production agriculture. Thus, a significant percentage of the approximately 3,300 borrowers with shared appreciation agreements that are coming to an end during the 1999 and 2000 calendar years are not able to repay the recapture amounts.

This rule will allow those borrowers to suspend their obligation to pay the recapture amount to give them time to recover from the current situation of depressed commodity prices. Accordingly, there is a good cause to make the rule effective immediately upon publication. FSA will accept public comments on the rule for 60 days after publication in the **Federal Register**.

The shared appreciation agreement regulations codified at 7 CFR 1951.914, generally provide the procedures for the servicing of shared appreciation agreements, including the procedure for determining and collecting recapture amount of any appreciation in the secured real estate.

The rule would amend the regulation by adding paragraph (h) to give a borrower with a shared appreciation agreement that becomes due on or before December 31, 2000, provided there has been no agreement for payment of the recapture amount, a period of 30 days to apply for a 1 year suspension of the borrower's obligation to pay the recapture amount if the borrower certifies in writing the inability to pay the recapture amount. In order to protect the Government's lien position, FSA must determine that its mortgage on the secured real estate will not expire prior to the end of the suspension period plus an additional 3 years, or FSA must be advised that under State law the mortgage can be extended for an additional 3 years.

A suspension may be renewed twice. At each renewal, the borrower will receive a suspension limited to the portion of the recapture amount FSA determines, based on a Farm and Home Plan, that the borrower is still unable to pay at the time of the renewal request. The amount of the recapture payment subject to a suspension will accrue

interest at a rate equal to the applicable Federal borrowing interest rate, as determined by the FSA Administrator.

Thirty days before the suspension period FSA will notify the borrower that the suspension of the shared appreciation agreement will end in the near future. This notification is separate and apart from the notification required by § 807 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (1999 Appropriations Act). Section 807 of the 1999 Appropriations Act requires FSA, beginning in fiscal year 2000, to send an FLP borrower notice of the provisions of the agreement not later than 12 months before the end of the term of a shared appreciation agreement. Under additional FSA procedures all borrowers whose agreements were due, even if the payment obligation is suspended, were notified of the agreements' provisions in the timeframe required by § 807. The requirement in this regulation that borrowers be notified 30 days before the end of the suspension is not intended to apply under § 807 of the 1999 Appropriations Act.

If the real estate is conveyed during the suspension period, the recapture amount plus any applicable interest will become immediately due and payable under the notice procedures explained in the notice to the borrowers.

List of Subjects in 7 CFR Part 1951

Accounting, Credit, Loan programs-agriculture.

Accordingly, 7 CFR part 1951 is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

Subpart S—Farmer Program Account Servicing Policies

2. Section 1951.914 is amended by revising the heading and introductory text of paragraph (b) and by adding paragraph (h) to read as follows:

§ 1951.914 Servicing of accounts restructured under Primary Loan Service Program.

* * * * *

(b) *Recapture under Shared Appreciation Agreements.* Except as provided in paragraph (h), recapture of any appreciation will take place at the end of the term of the agreement, or sooner, if the following occurs: * * *

* * * * *

(h) *Suspension of Recapture Payment Obligation under a Shared Appreciation Agreement.*

(1) A borrower may request from a Farm Loan Program (FLP) servicing official, a suspension of the obligation to pay the recapture amount under a shared appreciation agreement, if:

(i) The shared appreciation agreement recapture payment is now due but there has been no agreement to pay the recapture payment;

(ii) The 10 year term of the agreement ends on or before December 31, 2000;

(iii) The secured real estate has not yet been conveyed so that the entire amount of the shared appreciation agreement recapture payment is due;

(iv) The borrower has complied with the other terms of the agreement;

(v) The borrower certifies in writing that the borrower is not able to pay the recapture amount;

(vi) The agreement or the obligations thereunder have not been accelerated and there are pending servicing rights under this subpart still available to the borrower; and

(vii) The Agency's mortgage which secures the agreement remains in effect for a period not less than the suspension period under this paragraph plus 3 additional years or the Agency determines that the mortgage can be extended for an additional 3 years beyond the suspension period.

(2) A request for suspension of the obligation to pay the recapture amount must be submitted in writing to the FLP servicing official after the borrower has received notification of the recapture amount due by the later of:

(i) 30 days after the borrower has received notification of the recapture amount due; or

(ii) May 24, 1999.

(3) The term of the suspension of the obligation to pay the recapture amount is 1 year.

(4) A suspension may be renewed by the Agency at the request of a borrower in writing not more than twice. Prior to renewal of a suspension, the Agency will determine, based on a Farm and Home Plan, the portion of the recapture amount the borrower is still unable to pay, or obtain credit to pay, from any other source (including nonprogram loans from the Agency, in accordance with this part), the suspension will be limited to such an amount. The Agency must also determine that the conditions prescribed in paragraphs (h)(1)(i) through (h)(1)(vi) are still met.

(5) The amount of the recapture payment suspended will accrue interest at a rate equal to the applicable rate of interest of Federal borrowing, as determined by the Agency.

(6) Thirty days before the end of the suspension period, the FLP Servicing Official shall inform the borrower by letter of the suspended amount, including accrued interest that is owed and the date such payment is due.

(7) At the end of the suspension period, the borrower will be obligated to pay the amount suspended, plus any accrued interest and the borrower will be so notified.

(8) If the real estate that is the subject of the shared appreciation agreement during the suspension period is conveyed, the suspended amount, plus any accrued interest shall become immediately due and payable by the borrower in accordance with the procedures established under paragraph (c), except that an appraisal is not required on the real estate.

Signed in Washington, DC, on April 20, 1999.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 99–10258 Filed 4–21–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 98–052F]

RIN 0583–AC54

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is increasing the fees charged to meat and poultry establishments, plants, importers, and exporters for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. These fees are being increased in order to generate the additional revenue that FSIS is required to recover. Despite increased costs each year, these rates have not been adjusted since 1996.

FSIS is reducing the fee it charges for the Accredited Laboratory program. The Agency's analysis has identified decreased operational costs for this program. Accordingly, the Agency is reducing its fee.

DATES: Effective April 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michael B. Zimmerer, Director, Financial Management Division, Office of Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3552.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide for mandatory Federal inspection of the slaughter of certain livestock and poultry and of the processing of certain livestock and poultry products. The cost of this inspection (excluding such inspection performed on holidays or on an overtime basis) is borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection, certification, and identification services. Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), FSIS provides these services to assist in the orderly marketing of various animal products and byproducts. These services include the certification of technical animal fats and the inspection of exotic animal products. FSIS is required to recover the costs of voluntary inspection, certification, and identification services.

FSIS also provides certain voluntary laboratory services which establishments or others may request FSIS to perform. The cost of these services, which are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), must be recovered by FSIS. Laboratory services are provided for four types of analytic testing. These are: microbiological testing, residue chemistry tests, food composition tests, and some pathology testing.

In 1998, FSIS reviewed the fees that it charged for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services and performed a cost analysis to determine whether the fees it established were adequate to recover the costs that FSIS would incur in providing the services. As reflected in the proposed rule published on March 4, 1999, (64 FR 10402), FSIS has determined that the fees it currently charges are not adequate to recover the costs of providing the services.

Comments submitted in response to the proposed rule questioned why the base time fee for voluntary inspection, certification, and identification services and the fee for overtime and holiday services were being increased more than FSIS' projected increased FY 1999 costs of 3.1% for Federal employees pay raises and 1.9% for inflation. Comments submitted also questioned why the base time fee, the overtime and holiday fee, and the laboratory service fee were not being raised the same percentage.

FSIS has not raised the fees that it charges for providing voluntary inspection, identification, and certification services, overtime and holiday services, and laboratory services since December 1996 (61 FR 65459; 62 FR 6111). The cost of providing these services has risen since that time. FSIS has been absorbing these increased costs in various ways. FSIS cannot continue to absorb these increased costs.

As discussed below in the Agency's response to comments, since the 1996 rate change, FSIS has experienced increased costs in providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. These increased costs are attributable to the national and locality pay raises given to Federal employees each year, the increased travel and overhead costs each year, and other factors such as higher-salaried personnel certifying product during base time. These increased costs necessitate a 12.53% increase in base time costs, a 9.12% increase in overtime and holiday costs, and a 4.78% increase in laboratory services costs. The differing fee increase for each type of service is the result of the different amount it costs FSIS to provide these three types of services. As reflected in the response to comments, these differences in costs stem from various factors including the differing salary levels of the personnel who provide the services.

In its analysis of projected costs for FY 1999, FSIS has identified a decrease in the cost of operating the Accredited Laboratory Program (ALP). This projected decreased cost of $1,000 per accreditation is based upon the difference in actual costs since the 1996 increase and projected costs. The decreased cost of accreditation is the result of a number of factors, including a projected decrease in accreditations sought and maintained, as well as more efficient operating practices by FSIS.

A full analysis of the economic impact of this rule was presented in the proposed rule (64 FR 10402).

Proposed Rule and Comments

On March 4, 1999, FSIS published a proposed rule at 64 FR 10402 to increase the fees that FSIS charges meat and poultry establishments, plants, importers, and exporters for providing voluntary inspection, identification, and certification services; laboratory services; and overtime and holiday services. FSIS received 19 comments from the meat and poultry industries. All commenters were opposed to the proposal, objecting to the proposed fee increases for the affected inspection services. The commenters' specific concerns and the Agency's responses follow.

Comment: All commenters stated that the proposed raise of 12.53% and 9.12% in fees, respectively for base time and overtime/holiday time services, which appeared to be based upon an actual cost increase of 5.0% (3.1% for wages and 1.9% for overhead adjustments), was excessive. Most of the commenters stated that they were opposed to any rate increase in excess of 5.0%.

Response: The fee increases that FSIS proposed were not solely based upon FSIS' projected increased FY 1999 costs of 3.1% for wages and 1.9% for overhead. The last time FSIS increased reimbursable rates was in December of 1996 (61 FR 65459). FSIS is required to recover all of the costs associated with providing services in its voluntary inspection programs (i.e. voluntary inspection, identification, and certification services and overtime and holiday services). New rates were not proposed in 1997 and 1998 because of major reorganizations within the Agency and other factors, even though all Federal employees received pay raises, and travel and overhead costs increased in each of those years. This resulted in the industry being underbilled in each of these years and the Agency not recovering the full costs it incurred in operating its voluntary programs.

Since FY 1996, all Federal employees have received across the board average salary increases as follows: January, 1997—3.0%; January, 1998—2.8%; and January, 1999—3.6%. The compounded annual effect of all 3 years of salary increases total 9.7%. The compounded effect calculates the increase in a given year on top of the previous years' increases. That is, for every dollar earned by a Federal employee in 1996, he now is earning almost 10 cent more in 1999. Specifically, each dollar earned by a Federal employee in 1996, because of salary raises, increased to $1.03 in 1997 (a 3% increase), $1.06 in 1998 (a 2.8% increase) and $1.10 in 1999 (a 3.6% increase).

Additionally, there were other factors that were taken into account in determining the increased rate of 12.53% and 9.12% for base and overtime/holiday time services, respectively, beyond the calculated

9.7% increased salary amount for Federal employees. For base time, an additional 3.37% increase was added to the 9.16% compounded salary cost increase (estimated in mid-1998) to provide for the fact that base time services are performed by higher salaried employees doing certification of product for exports, instead of lower salaried employees in previous years, plus the projected inflated travel and overhead costs. The proposed increase of 9.12% for overtime/holiday services is less than the compounded effect of the 3 years of Federal pay raises (9.7%) by the amount of .58% due to the fact that when the proposed rate increases were originally calculated in mid-1998, the projected pay increase for January 1999 was calculated at the anticipated 3.1%, instead of the later approved actual raise of 3.6% that occurred.

Commenters were not opposed to the proposed increase cost for laboratory services. The increase of 4.78% for laboratory service fees is due to increased efficiencies in the laboratories, which in turn keep down operating costs. Operating costs constitute a significant portion of the fee for laboratory services. Operating costs have been kept in check over the last three years.

The fees being finalized reflect the difference between the last fee change in 1996 and projected costs incurred by FSIS for FY 1999. If those fees were recalculated to reflect all actual costs through FY 1999, they would probably increase. However, the Agency has decided to finalize the fee rates it proposed. It will make appropriate adjustments in a new proposal it expects to publish in late 1999 regarding the fees that need to be charged for the inspection programs it operates. This new proposal will reflect the Federal pay raise and inflation rate for travel and overhead costs anticipated for January 2000, and any other relevant factors.

Comment: Two commenters stated that in the proposed rule, there is an attempt to rationalize that small establishments would not be affected adversely. Some commenters stated that the rule will have a detrimental effect on small establishments trying to develop a growing market. Additionally, some commenters stated that some small establishments are not selling directly to consumers, but instead are selling to food service or retail establishments. Therefore, these commenters indicated that it was highly unlikely that the excessive cost increases being proposed could be passed through, especially in today's low inflation or even deflationary environment.

Response: FSIS does not have data on specific small establishments that sell their products directly to food service or retail establishments. Therefore, FSIS could not estimate the economic impact of the proposed fee increase on small establishments who engaged in this type of business, i.e., the potential impact of the increase in prices on their sales or the price elasticity. Price elasticity is the percentage change in demand for a product associated with a one percent change in its price. FSIS relied on the overall elasticity of demand for the product, i.e., responsiveness or sensitivity of demand to changes in prices of the product sold by all establishments. FSIS would welcome specific data on this issue for considering future adjustments. However, it must be understood that FSIS is required to recover the full costs of operating its voluntary programs.

Comment: Four commenters said that the increase in fees does not take into consideration the cooperative certification programs of the Agricultural Marketing Service, USDA, such as the Certified Angus Beef or the Certified American Lamb program.

Response: The certification services provided by other agencies and the rates that other agencies charge for the services that they provide has no impact upon the fees charged by FSIS.

Comment: Some commenters raised issues about FSIS inspection structure and the possible operation of HACCP plants outside normal inspection hours without the requirement for overtime inspection.

Response: These issues are not within the scope of this rulemaking and, thus, are not being addressed in this docket.

Accordingly, FSIS is amending § 391.2 to increase the base time rate for providing voluntary inspection, identification, and certification services from $32.88 per hour, per program employee, to $37.00 per hour, per program employee. FSIS is amending § 391.3 to increase the rate for providing overtime and holiday services from $33.76 per hour, per program employee, to $36.84 per hour, per program employee. FSIS is also amending § 391.4 to increase the rate for laboratory services from $48.56 per hour, per program employee to $50.88 per hour, per program employee. Further, FSIS is amending § 391.5 to reduce the fee charged for accreditations and renewals from $2,500 per accreditation, to $1,500 per accreditation per year.

To recover the increased costs in an expeditious manner, the Administrator has determined that these amendments should be effective on the first day of the pay period (Sunday) after publication of this rule. Therefore, the effective date for this rule is April 25, 1999.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The fee increases for voluntary inspection, identification, and certification services, laboratory services, and overtime and holiday inspection services are the result of increases in the salaries of Federal employees established by Congress under the Federal Employees Pay Comparability Act of 1990. The increase also includes projected increased travel costs and overhead costs due to inflation, higher-salaried employees working more base time than overtime, and various other factors.

The Administrator, Food Safety and Inspection Services, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. States and local jurisdictions are preempted by the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected livestock and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over livestock and poultry products that are outside official establishments for the purpose of preventing the distribution of livestock and poultry products that are misbranded or adulterated under the FMIA and PPIA, or, in the case of imported articles, that are not at such an establishment, after their entry into the United States.

State or local laws, regulations, or policies are preempted by the Agricultural Marketing Act of 1946, as amended, if they present irreconcilable conflict with the provisions of this rule under the Agricultural Marketing Act of 1946, as amended.

Administrative proceedings will not be required before parties may file suit

in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5 and 381.35 of the FMIA and PPIA regulations, respectively, must be exhausted prior to any judicial challenge of the application of the provisions of this proposed rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

List of Subjects in 9 CFR Part 391

Fees and charges, Government employees, Meat inspection, Poultry products.

For the reasons set out in the preamble, part 391 of title 9 of the Code of Federal Regulations is amended as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES AND LABORATORY ACCREDITATION

1. The authority citation for Part 391 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 394, 1622 and 1624; 21 U.S.C. 451 et seq.; 21 U.S.C. 601–695; 7 CFR 2.18 and 2.53.

2. Sections 391.2, 391.3, 391.4 and paragraph (a) in § 391.5 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $37.00 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5 and 381.38 shall be $36.84 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12 and 362.5 shall be $50.88 per hour, per program employee.

§ 391.5 Laboratory accreditation fees.

(a) The annual fee for the initial accreditation and maintenance of accreditation provided pursuant to §§ 318.21 and 381.153 shall be $1,500 per accreditation.

* * * * *

Done in Washington, DC on: April 20, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–10239 Filed 4–20–99; 3:49 pm]

BILLING CODE 3410–DM–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 55

RIN 3150–AF62

Initial Licensed Operator Examination Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to allow nuclear power facility licensees to prepare, proctor, and grade the required written examinations and to prepare the required operating tests that the NRC uses to evaluate the competence of individuals applying for operator licenses at those plants. The amendment requires facility licensees that elect to prepare the examinations to prepare the examinations in accordance with NRC operator licensing examination standards for power reactors; establish, implement, and maintain procedures to control examination security and integrity; submit, upon approval by an authorized representative of the facility licensee, each examination and test to the NRC for review and approval; and proctor and grade the written examinations upon NRC approval. In making this final rule change, the NRC will continue to administer (i.e., manage and oversee) the initial operator licensing examination process by: Developing the generic fundamentals examinations (which are also proctored by facility licensees); reviewing and approving the facility-developed, site-specific written examinations and operating tests; and independently conducting and grading both the dynamic simulator and walk-through portions of the operating test, which is considered the most performance-based aspect of the licensing process and permits the NRC to evaluate the operator and senior operator applicants' competence under normal and abnormal plant conditions. The amendment preserves the NRC's authority to prepare the examinations and tests in lieu of licensees and to exercise its discretion and reject a power reactor facility licensee's determination to prepare, proctor, and grade the written examinations and prepare the operating tests. The Commission is concerned with examination integrity; therefore, the amendment will also revise the regulations to ensure that applicants, licensees, and facility licensees understand the scope of the regulation.

EFFECTIVE DATE: This final rule is effective on October 20, 1999.

FOR FURTHER INFORMATION CONTACT: Siegfried Guenther, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1056; e-mail:sxg@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 107 of the Atomic Energy Act (AEA) of 1954, as amended, requires the NRC to determine the qualifications of individuals applying for an operator's license, to prescribe uniform conditions for licensing these individuals, and to issue licenses as appropriate. Pursuant to the AEA, 10 CFR Part 55 requires an applicant for an operator license to pass an examination that satisfies the basic content requirements specified in the regulation. The licensing examination consists of the following parts: (1) A written generic fundamentals examination (covering reactor theory, thermodynamics, and components) that license applicants have to pass as a prerequisite for taking the site-specific examination; (2) a site-specific written examination covering plant systems, emergency and abnormal plant procedures, and plant-wide generic knowledge and abilities; and (3) a site-specific operating test consisting of three categories, including a crew-based, dynamic simulator performance demonstration, an individual, task-based walk-through covering control room and in-plant systems, and various plant administrative requirements. Although neither the AEA nor Part 55 specifies who must prepare, proctor, or grade these examinations, the NRC has traditionally performed those tasks itself or through its contract examiners. The NRC and its contract examiners have used the guidance in NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' once titled ''Operator Licensing Examiner Standards,'' to prepare the initial operator licensing examinations. This document has been revised as experience has been acquired in preparing the examinations. The current version is designated Revision 8.[1]

In accordance with 10 CFR 170.12(i), the NRC's staff and contractual costs are recovered from facility licensees that receive examination services. In Fiscal

[1] Copies are available for inspection or copying for a fee from the NRC Public Document Room (PDR) at 2120 L Street NW, Washington, DC 20555–0001; the PDR's mailing address is Mail Stop LL–6; telephone is 202–634–3273; fax is 202–634–3343. Revision 8 of NUREG–1021 is also available for downloading from the internet at http://www.nrc.gov.

Year (FY) 1995, the NRC spent approximately $3 million on contractor support for the preparation and administration of the initial operator licensing examinations and for support of requalification program inspections. On March 24, 1995, in SECY–95–075, ''Proposed Changes to the NRC Operator Licensing Program,'' the staff advised the Commission of its intent to eliminate the use of contractors by allowing facility licensees to prepare the examinations. The NRC staff's proposal was motivated by the general improvement in the performance level of power reactor facility licensees' training programs, the NRC's continuing efforts to streamline the functions of the Federal government, and the need to accommodate anticipated resource reductions.

On April 18, 1995, the Commission approved the NRC staff's proposal to initiate a transition process to revise the operator licensing program and directed the NRC staff to consider carefully the experience from pilot examinations before fully implementing the changes. On August 15, 1995, the NRC issued Generic Letter (GL) 95–06, ''Changes in the Operator Licensing Program,'' [1] outlining the revised examination development process and soliciting volunteers to participate in pilot examinations to evaluate and refine the methodology.

Between October 1, 1995, and April 5, 1996, the NRC reviewed and approved 22 operator licensing examinations, including both the written examinations and the operating tests, prepared by facility licensees as part of a pilot program. These examinations were prepared using the guidance in Revision 7 (Supplement 1) of NUREG–1021 [1] and the additional guidance in GL 95–06.

The results of the pilot examinations were discussed in SECY–96–123, ''Proposed Changes to the NRC Operator Licensing Program,'' dated June 10, 1996. Based on the results of the pilot program, the NRC staff recommended that the Commission approve the implementation of the new examination process on a voluntary basis until rulemaking could be completed to require all power reactor facility licensees to prepare the entire initial operator licensing examination and to proctor and grade the written portion of the examination. On July 23, 1996, the Commission authorized the staff to continue the pilot examination process on a voluntary basis and directed the staff to develop a rulemaking plan to justify the changes that would be necessary to 10 CFR Part 55. The Commission also directed the staff to address a number of additional items (e.g., pros, cons, and vulnerabilities) regarding the revised examination process to facilitate a Commission decision on whether to implement the revised process on an industrywide basis.

With Commission approval, the NRC staff resumed conducting pilot-style examinations on August 19, 1996, and by the end of June 1998 had reviewed, approved, and administered 80 additional examinations that were developed by facility licensees. This raised the total number of examinations completed using the pilot process to 102.

On September 25, 1996, the NRC staff forwarded the rulemaking plan and a response to the additional items to the Commission in SECY–96–206, ''Rulemaking Plan for Amendments to 10 CFR part 55 to Change Licensed Operator Examination Requirements.'' SECY–96–206 identified a number of areas (i.e., quality and consistency, independence and public perception, examination security, NRC resources, program stability, and examiner proficiency) in which the NRC could be more vulnerable under the revised examination process and described the measures that the NRC has taken to manage the vulnerabilities. On December 17, 1996, the Commission directed the staff to proceed with the proposed rulemaking. The NRC staff forwarded the proposed rule (SECY–97–079, ''Proposed Rule—Initial Licensed Operator Examination Requirements'') to the Commission on April 8, 1997, and on June 26, 1997, the Commission approved publication of the proposed rule for a 75-day comment period. The proposed rule was published in the **Federal Register** (62 FR 42426) on August 7, 1997. After the public comment period expired on October 21, 1997, 11 comment letters were received. Two additional comment letters arrived after the expiration date but were also considered in the development of the final rule.

As written, the proposed rule would have required all power reactor facility licensees to prepare their operator licensing examinations and to proctor and grade the written portion of those examinations. Although the proposed rule would have imposed new requirements on facility licensees, the NRC took the position that the backfit rule, 10 CFR 50.109, did not apply because the shift in responsibility for preparing the examinations would not: (1) Constitute a ''modification of the procedures required to operate a facility'' within the scope of the backfit rule; (2) affect the basic procedures for qualifying licensed operators; or (3) require facility licensees to alter their organizational structures. However, based upon further review after issuing the proposed rule, the NRC has concluded that there is insufficient basis to support the original position. Therefore, the NRC has decided to revise the final rule so power reactor facility licensees may elect to prepare their written examinations and operating tests (and proctor and grade the written examinations) in accordance with NUREG–1021, or to have the NRC prepare the examinations, thereby making a backfit analysis unnecessary.

Discussion

The pilot examinations demonstrated that the revised process, under which facility licensees prepare the written examinations and operating tests, is generally effective and efficient. From the time the pilot program began in October 1995 through the end of June 1998, the NRC staff reviewed, approved, and administered a total of 102 examinations that were voluntarily developed by facility licensees under the pilot examination and transition program.

Facility licensees prepared the written examinations and the operating tests, proctored the written examinations, and graded the written examinations using the guidance provided by the NRC in GL 95–06 during the early stages of the pilot program, and subsequently in interim Revision 8 of NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors.'' NRC examiners thoroughly reviewed the examinations and tests to determine if they were consistent with NRC standards, directed facility licensees to make whatever changes were necessary to achieve NRC standards if the submitted examinations and tests were deficient, and approved the examinations and tests before they were administered. NRC examiners independently administered all of the operating tests, reviewed the written examination grading, and made the final licensing recommendations for approval by NRC management.

Comments from the NRC chief examiners who evaluated the pilot examinations indicate that the quality and level of difficulty of the licensee-prepared examinations (when modified as directed by the NRC) were generally comparable to the examinations prepared by the NRC (i.e., by the staff or NRC contractors). The passing rate on the 102 pilot-style examinations administered through the end of June 1998 was only slightly lower than the passing rate on the power reactor licensing examinations administered

during FY 1995, the last year in which all examinations were prepared by the NRC. However, considering the historical fluctuation in the average examination passing rates and the other factors (e.g., training program quality and screening of applicants by facility licensees) that could be responsible for some or all of the observed difference, the Commission has concluded that the observed change in the passing rates is not significant. The average grades on the facility-prepared, NRC-approved written examinations were also comparable if slightly lower than the grades on examinations prepared by the NRC during FY 1995. These data support the conclusion that the facility-prepared examinations are discriminating at a conservative and acceptable level and that the revised examination process is effective. Therefore, the fact that some facility licensees will be preparing the examinations with NRC review and approval, should have no negative effect on the safe operation of the plants.

Although the NRC-approved examinations were comparable to NRC-prepared examinations, essentially all of the examinations prepared by facility licensees required some changes subsequent to NRC review, and many of the examinations required significant rework. The NRC had originally believed that, with training and experience, the industry would quickly gain proficiency in preparing the examinations, but the overall quality of the examinations submitted to the NRC during the pilot program did not improve as expected over time. Although approximately half of the 17 facility licensees that had prepared more than one examination by the end of FY 1997 did maintain or improve the quality of their second or third examination submittals, the quality of the other facility licensees' second or third examinations was lower. Consequently, the NRC has asked the industry to address the issue of examination quality and determine the need for additional training on examination development. The NRC will continue to: (1) Direct facility licensees that prepare their examinations to revise the examinations as necessary to achieve an acceptable level of quality and discrimination; (2) withhold approval of those examinations that do not meet NRC standards; (3) oversee the regional implementation of the operator licensing process to ensure consistency; (4) address significant deficiencies in the submitted examinations as licensee performance issues in the examination reports, as appropriate; (5) conduct or participate in workshops, as necessary, to ensure that facility licensees understand the NRC's examination criteria; and (6) prepare the licensing examinations for those facility licensees that elect not to prepare their own examinations.

With regard to the efficiency of the revised examination process, the experience to date supports the conclusion that the average industry cost will not differ significantly from the cost of NRC-prepared examinations. Comments from the industry reflect that the cost for some facility licensees to prepare the examination was higher than it would have been for an NRC-prepared examination; however, other licensees prepared good quality examinations at lower cost than the NRC. The industry generally attributed the higher cost to the revised examination and administrative criteria under the pilot examination process. Although the NRC acknowledges that the revised criteria contribute somewhat to the elevated cost, many of the variables that affect the quality and, consequently, the cost of the examination will be under the facility licensees' control and can present an opportunity for cost savings. For example, facility licensees that elect to prepare the examinations will be able to manage the size and quality of their examination banks and the training and experience of the personnel they select to write their licensing examinations. The revised examination process allows facility licensees to control the development of the examinations and holds them responsible for their quality. If a facility licensee submits an acceptable quality examination, it is likely to save resources despite the additional administrative criteria; however, if the facility licensee submits an examination that requires many changes, it will likely cost more than if the NRC had prepared the examination.

Comments from the NRC chief examiners who worked on the pilot examinations indicate that the average amount of time spent reviewing and revising the facility-prepared examinations was generally consistent with the estimates developed before starting the pilot program. Although a number (approximately 20 percent in FY 1997) of the examinations required significantly more NRC effort than originally anticipated to bring them up to the NRC's standards, the resource burden was generally offset by other examinations that required less effort to review and revise. The increased efficiency of the revised examination process has enabled the NRC to eliminate the use of contractors in the operator licensing program and conduct the initial operator licensing and requalification inspection programs with the existing NRC staff. Before initiating the pilot examination and transition process at the beginning of FY 1996, the NRC spent approximately $3 million per year on contractor assistance for initial examinations and requalification inspections. In FY 1997, when facility licensees prepared approximately 75 percent of the examinations, the NRC's spending on contractor assistance for the licensing examinations and requalification inspections decreased to approximately $0.5 million. The FY 1998 and FY 1999 budgets reflect the complete elimination of contractor support for the operator licensing program (with the exception of the generic fundamentals examination). Future resource requirements for the operator licensing program will, in large part, be driven by changes in the level of facility participation in the voluntary examination development process.

In order to maintain the integrity of the operator licensing written examinations required by 10 CFR 55.41 and 55.43 and the operating tests required by 10 CFR 55.45, the Commission has amended the final rule by adding a requirement for those power reactor facility licensees that elect to prepare, proctor, and grade the written examinations and prepare the operating tests, to establish, implement, and maintain procedures that control the security and integrity of those examinations and tests. The Commission's regulations in 10 CFR 55.49 already prohibit applicants, licensees (operators), and facility licensees from engaging in any activity that compromises the integrity of any examination or test required by 10 CFR 55. However, based on the number of examination security incidents that have occurred since the pilot examination program began, the Commission has concluded that applicants, licensees, and facility licensees may not be aware that the requirements of 10 CFR 55.49 cover more than just those activities directly involving the physical administration of an examination or test. In that regard, the Commission considers the integrity of an examination or test to be compromised if any activity occurs that could affect the equitable and consistent administration of the examination or test, regardless of whether the activity takes place before, during, or after the administration of the examination or test. Therefore, in addition to requiring certain facility licensees to establish,

implement, and maintain procedures that control the security and integrity of the examinations and tests, the Commission is also amending 10 CFR 55.49 to clarify the scope of that regulation.

Revision 8 of NUREG–1021 identifies a number of examination security and integrity guidelines (e.g., physical security precautions, including the use of simulators and the mailing of examination materials) that the affected facility licensees (i.e., those that elect to prepare their own written examinations and operating tests) should consider when establishing their procedures. Although the security and integrity guidelines in NUREG–1021 are not regulatory requirements, once a facility licensee has established its required procedures, the Commission intends to monitor this area to ensure that the procedures are implemented and maintained.

Consistent with the examination security and integrity guidelines in NUREG–1021, facility employees with specific knowledge of any NRC examination before it is given should not communicate the examination contents to unauthorized individuals and should not participate in any further instruction of the students scheduled to take the examination. Before they are given access to the examination, facility employees are expected to sign a statement acknowledging their understanding of the restrictions. When the examinations are complete, the same employees are expected to sign a post-examination statement certifying that they have not knowingly compromised the examination.

NRC examiners are expected to be attentive to the facility licensee's examination security measures, to review the security expectations with the facility licensee at the time the examination arrangements are confirmed, and to report any security concerns to NRC management. If the NRC determines during its preparation that an examination may have been compromised, it will not administer the examination until the scope of the potential compromise is determined and measures can be taken to address the integrity and validity of the examination. Pursuant to 10 CFR 55.51, the NRC must make a determination before issuing a license that the test or examination is valid, meeting the requirements of the AEA and the Commission's regulations. If the compromise is discovered after the examination has been administered, the NRC will not complete the licensing action for the affected applicants until the NRC staff can make a determination regarding the validity of the examination. If the compromise is not discovered until after the licensing action is complete, the NRC will reevaluate the licensing decision. If the NRC determines that the original licensing decision was based on an invalid examination, it will take appropriate action pursuant to 10 CFR 55.61(b)(2).

As a separate action, the Commission is modifying its ''General Statement of Policy and Procedures for NRC Enforcement Actions'' (Enforcement Policy) to provide examples of violations that may be used as guidance in determining the appropriate severity level for violations involving the compromise of an examination or test. The NRC staff will evaluate all potential compromises of an examination or test required by 10 CFR 55 to determine whether a violation of 10 CFR 55.49 has occurred. A compromise that is not detected before a license is issued would be considered a significant regulatory concern and categorized at least at Severity Level III. However, depending on the circumstances as explained in the Enforcement Policy, the severity level may be increased or decreased. The NRC intends to utilize its enforcement authority including, as warranted, civil penalties and orders against individuals and facility licensees who: (1) Compromise the integrity of an examination in violation of 10 CFR 55.49; (2) commit deliberate misconduct in violation of 10 CFR 50.5; or (3) provide incomplete or inaccurate information to the NRC in violation of 10 CFR 50.9. In addition, cases involving willful violations may be referred to the Department of Justice for criminal prosecution.

The Commission has reviewed the vulnerabilities and costs associated with the revised examination process and considered the measures that the NRC staff has taken to mitigate the vulnerabilities. With regard to examination quality and level of difficulty, the Commission acknowledges that the effectiveness of the revised examination process is contingent on the NRC staff's review of the facility-proposed examinations to ensure that NRC standards are achieved. The Commission has concluded, based on the results of the pilot examination program, that the controls implemented by the NRC staff will provide reasonable assurance that the examinations that are administered to the license applicants will provide a valid and consistent basis upon which to make the licensing decisions regardless of whether the examinations were prepared by the facility licensee or the NRC. The Commission also realizes that the frequency of examination security incidents and the risk of undetected compromises may increase for those examinations that are prepared by facility licensees. However, the Commission is confident that the measures discussed above will sufficiently control the vulnerability in this area.

The Commission is aware that the original expectation that facility licensees would eventually realize cost savings under the revised process as they gain proficiency in preparing the examinations has not yet been realized. However, the Commission has concluded that neither the increased vulnerabilities nor the absence of clear industry cost benefit provides sufficient basis for discontinuing the revised examination process. The Commission also finds that the revised examination process is more consistent with the NRC's other oversight programs because it requires NRC examiners to review materials prepared by facility licensees. The revised process enables NRC examiners to focus more on the psychometric quality of examinations (e.g., the cognitive level at which the questions are written and the plausibility of the distractors or wrong answer choices) prepared by the facility licensees than on the technical accuracy of the examinations, which was their primary focus when the examinations were prepared by NRC contractors. This shift in the NRC examiners' focus, coupled with the facility licensees' technical expertise, has the potential to improve the overall quality of the facility-prepared licensing examinations.

In the proposed rule, the NRC took the position that the backfit rule (10 CFR 50.109) did not apply to this rulemaking. However, in its review of the final rule, the Committee To Review Generic Requirements (CRGR) opined that it was inclined to view the rule as a backfit and recommended that the provisions of the proposed rule be implemented on a voluntary basis, which would not constitute a backfit. Although the NRC had considered and dismissed that alternative during the proposed rulemaking because of concerns regarding resource planning, it has since concluded that the benefits of the revised examination process (e.g., improved regulatory efficiency and greater licensee control over the examination costs) remain substantial even if every facility licensee is not required to prepare its own examinations. Rather than terminate the pilot program and resume the NRC-

prepared examination process on an industrywide basis, the NRC has decided to amend the final rule to give facility licensees the option to prepare their own examinations or to have them prepared by the NRC.

Summary of Public Comments

The 75-day public comment period began when the notice of proposed rulemaking was published in the **Federal Register** (62 FR 42426) on August 7, 1997, and closed on October 21, 1997. The notice (FRN) requested public comment on the proposed rule, on the implementation guidance in interim Revision 8 of NUREG–1021, and on the following two questions:

1. Are there portions of the operator exams that are common to all licensees, and would, therefore, be more efficiently developed by the NRC?

2. Is the conclusion in the regulatory analysis correct that it would be less costly for each licensee to prepare its own initial operator examinations to be reviewed, revised, and administered by the NRC, than to have one NRC contractor prepare these exams for all licensed operators with the costs to be reimbursed by licensee fees?

The NRC received 13 comment letters on the proposed rule; two of the letters arrived after the comment period closed, but they were considered nonetheless. The respondents included three NRC examiners, one contract examiner, five nuclear utilities and one utility employee, one nonpower reactor facility licensee, the State of Illinois, and the Nuclear Energy Institute (NEI), which submitted its comments on behalf of the nuclear power industry. Copies of the public comments are available in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC, and on the internet at ''http://ruleforum.llnl.gov/cgi-bin/rulemake?source=OE__PRULE''.

Seven of the respondents (three NRC examiners, one contract examiner, one utility employee, one nonpower facility licensee, and the State of Illinois) recommended that the rule change be disapproved. Five of the industry respondents (NEI and four utilities) supported the rule change; however, one utility endorsed NEI's comments but stated that it did not agree with the proposed rule in its present form. NEI and two of the utilities stated that they would rather continue with a voluntary program because it would allow greater flexibility for those facility licensees with small training staffs. However, they would support mandatory participation with the rule change rather than return to the previous process under which NRC contractors wrote most of the examinations.

Those comments related to the two specific questions raised in the proposed rule and those that have a direct bearing on the rule are discussed below. The comments are categorized as they relate to reactor safety and the vulnerabilities discussed in SECY–96–206 (i.e., quality and consistency, independence and public perception, security, NRC resources, and examiner proficiency). The NRC received no comments related to program stability.

One NRC examiner, NEI, four of the utilities, and the utility employee also provided specific comments and recommendations regarding the implementation guidance in interim Revision 8 of NUREG–1021. Those comments are addressed in Attachment 1 of the Commission (SECY) paper associated with this rulemaking. A copy of the SECY is available in the NRC Public Document Room, on the internet at http://www.nrc.gov, or from Siegfried Guenther, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, at 301–415–1056 or e-mail at sxg@nrc.gov.

Comment: With regard to the first specific question included in the proposed rulemaking, 2 of the 13 respondents (NEI and one utility) stated that all of the common material is already included in the generic fundamentals examination (GFE) and that the remaining elements are best covered as part of the site-specific examination.

Response: It appears that the current allocation of topics between the GFE and site-specific written examinations is generally perceived to be an efficient method of covering the topics required by 10 CFR 55.41 and 55.43. Therefore, the Commission finds no basis for changing the process to have the NRC separately develop portions of the initial examination that would be common to all facilities.

Comment: Seven of the 13 respondents (NEI, two utilities, a utility employee, and three examiners) directly or indirectly addressed the second specific question in their letters. NEI and one utility stated that the revised examination criteria in interim Revision 8 of NUREG–1021 have increased the level of effort and will result in higher licensing fees regardless of who prepares the examinations. However, NEI and another utility agreed that comparing the cost of facility-prepared examinations to those prepared by the NRC is difficult, but they concluded that it should be less costly for facility licensees to prepare the examinations than to have the NRC prepare them under the same criteria.

NEI also stated that the relative cost of the two examination processes should not be the only factor in deciding whether to proceed with the rulemaking that would have required all power reactor facility licensees to prepare their licensing examinations. NEI indicated that preparing higher cognitive level questions requires detailed plant knowledge, better provided by facility licensees, and that the revised process (which has eliminated the use of NRC contractors to administer the operating tests) will allow NRC staff to evaluate each applicant without relying on third-party observers.

Two NRC examiners, one contract examiner, and a utility employee asserted that the facility licensees' cost has increased under the revised examination process. They cited various reasons for the increased cost, including training personnel to write the examinations and then restricting them from training the applicants, and upgrading equipment to maintain examination security. The NRC examiners based their comments on feedback from facility training personnel; one examiner indicated that it took facility licensees an average of 700 hours to prepare each examination. The utility employee stated that the rule change will simply transfer the cost of contractors from the NRC to the utilities.

Response: The NRC acknowledges that the revised administrative criteria in particular (e.g., the restrictions on which facility training personnel would be allowed to write the pilot examinations and the need to document the source of the test items) have probably caused the cost of preparing the examinations to be somewhat higher than it would have been if facility licensees had been allowed to prepare the examinations using the same criteria that applied to the NRC and its contractors before starting the pilot program. However, when the NRC first developed the revised examination process, with its additional administrative criteria, the NRC still believed that the cost for facility licensees to prepare the examinations would be offset by the reduction in the licensing fees and that a cost savings could be realized as facility licensees gained experience with the process. Many of the facility licensees that participated in the pilot program demonstrated that it is possible to prepare an acceptable quality examination at the same or lower cost than the NRC or its contractors could prepare a comparable examination. The

fact that a number of facility licensees did not prepare acceptable examinations may be as much an indication of the licensees' inefficiency and inexperience as it is a symptom of deficiencies in the examination criteria. Those facility licensees that did not initially submit acceptable examinations, eventually paid more in fees because of the additional effort required for the NRC to review, and the licensees' staffs to rewrite, the examinations. Finally, it is possible that the magnitude of the increase in effort and cost may be perceived to be higher than it actually is because the industry had originally expected to save money if the NRC would have allowed facility licensees to prepare the examinations using the version of NUREG–1021 that was in effect before beginning the pilot program.

With regard to the additional security costs cited by the examiners, the Commission has stressed the importance of maintaining examination security, but the NRC has not required facility licensees to invest in additional physical security systems. However, the frequency of security incidents since beginning the pilot examination program has prompted the NRC to: (1) clarify the intent of 10 CFR 55.49 in the final rule; (2) amend the final examination rule to require facility licensees that elect to prepare their examinations to establish, implement, and maintain procedures to control examination security and integrity; and (3) include additional security guidance in the final version of Revision 8 of NUREG–1021. These actions will help ensure, among other things, that facility licensees understand their responsibility for maintaining control over the examination process.

The pilot examinations demonstrated that some of the people assigned by facility licensees to develop the examinations did not have sufficient expertise required to prepare good quality examination materials consistent with NRC standards. As noted earlier, the NRC has asked the industry to address the issue of examination quality and the need for additional training on examination development. The NRC acknowledges that the restrictions on the use of instructors to prepare the licensing examinations may be partially responsible for limiting the availability of qualified examination preparers. Moreover, the NRC has concluded that the restrictions have placed an unnecessary burden on facility licensees with minimal benefit and, therefore, has revised the personnel restrictions in the final version of Revision 8 of NUREG–1021 to allow facility instructors to prepare the licensing examinations (including the written and operating test outlines, the written examination questions, and the operating test details) without regard to the amount of time they spent training the license applicants. However, the instructors will still be precluded from instructing the applicants once they begin working on the licensing examination. This change is consistent with NRC policy regarding instructor participation in requalification examinations and should provide licensees that elect to prepare their examinations with increased flexibility in managing their resources and possibly reduce their costs.

The NRC has revised the regulatory analysis in response to the public comments and lessons learned from the pilot program. The NRC has also reevaluated the additional administrative criteria in interim Revision 8 of NUREG–1021 and considers them reasonable and essential to mitigate the vulnerabilities (e.g., quality, security, and conflict of interest) of the new examination process and to facilitate the NRC staff's review of the proposed examinations. These criteria are retained in the final version of Revision 8 of NUREG–1021.

The issue of cost has lost much of its importance because the NRC has decided to continue the revised examination process on a voluntary basis rather than require each power reactor facility licensee to prepare the examinations. It will be up to each facility licensee to compare the cost of preparing its own examinations in accordance with the criteria in the effective revision of NUREG–1021 with the cost of having the NRC staff prepare the examinations and then make a decision based on its available resources (and other considerations).

Comment: Two NRC examiners with pilot-examination experience asserted that the quality of the simulator and walk-through tests has decreased significantly and that, in most cases, the quality and difficulty of the submitted examinations have been below NRC standards. All four examiners who submitted comments cited various reasons why the quality and difficulty of the facility-prepared examinations might be lower than examinations prepared by the NRC or its contract examiners, including: (1) the facility licensees' tendency to narrow the scope of the operating test to those procedures that the facility believes are important (and emphasized in the training program); and (2) the belief that most facility training personnel do not have the expertise to develop valid test items. Two NRC examiners asserted that the quality of the examinations has not improved during the pilot program and is not likely to improve because there is nothing to prevent licensees from using different people to develop successive examinations. A utility employee asserted that the utilities' limited contact with the process by preparing an examination once every 18 to 24 months will not foster consistency or develop skilled examination writers.

Two NRC examiners asserted that the elimination of NRC contract examiners who participated in examinations across the four NRC regions will be detrimental to examination consistency. One NRC examiner asserted that the guidance in interim Revision 8 of NUREG–1021 is not sufficiently prescriptive to ensure nationwide consistency in the level of knowledge tested and the level of difficulty of the examinations and that several specific changes should be included in NUREG–1021 to address his concerns.

The State of Illinois asserted that the quality and consistency of the written examination questions can be maintained because the NRC can change and approve the questions before they are used. However, the State also recommended that the NRC should compile the examination questions and proctor the examinations (refer to the conflict-of-interest discussion below).

According to NEI, the recent facility-prepared examinations were of higher quality than the examinations prepared by the NRC before the pilot program started. Many of the NRC-prepared examinations had to be revised in response to the facility licensees' technical reviews.

Response: Essentially all of the facility-prepared examinations required some changes and many required significant changes to make them conform to the NRC's standards for quality and level of difficulty. According to the questionnaires completed by the NRC chief examiners responsible for the pilot examinations, the average facility-prepared written examination required approximately 10 to 20 changes, which is consistent with the number of changes often required on examinations prepared by NRC contract examiners. Most NRC chief examiners judged the final examinations (with the NRC's changes incorporated) to be comparable to recent NRC-prepared examinations in terms of quality and level of difficulty. Moreover, the fact that the passing rate on the facility-prepared examinations is generally consistent with the historical passing rate on examinations prepared by the NRC suggests that the NRC-approved examinations have discriminated at an

acceptable level and that they have provided an adequate basis for licensing the applicants at those facilities.

Although the NRC expected that the proposed examination quality would improve as facility licensees gained experience and familiarity with the NRC's requirements and expectations, the overall quality of examinations submitted to the NRC during the transition process did not improve appreciably over time. Although approximately half of the 17 facility licensees that had prepared more than one examination by the end of FY 1997 did maintain or improve the quality of their second or third examination submittals, the quality of the other facility licensees' second or third examinations was lower. Although it is unclear to what extent the problems with proposed examination quality and difficulty have been caused by a lack of sufficient expertise on the part of the examination writers, the NRC has asked the industry to address this issue. Furthermore, the NRC staff has conducted and participated in a number of public meetings and workshops in an effort to communicate its expectations to the facility employees who will be preparing the examinations. Additional NRC and industry workshops will be conducted to address examination quality and solicit industry feedback.

In SECY–96–206, the NRC staff discussed the issues of examination quality and consistency and how they might be affected when a large number of facility employees assume the role that had been filled by a smaller number of experienced NRC and contract examiners. The NRC staff's comprehensive examination reviews versus the examination criteria in NUREG–1021, in combination with supervisory reviews and the examination oversight activities conducted by the Office of Nuclear Reactor Regulation, should mitigate the vulnerability in this area. Moreover, the industry and staff initiatives to improve the expertise of the examination writers should eventually enhance the quality and consistency of the facility-prepared examinations.

Comment: All four examiners who submitted comments, a nonpower reactor facility licensee, and the State of Illinois asserted that allowing the facility licensees to prepare the operator licensing examinations decreases the level of independence and creates a conflict of interest for facility personnel having responsibility for training and licensing the operators. Their letters maintained that the new process makes it possible for the utilities to ''teach the examination,'' to test applicants only on what was taught, or to avoid testing in areas with known difficulties. One NRC examiner noted that the new process places training managers in a no-win situation because if applicants fail the examination, the managers look like poor trainers, and if the examination is too easy, the NRC gives them a bad report. He and another NRC examiner asserted, based on their experience during the pilot examinations, that some facility personnel openly admitted that they would develop the easiest possible examination to ensure that all their applicants would pass.

One NRC examiner noted that the NRC review and approval process cannot adequately compensate for the conflict-of-interest problems inherent in the revised examination process and recommended a change to interim Revision 8 of NUREG–1021 that would limit the licensees' latitude in selecting topics for the examination outline. The State of Illinois suggested that the NRC should compile the questions and proctor the examination to maintain more of the checks and balances that existed under the old process.

The nonpower reactor facility licensee noted that most professional licensing examinations are developed by independent agencies, and that this fosters a sense of professionalism in the license applicants.

Response: The NRC agrees that the revised examination process decreases the level of independence in the licensing process and may create a potential conflict of interest for facility personnel involved in preparing the examination. However, the Commission has concluded that restricting the training activities of those individuals when they become involved in preparing the licensing examination, in combination with the NRC's enforcement authority, will adequately mitigate the vulnerability in this area. Although the NRC has amended the final version of Revision 8 of NUREG–1021 to allow instructors to participate in the examination development regardless of their involvement in training the license applicants (as discussed above in response to comments concerning the industry burden under the revised examination process), the NRC has also amended NUREG–1021 to include an expectation that facility licensees will use an objective, systematic process for preparing the written examination outlines. This process enhancement should limit the potential for bias in the selection of topics to be evaluated on the written examination.

The NRC will continue to monitor the facility licensees' examination development programs and implement additional restrictions, as necessary, if actual bias problems are identified. Moreover, if the NRC determines that a facility licensee has intentionally biased the scope, content, or level of difficulty of an examination (i.e., compromised its integrity contrary to 10 CFR 55.49) to enhance the chances that its applicants would pass the examination, the NRC will utilize its enforcement authority including, as warranted, civil penalties, orders against the individuals involved, and charging the individuals involved with deliberate misconduct pursuant to 10 CFR 50.5.

Concerns regarding the potential for conflict of interest and the frequency of security incidents since beginning the pilot examination program have prompted the NRC to review the clarity of 10 CFR 55.49. The regulation encompasses not only activities like cheating and lapses in security but also activities that compromise the integrity or validity of the examination itself (e.g., noncompliance with the criteria designed to limit the potential for bias in the selection of topics to be evaluated on the written examination). Therefore, the NRC has concluded that it would be beneficial to amend 10 CFR 55.49 to clarify its intent and to amend the examination rule to require power reactor facility licensees that elect to prepare their licensing examinations to establish procedures to control examination security and integrity.

Comment: Three NRC examiners and the State of Illinois asserted that the revised examination process increases the threat to examination security. One examiner noted that the examination is onsite for a longer period of time, thereby proportionally increasing the risk of being compromised. Another examiner cited the fact that a number of examination reports have documented problems with security.

Response: As discussed in SECY–96–206 and SECY–97–079, the Commission is aware of the vulnerability in this area because several security incidents have occurred since beginning the pilot examination program. Therefore, based on the comments received and the experience with security incidents, the NRC has: (1) clarified 10 CFR 55.49 in the final rule to ensure that applicants, licensees, and facility licensees understand the scope and intent of the regulation; (2) amended the final examination rule to require facility licensees that elect to prepare their licensing examinations to establish, implement, and maintain procedures to control examination security and integrity; (3) strengthened the discussion of examination security in

the final version of Revision 8 of NUREG–1021; and (4) modified NUREG–1600, ''General Statement of Policy and Procedures for NRC Enforcement Actions,'' to address enforcement action against parties subject to the requirements in 10 CFR 55.49. NRC examiners are expected to review the NRC's physical security guidelines and the facility licensee's specific plans for ensuring examination security at the time the examination arrangements are confirmed with the designated facility contact. Furthermore, the NRC has issued an Information Notice to advise power reactor facility licensees of the NRC's perspective and expectations regarding the integrity of examinations developed by the facility licensees' employees and representatives, and it has asked NEI to take the initiative in developing a model for securing examinations.

As a separate action, the NRC will not administer any examination that may have been compromised until the scope of the potential compromise is determined and measures can be taken to address the integrity and validity of the examination. If the compromise is discovered after the examination has been administered, the NRC will not complete the licensing action for the affected applicants until the staff can make a determination regarding the impact that the compromise has had on the examination process. If the compromise is not discovered until after the licensing action is complete, the NRC will reevaluate the licensing decision pursuant to 10 CFR 55.61(b)(2) if it determines that the original licensing decision was based on an invalid examination.

Comment: One NRC examiner disagreed with the conclusion in the proposed rulemaking that the facility-prepared examination process is an efficient use of NRC resources when compared to the NRC-prepared or contractor-prepared examinations. He noted that, in most cases, the quality and difficulty of the proposed examinations have been below NRC standards (as discussed above) and that it has taken a significant effort on the part of the NRC chief examiner to achieve an acceptable product.

An NRC contract examiner asserted that NRC cost-saving is a poor reason for changing the rule, since the utilities pay for the examinations anyway. He noted that the pilot examination process has led to a loss of certified examiners and contends that those NRC examiners who are left will become more dissatisfied with their jobs and will leave because they will be required to travel more to compensate for the loss of contractors.

Response: The NRC acknowledges that many of the facility-prepared examinations (about 20 percent in FY 1997) required significantly more NRC examiner time than desired or planned in order to achieve NRC quality standards. However, questionnaires filled out by NRC chief examiners for the pilot examinations indicate that the average amount of time spent on reviewing and upgrading the examinations is generally consistent with the estimates developed before starting the pilot program (i.e., approximately 170 examiner-hours). As noted in SECY–97–079, the NRC has issued a memorandum to its regional administrators emphasizing the importance of: (1) Assigning adequate resources to carry out the operator licensing task; (2) completing a review of every facility-prepared examination; and (3) not administering any examination that fails to meet NRC standards for quality and level of difficulty. Furthermore, all the time that NRC examiners spend reviewing an examination and modifying it so that it meets NRC standards is ultimately billed to the facility licensee.

The Commission acknowledges that facility licensees bear the cost of preparing the licensing examinations whether or not the NRC performs this function. However, this rule will give facility licensees more control over the cost of licensing operators at their facility, and the pilot examination program has demonstrated that some facility licensees will save resources if they elect to prepare their own licensing examinations.

The NRC's budget cuts have necessitated agencywide downsizing, which can be expected to increase the burden of travel for many NRC employees, not just the operator licensing examiners. The number of NRC full-time equivalent (FTE) license examiners has remained essentially constant throughout the pilot program and, aside from normal attrition and staff turnover, the loss of certified examiners has been limited to NRC contractors.

Comment: Two NRC examiners expressed concern that examiner proficiency will decrease as a result of implementing the revised examination process. One of the examiners stated that examination reviewers will not maintain the same base of knowledge as examination writers maintained and that they will lose their familiarity with plant operating procedures.

Response: The Commission has concluded that the revised examination process affords sufficient NRC staff involvement that NRC examiners will maintain an acceptable level of proficiency. An NRC examiner will review and approve every facility-prepared examination before it is administered to ensure that it conforms to the criteria specified in NUREG–1021 for content, format, quality, and level of knowledge and difficulty. NRC examiners will also continue to independently administer and grade both the dynamic simulator and the plant walk-through portions of the operating tests. Because NRC examiners will be administering all of the operating tests, the Commission believes that the revised process will enable the examiners to accrue more experience in a shorter period of time and to maintain their proficiency. New NRC license examiners will still be required to complete a standardized training program, including the development of a written examination and operating test, as part of their qualification process. Moreover, the NRC will ensure that the in-house capability to prepare the examinations is maintained by: (1) Requiring a regional supervisor to review and approve every examination and the Office of Nuclear Reactor Regulation to conduct periodic examination reviews; (2) conducting examiner refresher training; and (3) convening an operator licensing examiners' training conference at intervals not to exceed 24 months. Although experience during the voluntary pilot program and informal feedback from the industry suggests that facility licensees are likely to request the NRC to prepare a sufficient number of examinations to maintain the proficiency of its examiners, each region will be required to write at least one initial operator licensing examination per calendar year.

Comment: A utility employee asserted that the revised examination process will not enhance the competency of the operators or reactor safety because the facilities' training resources will be diverted from their primary purpose (i.e., training the applicants) as much as six months before the examination date. Three NRC examiners also took issue with the conclusion in the proposed rulemaking that the NRC staff's focus on operator performance and its core of experience will improve under the pilot examination process because contractors will no longer be used to administer the operating tests. Two of the examiners asserted that the reduction in the amount of procedural research by examiners will result in the identification and correction of fewer procedural problems. Two of the examiners also stated that the contract

examiners help maintain examination consistency across the NRC regions and that their contribution to the operator licensing program goes beyond simple task completion.

Response: The Commission expects that those training departments that cannot readily and safely absorb the examination development work will use the funds that they were previously paying to the NRC through the fee recovery program to secure the additional personnel to do the extra work or request the NRC to prepare the examinations. If a facility licensee decides to prepare the examination and, as a result, places insufficient resources on either training or testing, the quality of its proposed licensing examinations or the passing rate on those examinations would most likely suffer. Although many of the facility-prepared examinations have required significant changes to achieve NRC quality standards, the examination results, to date, are generally consistent with the results on previous NRC-prepared examinations, suggesting that the quality of the facility licensees' training programs has not been affected. Therefore, the fact that facility licensees will have the option of preparing the examinations is not expected to have a negative effect on reactor safety.

The NRC acknowledges that the contract examiners identified procedural and training problems in addition to their primary responsibility for preparing and administering the licensing examinations, and that they helped maintain examination consistency by working on examinations in each of the NRC's regions. As noted in connection with the discussion of examination quality, the Commission realizes that the revised examination process increases the possibility of inconsistency, but it believes that the examination criteria in the final version of Revision 8 of NUREG–1021, in combination with the NRC's examination oversight programs, will minimize these inconsistencies so that they remain within acceptable limits.

When the NRC initiated the pilot program, its goal was to eliminate the need for NRC contract examiners without compromising the existing levels of reactor safety. Because NRC examiners will be administering all of the operating tests, the revised process will enable the NRC examiners to accrue more experience in a shorter period of time and may improve the consistency of the operating test evaluations and the licensing decisions. Although the total number of procedures reviewed in the process of developing examinations may be fewer under the revised method, NRC examiners will still be expected to review and identify discrepancies in the procedures that will be exercised during the walk-through portion of the operating test and during the simulator scenarios.

Other Comments

Since beginning the pilot examination program, the NRC has sought to obtain up-to-date insights regarding the effectiveness of the revised examination process based on the staff's growing body of experience in reviewing the facility-prepared examinations. Many of the staff comments received have paralleled the public comments and require no further attention in this notice. However, one recommendation to amend the wording of the proposed regulation is considered worthy of discussion and incorporation. Specifically, it was recommended that the rule should indicate that a key manager would be responsible for submitting the examination because that individual would be in a position to ensure that the facility licensee's operations and training departments apply sufficient resources to prepare a quality examination. The NRC finds that the recommendation is consistent with normal NRC practice and the analogous regulatory requirement in § 55.31(a)(3), which requires ''* * * an authorized representative of the facility licensee by which the applicant will be employed * * *'' to submit a written request that examinations be administered to the applicant. Therefore, the wording of the final examination rule has been amended to require an authorized representative of the facility licensee to approve the written examinations and operating tests before they are submitted to the NRC for review and approval.

Availability of Guidance Document for Preparing Operator Licensing Examinations

As a consequence of preparing and administering the initial operator licensing examinations over a number of years, the NRC has developed a substantial body of guidance to aid its examiners. That guidance has been published in various versions of NUREG–1021, the latest version of which (final Revision 8) incorporates lessons learned since interim Revision 8 was published in February 1997, as well as refinements prompted by the comments submitted in response to the FRN of August 7, 1997 (62 FR 42426), which solicited public comments in conjunction with the proposed rulemaking. A copy of the final version of Revision 8 of NUREG–1021 will be mailed to each facility licensee; in accordance with NRC practice, revisions of NUREG–1021 are announced in the **Federal Register** when they are issued and become effective six months after the date of issuance. Copies may be inspected and/or copied for a fee at the NRC's Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Final Revision 8 of NUREG–1021 is also electronically available for downloading from the internet at ''http://www.nrc.gov.''

The NRC will prepare, administer, and grade initial operator licensing examinations when requested by facility licensees and at least four times a year to maintain the proficiency of its examiners. NRC examiners will use the criteria in the effective version of NUREG–1021 to evaluate whether an applicant meets the Commission's regulations. In this regard, NUREG–1021 is comparable to the Standard Review Plan (SRP), which establishes the criteria that the NRC uses to evaluate Part 50 license applications. Licensees that elect to prepare their own licensing examinations will also be required to use the guidance in the effective version of NUREG–1021. As provided in NUREG–1021, licensees may identify differences from the NUREG–1021 examination criteria and evaluate how the proposed alternatives provide an acceptable method of complying with the Commission's regulations. The NRC staff will review any proposed alternatives and make a decision regarding their acceptability. The NRC will not approve any alternative that would compromise its statutory responsibility of prescribing uniform conditions for the operator licensing examinations.

Final Rule

This regulation adds a new section, § 55.40, ''Implementation,'' to Subpart E of 10 CFR Part 55. Paragraph (a) of § 55.40 states the NRC's intent to use the criteria in the version of NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' in effect six months before the examination date when preparing and evaluating the written examinations required by §§ 55.41 and 55.43, and the operating tests required by § 55.45. The NRC uses the criteria in NUREG–1021 to evaluate whether an applicant meets the Commission's regulations. In this regard, NUREG–1021 is comparable to the Standard Review Plan, which establishes the criteria that the NRC uses to evaluate Part 50 license applications. Pursuant to Section 107 of the AEA of 1954, as amended, the NRC must prescribe uniform conditions for

licensing individuals applying for operator licenses.

Based on the success of the pilot examination program, paragraph (b) of § 55.40 allows power reactor facility licensees to prepare, proctor, and grade the written examinations required by §§ 55.41 and 55.43 and to prepare the operating tests required by § 55.45, subject to the following conditions:

(1) To ensure uniformity pursuant to the AEA, the facility licensee shall prepare the examinations and tests in accordance with NUREG–1021;

(2) To minimize the possibility that the required written examinations and operating tests might be compromised, the facility licensee shall establish, implement, and maintain procedures to control the security and integrity of the examinations and tests;

(3) To ensure that the facility licensee's operations and training departments apply sufficient resources to prepare a quality examination, an authorized representative of the facility licensee shall approve the examinations before they are submitted to the NRC for review and approval; and

(4) To ensure that NRC standards for quality are maintained, the facility licensee must receive Commission approval of its proposed written examinations and operating tests before they are given.

These requirements are contained in §§ 55.40(b)(1), (2), (3), and (4) respectively.

As provided in NUREG–1021, licensees may identify differences from the NUREG–1021 examination criteria and evaluate how the proposed alternatives provide an acceptable method of compliance with NRC regulations. The NRC staff will review any proposed alternatives and make a decision regarding their acceptability. However, the NRC will not approve any alternative that would compromise its statutory responsibility of prescribing uniform conditions for the operator licensing examinations. The NRC staff will review the facility-prepared written examinations and operating tests against the criteria in NUREG–1021 and direct whatever changes are necessary to ensure that adequate levels of quality, difficulty, and consistency are maintained. After the NRC staff reviews and approves a written examination, the facility licensee will proctor and grade the examination consistent with the guidance in NUREG–1021. The NRC staff will continue to independently administer and grade the operating tests, review and approve the written examination results, and make the final licensing decisions. The facility licensee will not conduct parallel operator evaluations during the dynamic simulator or the walk-through tests.

Pursuant to the requirements in § 55.40(c), the NRC staff will prepare the licensing examinations and tests upon written request by a power reactor facility licensee in accordance with § 55.31(a)(3). In addition, the NRC may exercise its discretion to reject a power reactor facility licensee's determination to prepare the required written examinations and operating tests, and to proctor and grade the written examinations. The NRC will then prepare, proctor, and grade the written examinations and prepare the operating tests for the facility licensee. This provision of the regulation allows the NRC to maintain its proficiency and to perform these activities if the NRC questions a licensee's ability to prepare an acceptable examination.

Paragraph (d) of § 55.40 reasserts that the NRC will continue to prepare and administer the written examinations and operating tests for non-power reactor facility licensees. The NRC has taken this position because the non-power reactor community does not have an accreditation process for training and qualification or the resources to prepare the examinations.

This regulation also amends § 55.49 because the NRC has determined, since the proposed rule was published, that applicants, licensees, and facility licensees may be interpreting § 55.49 too narrowly by limiting it to actual cases of cheating. The amendment clarifies that the regulation pertains to all activities that could affect the equitable and consistent administration of the examination, including activities before, during, and after the examination is administered.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*). These were approved by the Office of Management and Budget (OMB), approval number 3150–0101. The additional public reporting burden for this collection of information is estimated to average 500 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information (i.e., preparing the examinations). The additional, one-time burden for power reactor facility licensees that elect to prepare their licensing examinations to establish procedures to prevent the examinations from being compromised is not expected to exceed 100 hours per facility; and the burden of maintaining those procedures is estimated at approximately 10 hours per facility per year. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by internet electronic mail to bjs1@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0101), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC 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.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory 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 Siegfried Guenther, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, at 301–415–1056 or by e-mail at sxg@nrc.gov.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' described in the Regulatory Flexibility Act or the Small Business Size Standards stated in regulations issued by the Small Business Administration at 13 CFR part 121.

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 of OMB.

Backfit Analysis

In the proposed rule, the NRC took the position that the backfit rule (10 CFR 50.109) did not apply because the proposed shift in responsibility for preparing the examinations: (1) Would not constitute a ''modification of the procedures required to operate a facility'' within the scope of the backfit rule; (2) would not have affected the basic procedures for qualifying licensed operators; and (3) would not have required facility licensees to alter their organizational structures. However, upon further review, the NRC has concluded that there is insufficient basis to support the original position. Therefore, the NRC has decided to revise the final rule so that power reactor facility licensees may elect to prepare their written examinations and operating tests (and proctor and grade the written examinations) in accordance with NUREG–1021 or to have the NRC prepare the examinations. Eliminating the requirement for all facility licensees to prepare their examinations and tests obviates the need for a backfit analysis.

Enforcement Policy

In conjunction with this final rule, the Commission is separately publishing modifications to NUREG–1600, ''General Statement of Policy and Procedure for NRC Enforcement Actions,'' to address enforcement action against parties subject to the requirements in 10 CFR 55.49 (i.e., Part 55 license applicants/licensees and Part 50 licensees).

List of Subjects in 10 CFR Part 55

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons given 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 adopts the following amendments to 10 CFR part 55.

PART 55—OPERATORS' LICENSES

1. The authority citation for Part 55 continues to read as follows:

Authority: Secs. 107, 161, 182, 68 Stat. 939, 948, 953 , as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226). Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

2. In § 55.8, paragraph (c)(4) is revised to read as follows:

§ 55.8 Information collection requirements; OMB approval

* * * * *

(4) In §§ 55.40, 55.41, 55.43, 55.45, and 55.59, clearance is approved under control number 3150–0101.

* * * * *

3. A new § 55.40 is added to read as follows:

§ 55.40 Implementation.

(a) The Commission shall use the criteria in NUREG–1021, ''Operator Licensing Examination Standards for Power Reactors,'' [1] in effect six months before the examination date to prepare the written examinations required by §§ 55.41 and 55.43 and the operating tests required by § 55.45. The Commission shall also use the criteria in NUREG–1021 to evaluate the written examinations and operating tests prepared by power reactor facility licensees pursuant to paragraph (b) of this section.

(b) Power reactor facility licensees may prepare, proctor, and grade the written examinations required by §§ 55.41 and 55.43 and may prepare the operating tests required by § 55.45, subject to the following conditions:

(1) Power reactor facility licensees shall prepare the required examinations and tests in accordance with the criteria in NUREG–1021 as described in paragraph (a) of this section;

(2) Pursuant to § 55.49, power reactor facility licensees shall establish, implement, and maintain procedures to control examination security and integrity;

(3) An authorized representative of the power reactor facility licensee shall approve the required examinations and tests before they are submitted to the Commission for review and approval; and

(4) Power reactor facility licensees must receive Commission approval of their proposed written examinations and operating tests.

(c) In lieu of paragraph (b) of this section and upon written request from a power reactor facility licensee pursuant to § 55.31(a)(3), the Commission shall, for that facility licensee, prepare, proctor, and grade, the written examinations required by §§ 55.41 and 55.43 and the operating tests required by § 55.45. In addition, the Commission may exercise its discretion and reject a power reactor facility licensee's determination to elect paragraph (b) of this section, in which case the Commission shall prepare, proctor, and grade the required written examinations and operating tests for that facility licensee.

(d) The Commission shall prepare, proctor, and grade the written examinations required by §§ 55.41 and 55.43 and the operating tests required by § 55.45 for non-power reactor facility licensees.

4. Section 55.49 is revised to read as follows:

§ 55.49 Integrity of examinations and tests.

Applicants, licensees, and facility licensees shall not engage in any activity that compromises the integrity of any application, test, or examination required by this part. The integrity of a test or examination is considered compromised if any activity, regardless of intent, affected, or, but for detection, would have affected the equitable and consistent administration of the test or examination. This includes activities related to the preparation and certification of license applications and all activities related to the preparation, administration, and grading of the tests and examinations required by this part.

Dated at Rockville, Maryland, this 19th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–10190 Filed 4–22–99; 8:45 am]

BILLING CODE 7590–01–P

[1] Copies of NUREGs may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 38082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, D.C.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–337–AD; Amendment 39–11132; AD 99–08–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This action requires repetitive inspections to detect cracking in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord; and corrective actions, if necessary. This amendment is prompted by several reports of fatigue cracking found at that location on Model 737 series airplanes. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage.

DATES: Effective May 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of fatigue cracking found on Boeing Model 737–200 series airplanes in the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord. An 11-inch crack was found on an airplane with 40,000 total flight cycles, and a 3.5-inch crack was found on an airplane with 28,000 total flight cycles. Investigation revealed 43 fasteners installed in improperly drilled holes at the web-to-''Y'' chord attachment in the area of the 11-inch crack. Such fatigue cracking, if not detected and corrected, could result in rapid decompression of the fuselage.

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 detect and correct fatigue cracking at certain fastener holes of the aft pressure bulkhead, which could result in rapid decompression of the fuselage. This AD requires repetitive inspections of the web of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord, and corrective actions, if necessary. For compliance with this inspection requirement, operators may perform either a low frequency eddy current (LFEC) inspection from the aft side of the bulkhead or a detailed visual inspection from the forward side of the bulkhead. Corrective actions include a high frequency eddy current inspection to detect cracking of the web at the ''Y'' chord attachment; a detailed visual inspection of the bulkhead, if necessary; and repair in accordance with a method approved by the FAA.

Differences Between AD and Relevant Service Information

This AD refers to Boeing 737 Nondestructive Test (NDT) Manual D6–37239, Part 6, Subject 53–10–54, as the appropriate source of service information for accomplishment of the LFEC inspection. Operators should note that, unlike the procedures described in the NDT manual, which specifies that the web be inspected only from stringer 9 left to stringer 9 right, this AD expands the area to be inspected. Because of the safety implications and consequences associated with fatigue cracking and because of the unknown nature of the source of the subject cracking, the FAA has determined that an LFEC inspection, if accomplished, must be performed from stringer 15 left to stringer 15 right of the upper section of the bulkhead at body station 1016.

Interim Action

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

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–337–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:

99–08–23 Boeing: Amendment 39–11132. Docket 98–NM–337–AD.

Applicability: All Model 737–100, –200, –200C, –300, –400, and –500 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 (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking at certain fastener holes of the aft pressure bulkhead, which could result in rapid decompresssion of the fuselage, accomplish the following:

Initial Inspection

(a) Perform either inspection specified by paragraph (a)(1) or (a)(2) of this AD at the time specified in paragraph (b) of this AD.

(1) Perform a low frequency eddy current inspection from the aft side of the aft pressure bulkhead to detect discrepancies (including cracking, misdrilled fastener holes, and corrosion) of the web of the upper section of the aft pressure bulkhead at body station 1016 at the aft fastener row attachment to the ''Y'' chord, from stringer 15 left to stringer 15 right, in accordance with Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 53–10–54, dated December 5, 1998.

(2) Perform a detailed visual inspection of the aft fastener row attachment to the ''Y'' chord from the forward side of the aft pressure bulkhead to detect discrepancies (including cracking, misdrilled fastener holes, and corrosion) of the entire web of the aft pressure bulkhead at body station 1016.

(b) Perform the inspection required by paragraph (a) of this AD at the time specified by paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) For airplanes that have accumulated 40,000 or more total flight cycles as of the effective date of this AD: Inspect within 375 flight cycles or 60 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 25,000 or more total flight cycles and fewer than 40,000 total flight cycles as of the effective date of this AD: Inspect within 750 flight cycles or 90 days after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated fewer than 25,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 25,750 total flight cycles.

Repetitive Inspections

(c) Within 1,200 flight cycles after performing the initial inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 1,200 flight cycles: Perform either inspection specified by paragraph (a)(1) or (a)(2) of this AD.

Corrective Actions

(d) If any discrepancy is detected during any inspection required by this AD: Prior to further flight, accomplish the actions specified by paragraphs (d)(1) and (d)(3), and paragraph (d)(2) if applicable, of this AD.

(1) Perform a high frequency eddy current inspection from the forward side of the bulkhead to detect cracking of the web at the ''Y'' chord attachment, around the entire periphery of the ''Y'' chord, in accordance with Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 51–00–00, Figure 23, dated November 5, 1997.

(2) If the most recent inspection performed in accordance with paragraph (a) of this AD was not a detailed visual inspection: Accomplish the actions specified by paragraph (a)(2) of this AD. If the inspection was a detailed visual inspection, it is not necessary to repeat that inspection prior to further flight.

(3) Repair any discrepancy such as cracking or corrosion or misdrilled fastener holes in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Alternative Methods of Compliance

(e) 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 ACO. 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.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 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

(g) The eddy current inspections shall be done in accordance with Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 53–10–54, dated December 5, 1998; or Boeing 737 Nondestructive Test Manual D6–37239, Part 6, Section 51–00–00, Figure 23, dated November 5, 1995; as applicable. These references contain the specified list of effective pages:

Page No.	Revision level shown on page	Date shown on page
Title Page	Not Shown	February 5, 1995.
List of Effective Pages—Pages 1, 6–12	Not Shown	December 5, 1998.
List of Effective Pages—Page 2	Not Shown	August 5, 1998.
List of Effective Pages—Pages 2A, 3	Not Shown	November 5, 1997.
List of Effective Pages—Page 4	Not Shown	November 5, 1995.

Page No.	Revision level shown on page	Date shown on page
List of Effective Pages—Page 5	Not Shown	May 5, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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.

(h) This amendment becomes effective on May 10, 1999. .

Issued in Renton, Washington, on April 9, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–9739 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–44–AD; Amendment 39–11139; AD 99–09–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–350B, B1, B2, B3, BA, and D Helicopters, and Model AS 355E, F, F1, F2 and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS–350B, B1, B2, B3, BA, and D helicopters, and Model AS 355E, F, F1, F2 and N helicopters. This action requires inspecting the tail rotor spider plate bearing (bearing) for the proper bearing rotational torque, axial play, and for any brinelling of the bearing. This amendment is prompted by service difficulty reports citing the need to prematurely replace bearings due to wear, and by two in-flight incidents of increased tail rotor vibration levels due to bearing wear. This condition, if not corrected, could result in seizure of the bearing, loss of tail rotor control and subsequent loss of control of the helicopter.

DATES: Effective May 10, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–44–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS–350B, B1, B2, B3, BA, and D helicopters, and Model AS 355E, F, F1, F2 and N helicopters. The DGAC advises that a one-time measurement of bearing rotational torque and repetitive inspections of the bearing for axial play, binding, or brinelling is necessary to prevent seizure of the bearing and loss of control of the helicopter.

Eurocopter France has issued Eurocopter AS 350 Service Bulletin (SB) No. 05.00.29, applicable to Model AS–350 helicopters, and SB No. 05.00.30, applicable to Model AS 355 helicopters, both dated February 8, 1999. These SB's specify a periodic check of the pitch change spider plate bearing to prevent any blocking of the bearing. The DGAC classified these SB's as mandatory and issued AD 1999–084–057(A), and AD 1999–085–076(A), both dated February 24, 1999, applicable to Model AS 355 and Model AS–350 helicopters, respectively, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

The FAA estimates that 507 helicopters will be affected by this AD, that it will take approximately 1 work hour to accomplish the inspection, and 4 work hours to replace a bearing, if required, and that the average labor rate is $60 per work hour. Required parts will cost approximately $60 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $182,520 to inspect and replace one bearing in each helicopter in the fleet.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS–350B, B1, B2, B3, BA, and D helicopters, and Model AS 355E, F, F1, F2 and N helicopters of the same type design registered in the United States, this AD is being issued to prevent seizure of the bearing, loss of tail rotor control, and subsequent loss of control of the helicopter. This AD requires, within 50 hours TIS, measuring the bearing rotational torque, and thereafter at intervals not to exceed 100 hours TIS, inspecting the bearing for axial play, binding, or brinelling. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspecting the bearing for the proper rotational torque within the next 50 hours time-in-service (TIS), and for any bearing roughness at intervals not to exceed 100 hours TIS is required, and this AD must be issued immediately.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons

are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–SW–44–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and 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 a new airworthiness directive to read as follows:

AD 99–09–06 Eurocopter France: Amendment 39–11139. Docket No. 98–SW–44–AD.

Applicability: Eurocopter France Model AS–350B, B1, B2, B3, BA, and D helicopters, and Model AS 355E, F, F1, F2 and N helicopters, with tail rotor spider assembly, part number 350A332004–03 or 350A332004–05, installed, certificated in any category.

Note 1: This AD applies to each helicopter 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 helicopters 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 seizure of the tail rotor spider plate bearing (bearing), loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following in accordance with the specified paragraphs of Eurocopter Service Bulletin (SB) 05.00.29, applicable to Model AS–350 helicopters, or SB 05.00.30, applicable to Model AS 355 helicopters, both dated February 8, 1999, as applicable:

(a) Within 50 hours time-in-service, measure the rotational torque of the bearing using the operational procedure in paragraph 2.B.1 of the Accomplishment Instructions in the applicable SB. If the rotational load is equal to or greater than 300 grams, replace the pitch change spider plate assembly with an airworthy pitch change spider plate assembly before further flight.

(b) At intervals not to exceed 100 hours time-in-service, measure the axial play, and inspect for rotational binding or brinelling of the bearing using the operational procedure in paragraph 2.B.2 of the Accomplishment Instructions in the applicable SB.

(c) If the bearing fails to meet the airworthiness criteria stated in paragraph 2.B.3(b) of the Accomplishment Instructions in the applicable SB, replace the pitch change spider plate assembly with an airworthy pitch change spider plate assembly before further flight.

(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, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

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

(f) The measurements and replacements, if necessary, shall be done in accordance with Eurocopter Mandatory SB 05.00.29, applicable to Model AS–350 helicopters, or Eurocopter Mandatory SB 05.00.30, applicable to Model AS 355 helicopters, both dated February 8, 1999, 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 American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–44–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 10, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999–084–057(A) and AD 1999–085–076(A), both dated February 24, 1999.

Issued in Fort Worth, Texas, on April 14, 1999.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–10053 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–49–AD; Amendment 39–11144; AD 99–09–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric Model CF6–45 or –50 Series Engines; or Pratt & Whitney Model JT9D–3, –7, or –70 Series Engines; and 747–E4B (Military) 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 and all 747–E4B (military) airplanes. This action requires repetitive inspections to detect cracking or fracture of the steel attachment fittings of the diagonal brace to the nacelle struts; and replacement of the attachment fittings with new steel fittings, if necessary. This amendment is prompted by a report indicating a fractured steel attachment fitting of a diagonal brace to the number 2 nacelle strut; such fracture has been attributed to fatigue cracking. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in failure of a nacelle strut diagonal brace load path and possible separation of the nacelle from the wing.

DATES: Effective May 10, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–49–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On May 10, 1995, the FAA issued AD 95–10–16, amendment 39–9233 (60 FR 27008, May 22, 1995), applicable to certain Boeing Model 747 series airplanes equipped with Pratt & Whitney Model JT9D series engines (excluding Model JT9D–70 series engines); and on June 16, 1995, the FAA issued AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), applicable to certain Boeing Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines, or Pratt & Whitney Model JT9D–70 series engines. Both of those AD's require modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. The requirements of those AD's are intended to prevent failure of the nacelle strut and subsequent separation of the nacelle from the wing.

Since issuance of those two AD's, the FAA has received a report indicating that a fractured steel attachment fitting of a diagonal brace to the number 2 nacelle strut was found during a routine service inspection of a Boeing Model 747 series airplane equipped with General Electric Model CF6–50 series engines. This is the first report of a fractured steel attachment fitting on a Model 747 series airplane that was found after the strut and wing were modified in accordance with AD 95–13–07 or AD 95–10–16. However, the report clarifies that the steel fitting had been installed during production rather than during the modification required by AD 95–13–07. The FAA points out that the replacement of the fitting with a new steel fitting is only part of the modification required by the previously referenced AD's. The manufacturer reported that the crack initiation, which began at the far aft fastener hole on the inboard side of the lower flange of the attachment fitting, was attributed to fretting and galling and is indicative of fatigue. The airplane had accumulated 54,852 flight hours and 11,124 flight cycles, and the strut and wing modification had been accomplished in accordance with AD 95–13–07 at 50,357 flight hours and 10,085 flight cycles.

While this is the first report of a fitting failure after modification in accordance with AD 95–13–07, cracking or fracture of a steel attachment fitting of the diagonal brace to the nacelle strut, if not corrected, could result in failure of a nacelle strut diagonal brace load path and possible separation of the nacelle from the wing.

The attachment fittings on the Pratt & Whitney series engines are similar to the attachment fittings on the General Electric series engines that are addressed in this AD. Therefore, all of the attachment fittings on either of these engines may be subject to the same unsafe condition. However, the configurations of these engines are different in that some have enhanced structural capability; therefore, the FAA has determined that a somewhat longer repetitive inspection interval for those configurations is appropriate.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of the same type design, this AD is being issued to detect and correct fatigue cracking or fracture of the steel attachment fittings of the diagonal brace to the nacelle struts, which could result in failure of the nacelle strut diagonal brace load path and possible separation of the nacelle from the wing. This AD requires repetitive detailed visual inspections to detect such cracking or fracture. This AD also requires replacement of the attachment fittings with new steel fittings, if necessary, in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

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

Determination of Rule's Effective Date

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

Comments Invited

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–49–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–09–11 Boeing: Amendment 39–11144. Docket 99–NM–49–AD.

Applicability: Model 747 series airplanes equipped with General Electric Model CF6–45 or –50 series engines, or Pratt & Whitney Model JT9D–3, –7, or –70 series engines, and all 747–E4B (military) airplanes, having steel attachment fittings of the diagonal brace to the nacelle struts; certificated in any category.

Note 1: This AD excludes those airplanes that are included in the applicability of AD 97–20–01 R1, amendment 39–10982 (64 FR 985, January 7, 1999). Those airplanes have aluminum attachment fittings.

Note 2: 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 detect and correct fatigue cracking or fracture of the steel attachment fittings of the diagonal brace to the nacelle struts, which could result in failure of a nacelle strut diagonal brace load path and possible separation of the nacelle from the wing; accomplish the following:

Initial Inspection

(a) Gain access to the attachment fittings of the diagonal brace to the inboard and outboard nacelle struts through the aft fairing doors, and perform a detailed visual inspection to detect cracking or fracture of the steel attachment fittings of the diagonal brace to the inboard and outboard nacelle struts, at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes on which the strut and wing modification required by AD 95–10–16, amendment 39–9233, or AD 95–13–07, amendment 39–9287, has not been accomplished: Within 10 days after the effective date of this AD, accomplish the detailed visual inspection.

(i) For airplanes equipped with General Electric Model CF6–45 or –50 series engines and/or Pratt & Whitney JT9D–3 or –7 series engines, repeat the inspection thereafter at intervals not to exceed 180 flight cycles.

(ii) For airplanes equipped with Pratt & Whitney JT9D–70 series engines, repeat the inspection thereafter at intervals not to exceed 250 flight cycles.

(2) For airplanes on which the strut and wing modification required by AD 95–10–16, amendment 39–9233, or AD 95–13–07, amendment 39–9287, has been accomplished: Within 30 days after the effective date of this AD or within 150 flight cycles after accomplishment of the modification, whichever occurs later, accomplish the detailed visual inspection.

(i) For airplanes equipped with General Electric Model CF6–45 or –50 series engines or Pratt & Whitney JT9D–70 series engines, repeat the inspection thereafter at intervals not to exceed 600 flight cycles.

(ii) For airplanes equipped with Pratt & Whitney JT9D–3 or –7 series engines, repeat the inspection thereafter at intervals not to exceed 350 flight cycles.

Corrective Actions

(b) If any cracking or fracture of any attachment fitting is detected during any inspection required by paragraph (a) of this AD, prior to further flight, replace the fitting with a new steel fitting in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

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, Seattle ACO. 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

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.

(e) This amendment becomes effective on May 10, 1999.

Issued in Renton, Washington, on April 16, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10175 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–54]

Revision of Class E Airspace; San Antonio, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at San Antonio, TX.

EFFECTIVE DATE: The direct final rule published at 64 FR 3208 is effective 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 21, 1999 (64 FR 3208). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on April 14, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–10090 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–55]

Revision of Class E Airspace; Monroe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Monroe, LA.

EFFECTIVE DATE: The direct final rule published at 64 FR 3207 is effective 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Forth Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 21, 1999 (64 FR 3207). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on April 14, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–10089 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–6]

Amendment to Class E Airspace; Boonville, MO; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at Boonville, MO, and corrects an error in the geographic coordinates for the Viertel Nondirectional Radio Beacon (NDB) as published in the **Federal Register** February 22, 1999 (64 FR 8508), Airspace Docket No. 99–ACE–6.

DATES: The direct final rule published at 64 FR 8508 is effective on 0901 UTC, May 20, 1999.

This correction is effective on May 20, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On February 22, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at Boonville, MO (FR Document 99–4175, 64 FR 8508, Airspace Docket No. 99–ACE–6). An error was subsequently discovered in the geographic coordinates for the Viertel NDB. This action corrects that error. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the geographic coordinates for the Viertel NDB and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comments. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct final rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Viertel

NDB, as published in the **Federal Register** on February 22, 1999 (64 FR 8508), **Federal Register** Document 99–4175; page 8509, column three) are corrected as follows:

§ 71.1 [Corrected]

ACE MO E5 Boonville, MO [Corrected]

On page 8509, in the third column, under Viertel NDB, by correction (lat. 38°57′03″ N., long. 92°41′22″ W.) to read (lat. 38°56′58″ N., long. 92°41′03″ W.)

Issued in Kansas City, MO on April 2, 1999.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–10278 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–5]

Amendment to Class E Airspace; El Dorado, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date and correction.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace at El Dorado, KS, and corrects an error in the airspace designation for Captain Jack Thomas/El Dorado Airport as published in the **Federal Register** February 22, 1999 (64 FR 8507), Airspace Docket No. 99–ACE–5.

DATES: The direct final rule published at 64 FR 8507 is effective on 0910 UTC, May 20, 1999.

This correction is effective on May 20, 1999.

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

SUPPLEMENTARY INFORMATION:

History

On February 22, 1999, the FAA published in the **Federal Register** a direct final rule; request for comments which revises the Class E airspace at El Dorado, KS (FR Docket 99–4176, 64 FR 8507, Airspace Docket No. 99–ACE–5). An error was subsequently discovered in the airspace designation for Captain Jack Thomas/El Dorado Airport. This action corrects that error. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published. This action corrects the airspace designation for the Captain Jack Thomas/El Dorado Airport and confirms the effective date of the direct final rule.

The FAA uses the direct final rulemaking for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received with the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Correction to the Direct final rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for Captain Jack Thomas/El Dorado Airport, as published in the **Federal Register** on February 22, 1999 (64 FR 8507), **Federal Register** Document 99–4176; page 8508, column three) is corrected as follows:

§ 71.1 [Corrected]

ACE KS E5 El Dorado, KS [Corrected]

On page 8508, in the third column, line seven, correct the airspace designation by removing the word ''south'' and adding ''southwest.''

Issued in Kansas City, MO on April 2, 1999.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–10277 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Use of Small Self-Contained Payloads

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim final rule.

SUMMARY: NASA is removing its rule on use of small self-contained payloads. This rule, in effect since August 31, 1992, revised the prices for standard launch support of Small Self-Contained Payloads (SSCP), as well as clarified and amended other features of the SSCP policy. It addressed conditions of use of the space shuttle, reimbursement policy, flight schedule and reflight, patent and data rights, among other things. NASA plans to issue a new policy whereby domestic educational institutions will have priority ranking in the manifest process.

EFFECTIVE DATE: April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Lynda Cywanowicz, 202–358–1673.

SUPPLEMENTARY INFORMATION: The rule removed in this document was originally published at 45 FR 73023, November 4, 1980, and was codified in the Code of Federal Regulations at 14 CFR part 1214, subpart 1214.9. The proposed new policy will be separately published in the **Federal Register**, for notice and comment, before becoming a final rule.

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, Space transportation, and exploration.

Daniel S. Goldin,

Administrator.

Accordingly, NASA amends 14 CFR chapter V as follows:

PART 1214—SPACE SHUTTLE

1. The authority citation for part 1214 continues to read as follows:

Authority: Sec. 203, Public Law 85–568, 72 Stat. 429, as amended (42 U.S.C. 2473).

Subpart 1214.9—[Removed and Reserved]

2. Subpart 1214.9, consisting of §§ 1214.900 through 1214.912, is removed and reserved.

[FR Doc. 99–9896 Filed 4–22–99; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Special Policy on Small Self-Contained Payloads (SSCP's) By Domestic Educational Institutions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim final rule.

SUMMARY: NASA is removing its rule on special policy on small, self-contained payloads (SSCP's) by domestic educational institutions. This rule, in effect since December 21, 1992, offered lower prices, relative to other users, for standard launch services for SSCP's sponsored by domestic educational institutions that agreed to certain provisions and could meet certain criteria. NASA plans to issue a new policy to reduce further the price for SSCP standard launch services for

qualifying domestic educational institutions.

EFFECTIVE DATE: April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Lynda Cywanowicz, 202–358–1673.

SUPPLEMENTARY INFORMATION: The rule removed in this document was originally published at 57 FR 61794, December 29, 1992, and was codified in the Code of Federal Regulations at 14 CFR part 1214, subpart 1214.10. The proposed new policy will be published separately in the **Federal Register**, for notice and comment, before becoming a final rule.

List of Subjects in 14 CFR Part 1214

Government employees, Government procurement, Security measures, space transportation, and exploration.

Daniel S. Goldin,

Administrator.

Accordingly, NASA amends 14 CFR chapter V as follows:

PART 1214—SPACE SHUTTLE

1. The authority citation for part 1214 continues to read as follows:

Authority: Sec. 203, Public Law 85–568, 72 Stat. 429, as amended (42 U.S.C. 2473).

Subpart 1214.10—[Removed and Reserved]

2. Subpart 1214.10, consisting of §§ 1214.1000 through 1214.1004, is removed and reserved.

[FR Doc. 99–9895 Filed 4–22–99; 8:45 am]

BILLING CODE 7510–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 84G–0257]

Carbohydrase and Protease Enzyme Preparations Derived From Bacillus Subtilis or Bacillus Amyloliquefaciens; Affirmation of GRAS Status as Direct Food Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that carbohydrase enzyme preparations derived from either *Bacillus subtilis* or *B. amyloliquefaciens* and protease enzyme preparations derived from either *B. subtilis* or *B. amyloliquefaciens* are generally recognized as safe (GRAS) for use as direct food ingredients. This action is a partial response to a petition filed by the Ad Hoc Enzyme Technical Committee (now the Enzyme Technical Association).

DATES: The regulation is effective April 23, 1999. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications listed in 21 CFR 184.1148 and 184.1150, effective April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with the procedures described in § 170.35 (21 CFR 170.35), the Ad Hoc Enzyme Technical Committee (now the Enzyme Technical Association), c/o Miles Laboratories, Inc., 1127 Myrtle St., Elkhart, IN 46514, submitted a petition (GRASP 3G0016) requesting that the following enzyme preparations be affirmed as GRAS for use in food: (1) Animal-derived enzyme preparations: Catalase (bovine liver); lipase, animal; pepsin; rennet; rennet, bovine; and trypsin; (2) plant-derived enzyme preparations: Bromelain; malt; and papain; (3) microbially-derived enzyme preparations: Lipase, catalase, glucose oxidase, and carbohydrase from *Aspergillus niger*, var.; mixed carbohydrase and protease from *Bacillus subtilis*, var.; carbohydrase from *Rhizopus oryzae*; and carbohydrase from *Saccharomyces* species.

FDA published a notice of filing of this petition in the **Federal Register** of April 12, 1973 (38 FR 9256), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The petition was amended by notices published in the **Federal Register** of June 12, 1973 (38 FR 15471), proposing affirmation that microbially-derived enzyme preparations (carbohydrase, lipase, and protease) from *A. oryzae* are GRAS for use in food; in the **Federal Register** of August 29, 1984 (49 FR 34305), proposing affirmation that the enzyme preparations ficin, obtained from species of the genus *Ficus* (fig tree), and pancreatin, obtained from bovine and porcine pancreas, are GRAS for use in food; in the **Federal Register** of June 23, 1987 (52 FR 23607), proposing affirmation that the protease enzyme preparation from *A. niger* is GRAS for use in food; and in the **Federal Register** of August 5, 1996 (61 FR 40648), proposing affirmation that carbohydrase and protease enzyme preparations from *B. amyloliquefaciens* are GRAS for use in food. In the June 23, 1987, notice, FDA also noted the petitioner's assertion that pectinase enzyme preparation from *A. niger* and lactase enzyme preparation from *A. niger* are included under carbohydrase enzyme preparation from *A. niger*, and that invertase enzyme preparation from *Saccharomyces cerevisiae* and lactase enzyme preparation from *Kluyveromyces marxianus* are both included under carbohydrase enzyme preparation from species of the genus *Saccharomyces*. The agency further noted that, therefore, pectinase enzyme preparation from *A. niger*, lactase enzyme preparation from *A. niger*, invertase enzyme preparation from *S. cerevisiae*, and lactase enzyme preparation from *K. marxianus* were to be considered part of the petition. Interested persons were given an opportunity to submit comments to the Dockets Management Branch (address above) on each amendment.

After the petition was filed, the agency published, as part of its comprehensive safety review of GRAS substances, two GRAS affirmation regulations that covered three of the enzyme preparations from animal and plant sources included in the petition. These two regulations are: (1) § 184.1685 *Rennet* (animal derived) (21 CFR 184.1685), which was published in the **Federal Register** of November 7, 1983 (48 FR 51151) and includes the petitioned enzyme preparations rennet and bovine rennet; and (2) § 184.1585 *Papain* (21 CFR 184.1585), which was published in the **Federal Register** of October 21, 1983 (48 FR 48805). Thus,

rennet, bovine rennet, and papain are already affirmed as GRAS and need not be addressed further.

In a notice published in the **Federal Register** of September 20, 1993 (58 FR 48889), the agency announced that the petitioner had requested that the following enzyme preparations be withdrawn from the petition without prejudice to the filing of a future petition: (1) Pancreatin used for its lipase activity, (2) pancreatin used for its amylase activity, and (3) amylase derived from unmalted barley extract. In that notice, the agency stated that, in light of the petitioner's request, any future action by FDA on the petition would not include a determination of the GRAS status of these three enzyme preparations.

In a final rule published in the **Federal Register** of June 26, 1995 (60 FR 32904), the agency affirmed as GRAS the following enzyme preparations derived from animal sources: Catalase (bovine liver), animal lipase, pepsin, trypsin, and pancreatin (as a source of protease activity). In that same final rule, the agency also affirmed as GRAS the following enzyme preparations derived from plant sources: Bromelain, ficin, and malt.

This final rule addresses the following bacterially-derived enzyme preparations: (1) carbohydrase enzyme preparation from *B. subtilis*; (2) protease enzyme preparation from *B. subtilis*; (3) carbohydrase enzyme preparation from *B. amyloliquefaciens*; and (4) protease enzyme preparation from *B. amyloliquefaciens*.[1] The other microbial enzyme preparations in the petition will be dealt with separately in a future issue of the **Federal Register**.

II. Standards for GRAS Affirmation

Under § 170.30 (21 CFR 170.30) and 21 U.S.C. 321(s), general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances directly or indirectly added to food. The basis of such views may be either scientific procedures or, in the case of a substance used in food prior to January 1, 1958, experience based on common use in food. General recognition of safety based upon scientific procedures requires the same quantity and quality of scientific evidence as is required to obtain approval of a food additive and ordinarily is based upon published studies, which may be corroborated by unpublished studies and other data and information (§ 170.30(b)). General recognition of safety through experience based on common use in food prior to January 1, 1958, may be determined without the quantity or quality of scientific procedures required for approval of a food additive, and ordinarily is based upon generally available data and information concerning the pre-1958 use of the substance (§ 170.30(c)).

For the enzyme preparations from *B. subtilis* and *B. amyloliquefaciens* that are the subject of this document, the Enzyme Technical Association bases its request for affirmation of GRAS status on a history of safe food use prior to 1958. As discussed in the preamble to the proposed rule for the most recent amendment to § 170.30, general recognition of safety through experience based on common use in food requires a consensus on the safety of the substance among the community of experts who are qualified to evaluate the safety of food ingredients (50 FR 27294 at 27295, July 2, 1985).

III. Background

A. Identity and Technical Effect

Enzymes are proteins that originate from living cells and produce chemical change by catalytic action (*Random House Dictionary of the English Language*, 1987). Most enzymes are very specific in their ability to catalyze only certain chemical reactions; this high degree of specificity and strong catalytic activity are the most important functional properties of enzymes (Ref. 1).

Commercial enzyme preparations such as those that are the subject of this document usually contain several enzymes that have catalytic activities other than those for which they are sold—i.e., other than their characterizing enzyme activities. As discussed in more detail in section III.B of this document, the methods of manufacture for a specific commercial enzyme preparation are tailored to maximize the characterizing enzyme activity. The other enzymes that are present in the preparation generally are present at low levels.

Carbohydrases, which are also known as glycosidases, are enzymes whose catalytic activity is the hydrolysis (i.e., splitting) of *O*-glycosyl bonds in carbohydrates. The carbohydrase enzyme preparations that are the subject of this document each contain two or more carbohydrases, including: (1) α-amylase, which hydrolyzes α-1,4-glucan bonds in polysaccharides (e.g., starch) yielding monosaccharides, linear oligosaccharides and branched oligosaccharides (dextrins), and (2) β-glucanase, which hydrolyzes 1,3 and some 1,4 linkages in β-D-glucans (polysaccharides that are common in cereals such as oats, barley, and rye), yielding oligosaccharides and glucose (Refs. 2 and 3). Because the major carbohydrase in the carbohydrase enzyme preparations derived from *B. subtilis* or *B. amyloliquefaciens* is α-amylase, the primary use of these enzyme preparations is the hydrolysis of starch in processes such as the preparation of starch syrups and the fermentation of beer (Refs. 3 through 5).

Proteases are enzymes whose catalytic activity is the hydrolysis of peptide bonds in proteins, yielding peptides and amino acids. The protease enzyme preparations that are the subject of this document each contain two or more proteases, including subtilisin and neutral proteinase (Refs. 2 and 3). The primary use of the protease enzyme preparations derived from *B. subtilis* or *B. amyloliquefaciens* is in the preparation of protein hydrolysates and the tenderizing of meat (Refs. 3 through 5).

Table 1 lists the characterizing enzyme activities and associated International Union of Biochemistry Enzyme Commission (EC) numbers of the carbohydrase and protease enzyme preparations derived from *B. subtilis* or *B. amyloliquefaciens*.

TABLE 1.—ENZYME ACTIVITIES AND EC NUMBERS ASSOCIATED WITH ENZYME PREPARATIONS DERIVED FROM B. SUBTILIS OR B. AMYLOLIQUEFACIENS

Enzyme Preparation	Characterizing Enzyme Activity	EC Number
Carbohydrase	α-Amylase	3.2.1.1
	β-Glucanase	3.2.1.6
Protease	Subtilisin	3.4.21.62
	Neutral Proteinase	3.4.24.28

B. Methods of Manufacture

All microbial strains, including bacterial strains, used to manufacture enzyme preparations are started from a

[1] Although the petition requested GRAS affirmation for mixed carbohydrase and protease enzyme preparation from *B. subtilis*, the petitioner subsequently agreed that this enzyme preparation be evaluated as two separate enzyme preparations, carbohydrase enzyme preparation from *B. subtilis* and protease enzyme preparation from *B. subtilis*. Enzyme preparations that contain mixtures of carbohydrases and proteases can be used either for their carbohydrase activity or for their protease activity, and they are usually sold according to their intended use. FDA requested the petitioner's agreement to this change to reflect the distinct uses of mixed carbohydrase and protease enzyme preparations in food depending on whether a particular preparation is being used for its carbohydrase activity or for its protease activity.

pure laboratory culture and grown, or ''fermented,'' in a sterile liquid nutrient medium or sterile moistened semisolid medium. Accepted microbiological techniques are used to exclude contaminating organisms and to avoid development of substrains from within the culture itself (Ref. 6). Although specific conditions of fermentation vary from manufacturer to manufacturer, common fermentation procedures are: (1) The submerged culture method, which uses closed fermenters equipped with agitators, aeration devices, and jackets or coils for temperature control; and (2) the semisolid culture method, which uses horizontal rotating drums or large chambers fitted with trays (Refs. 5 and 6). During fermentation by either method, the pH, temperature, appearance or disappearance of certain ingredients, purity of culture, and level of enzyme activity must be carefully controlled. The fermentation is harvested at the point where laboratory tests indicate that maximum production of enzyme activity has been attained.

In practice, the processes by which microbial-derived enzyme preparations are produced vary widely. Each single strain of microorganism produces a large number of enzymes (Ref. 5). The absolute and relative amounts of various individual enzymes produced vary markedly among species and even among strains of the same species. They also vary depending upon the composition of medium on which the microorganism grows, and upon the fermentation conditions. The petitioner states that for a specific enzyme preparation the production strain, medium composition, and fermentation conditions are optimized to maximize the desired enzyme activity (Refs. 7 and 8).

The carbohydrase and protease enzymes from *B. subtilis* and *B. amyloliquefaciens* are excreted into the fermentation medium (Refs. 9 through 11). In the semisolid culture method, an enzyme that is present in the fermentation medium is extracted either directly from the moist material, or later after the culture mass has been dried. In the submerged culture method, the microorganisms and other insolubles are removed from the fermentation medium by decanting, filtering, or centrifuging, and therefore an extraction step is not required. In either method, further processing steps may involve clarification, evaporation, precipitation, drying, and grinding (Refs. 6 and 9 through 12).

IV. Safety Evaluation

A. Pre-1958 History of Use in Food

Enzyme preparations have been safely used for many years in the production and processing of food, for example, in the baking, dairy, and brewing industries (e.g., see Refs. 1, 4, and 13).

1. Bacillus Subtilis

The petitioner has provided generally available information, including published reviews, showing that carbohydrase and protease enzyme preparations derived from *B. subtilis* were commonly used in food prior to 1958 (Refs. 4 and 5). This information is summarized in Table 2.

TABLE 2.—APPLICATIONS OF BACTERIAL CARBOHYDRASE AND PROTEASE ENZYME PREPARATIONS IN FOOD PRIOR TO 1958

Enzyme preparation	Food categories	Technical effect or industry application	References
Carbohydrase	Beer	Mashing[1]	4 and 5
	Syrup for cocoa and chocolate	Reduction of viscosity	4 and 5
	Sugar	Recovery from scrap candy	4 and 5
	Distilled beverages	Mashing	4 and 5
	Precooked cereals	Modification of cereal starches to improve characteristics	4
Protease	Beer	Chillproofing	4
	Condiments	Not reported	5
	Milk	Protein hydrolysis	5

[1] Mashing is the conversion of starch to sugars.

In the published article by Underkofler et al. (Ref. 5), the authors use the general terms ''bacterial amylase'' and ''bacterial protease'' to refer to bacterially-derived carbohydrase and protease enzyme preparations used in food at the time of the article. However, the article also includes a table in which the source bacterium for bacterially-derived enzyme preparations is identified as *B. subtilis*.

In the published article by Underkofler and Ferracone (Ref. 4), the authors use the general terms ''bacterial carbohydrase'' and ''bacterial protease'' to refer to bacterially-derived carbohydrase and protease enzyme preparations used in food at the time of the article. Unlike the Underkofler et al. article, however, the Underkofler and Ferracone article does not identify the source bacterium for these enzyme preparations. Although it is not possible to determine conclusively whether the descriptor ''bacterial'' in the Underkofler and Ferracone article refers to *B. subtilis*, the use of this term by the same principal author in two scientific articles published in consecutive years to describe the source of protease and carbohydrase enzyme preparations used in the food industry, coupled with the identification of the source bacterium for these enzyme preparations as *B. subtilis* in the Underkofler et al. article, makes it likely that the source bacterium referred to by Underkofler and Ferracone was in fact *B. subtilis*.

The food uses shown in Table 2, using terminology from the cited reference(s), were documented in articles that were published before or during 1958; the cited references demonstrate that the use of these enzyme preparations in a variety of foods was widely recognized by 1958. Therefore, the agency concludes that carbohydrase and protease enzyme preparations derived from *B. subtilis* were in common use in food prior to January 1, 1958.

2. *Bacillus Amyloliquefaciens*

According to the petitioner (Refs. 8 and 14 through 16), the species *B. amyloliquefaciens* was not classified under the name *B. amyloliquefaciens* until it was taxonomically separated from the species *B. subtilis* in the late 1980's (Refs. 17 and 18). Therefore, the petitioner asserts, references in contemporaneous scientific literature to pre-1958 food use of enzyme preparations from *B. amyloliquefaciens* occur under the name *B. subtilis*.

With respect to carbohydrase components of the petitioned enzyme

preparations, the petitioner cites scientific literature describing a distinctive group of bacteria, within the group originally considered to be *B. subtilis*, that are known to possess a high level of α-amylase activity and are currently designated as *B. amyloliquefaciens* (Refs. 19 through 22). The petitioner also cites a scientific review article (Ref. 23) that states that the source organism for commercial preparations of α-amylase from *B. amyloliquefaciens* was called *B. subtilis* prior to its current designation as *B. amyloliquefaciens*. With respect to the protease components of the petitioned enzyme preparations, the petitioner cites a statement in the same scientific review article (Ref. 23) that most bacterial protease preparations produced before 1960 were derived from *B. amyloliquefaciens*.

As FDA noted in the preamble to another final rule affirming an enzyme preparation as GRAS (58 FR 27197 at 27199, May 7, 1993), the taxonomic placement and name of an organism may change as a result of scientific advances. If internationally accepted rules of nomenclature are observed, references to a particular organism can be followed historically in the scientific literature. Thus, changes in the taxonomic placement of an organism should not affect the ability to identify scientific references to the organism, including scientific references to its toxigenicity, pathogenicity, or use in the production of food or enzymes.In reviewing the petition, FDA has evaluated whether the scientific information documenting pre-1958 food use of bacterially-derived carbohydrase and protease enzyme preparations pertains to carbohydrase and protease enzyme preparations from *B. amyloliquefaciens*. Although it is not possible to determine conclusively whether any one reference to *B. subtilis* in the scientific literature refers to the species now referred to as *B. amyloliquefaciens*, the totality of the scientific evidence supports a determination that some carbohydrase and some protease enzyme preparations that were described in scientific literature documenting their common use in food before 1958 as derived from *B. subtilis* were in fact derived from *B. amyloliquefaciens*. Therefore, the agency concludes that carbohydrase and protease enzyme preparations derived from *B. amyloliquefaciens* were in common use in food prior to January 1, 1958.

B. Corroborating Evidence of Safety

Because enzymes are highly efficient catalysts, they are needed in only minute quantities to perform their function. When used in accordance with current good manufacturing practice (CGMP), the amounts added to food represent only a minute fraction of the total food mass. FDA estimates dietary exposure to enzyme preparations derived from *B. subtilis* or *B. amyloliquefaciens* at 200 mg/person/day (Ref. 24). This estimate is exaggerated because the agency used the total consumption of microbially-derived enzyme preparations in food as an approximation for the consumption of enzyme preparations derived from *B. subtilis* or *B. amyloliquefaciens*. Thus, the estimate relies on the worst-case assumption that all microbially-derived enzyme preparations that are consumed in food are derived from *B. subtilis* or *B. amyloliquefaciens*. This assumption is extremely conservative because there are numerous microbially-derived enzyme preparations that are GRAS for use in food (see, e.g., 21 CFR 184.1012, 184.1027, 184.1387, 184.1388, 184.1924, and 184.1985).

1. The Enzyme Components

Enzymes, including carbohydrase and protease enzymes in the enzyme preparations that are the subject of this document, are naturally occurring proteins that are ubiquitous in living organisms. A wide variety of enzymes has always been present in human food. Many naturally occurring enzymes remain active in unprocessed food and therefore are consumed as active enzymes. For example, active enzymes are present in fresh fruits and vegetables and are not inactivated unless the fruits or vegetables are cooked (Refs. 1 and 25).

Enzymes derived from microorganisms have been used as components of foods that have been safely consumed as part of the diet throughout human history (Ref. 26). For example, such common foods as bread and yogurt are produced using enzymes derived from microorganisms (Refs. 26 and 27).

The carbohydrase and protease enzymes in the enzyme preparations that are the subject of this document are substantially equivalent [2] to carbohydrase and protease enzymes from other microorganisms that FDA has evaluated and found to be safe and that are routinely consumed as part of a normal diet in the United States. For example, FDA has affirmed the use of a mixed carbohydrase and protease enzyme preparation derived from *Bacillus licheniformis* is GRAS (see 21 CFR 184.1027). In addition, carbohydrases derived from various fungi (e.g., *Rhizopus niveus*, *Rhizopus oryzae*, and *A. niger*) are approved for use as secondary direct food additives (see 21 CFR 173.110, 173.130, and 173.120, respectively).

In general, issues relevant to a safety evaluation of proteins such as the enzyme component of an enzyme preparation are potential toxicity and allergenicity. Pariza and Foster (Ref. 1) note that very few toxic agents have enzymatic properties, and those that do (e.g., diphtheria toxin and certain enzymes in the venom of poisonous snakes) catalyze unusual reactions that are not related to the types of catalysis that are common in food processing and that are the subject of this document. Further, as the agency has noted in the context of guidance to industry regarding the safety assessment of new plant varieties, enzymes do not generally raise safety concerns (57 FR 22984 at 23000, May 29, 1992). Exceptions include enzymes that catalyze the formation of toxic substances or substances that are not ordinarily digested and metabolized. The catalytic activities of the enzymes that are the subject of this document are well known; they split proteins or carbohydrates into smaller subunits that are readily metabolized by the human body and that do not have toxic properties.

According to Pariza and Foster (Ref. 1), there have been no confirmed reports of allergies or primary irritations in consumers caused by enzymes used in food processing. There have been, however, some reports of allergies and primary irritations from skin contact with enzymes or inhalation of dust from concentrated enzymes (for example, proteases used in the manufacture of laundry detergents) (Refs. 29 through 31). These reports relate primarily to workers in production plants (Ref. 30) and are not relevant to an evaluation of

[2] A 1996 report of the joint Food and Agriculture Organization and World Health Organization (FAO/WHO) consultation group (Ref. 28) stated that ''[s]ubstantial equivalence embodies the concept that if a new food or food component is found to be substantially equivalent to an existing food or food component, it can be treated in the same manner with respect to safety (i.e. the food or food component can be concluded to be as safe as the conventional food or food component). Account should be taken of any processing that the food or food component may undergo as well as the intended use and the intake by the population.'' As discussed more fully in FDA's proposal to amend the agency's regulations pertaining to substances that are generally recognized as safe (62 FR 18938 at 18944, April 17, 1997), international expert groups such as the FAO/WHO consultation group and the Organization for Economic Co-operation and Development (OECD) consultation group have recommended that the concept of ''substantial equivalence'' be applied to the safety assessment of foods and substances intentionally added to food.

the safety of ingestion of such enzymes in food.

The 1977 report of the Select Committee on GRAS substances concerning the plant enzyme papain (Ref. 29) supports the view that the ingestion of an active protease at levels found in food products is not likely to affect the human gastrointestinal tract, where many proteases already exist at levels adequate to digest food:

In common with other proteolytic enzymes, papain digests the mucosa and musculature of tissues in contact with the active enzyme for an appreciable period. Because there is no food use of papain that could result in the enzyme preparation occurring in sufficient amount in foods to produce these effects, this property does not pose a dietary hazard.

FDA concludes that generally available and accepted data and information corroborate the safety of the enzyme components of the enzyme preparations that are the subject of this document by establishing that these enzyme components are identical or substantially equivalent to enzymes that are known to have been safely consumed in the diet for many years. FDA also concludes that generally available and accepted data and information corroborate that the enzyme components of the enzyme preparations that are the subject of this document are nontoxigenic and nonallergenic when ingested.

2. Enzyme Sources, Manufacturing Methods, and Processing Aids

Enzyme preparations used in food processing are usually not chemically pure; in addition to the enzyme component(s), they may contain other components derived from the production organism and the fermentation medium, residual amounts of processing aids, and substances added as stabilizers, preservatives, or diluents. The agency has concluded that the enzyme components of the carbohydrase and protease enzyme preparations derived from *B. subtilis* or *B. amyloliquefaciens* do not raise safety concerns; therefore, the remaining safety issue is whether other components of the enzyme preparations are toxic or raise other safety concerns.

a. *Antibiotics*. Some microorganisms are capable of producing antibiotics, which are a special class of metabolites that can inhibit the growth of, or kill, other microorganisms. Some microorganisms have genetic traits that make them resistant to one or more antibiotics such as penicillin, tetracycline, and kanamycin. These traits or markers are often located on plasmids (extrachromosomal pieces of deoxyribonucleic acid (DNA) that are easily transferred to other microorganisms in the environment (e.g., in the gastrointestinal tract). The presence of antibiotics in the food supply would be expected to favor the growth of microorganisms resistant to the antibiotic, and thus could accelerate the spread of antibiotic resistance among microorganisms, including human pathogens, rendering them resistant to therapy with antibiotic drugs. Therefore, experts have recommended that microbial-derived enzyme preparations that are intended for food use not contain clinically important antibiotics (Refs. 1 and 32).

Accordingly, FDA has evaluated the potential for carbohydrase or protease enzyme preparations derived from *B. subtilis* or *B. amyloliquefaciens* to contain antibiotics as contaminants derived from the bacterial source. Although *Bacillus* species are capable of producing a number of linear or cyclic polypeptide antibiotics following the exponential phase of growth as part of the process of spore formation (Ref. 33), the production of antibiotics can be repressed by selection of strains that produce low or undetectable levels of antibiotics as well as by strict control of the growth conditions. In addition, the enzyme preparations can be tested for the presence of antibiotic activity by routine methods (Ref. 34) to ensure that they do not contain antibiotics. Because of safety concerns about the presence of antibiotics in substances added to food, a condition of agency affirmation of GRAS status for the enzyme preparations that are the subject of this document is that the enzyme preparations not contain antibiotics.

b. *Toxicity and pathogenicity*. A published scientific review article (Ref. 23) states that *Bacillus* species, with the exception of the *B. cereus* group (which does not include *B. subtilis* or *B. amyloliquefaciens*) do not produce toxins. Another published scientific review article on the safety of *B. subtilis* and *B. amyloliquefaciens* (Ref. 35) notes that *B. subtilis* is consumed in large quantities in the Japanese food natto. Further, according to a monograph on microbial enzymes that was prepared under the auspices of the agency-initiated review of GRAS substances conducted during the 1970's, there had been no reported problems of pathogenicity or toxicity with enzyme preparations derived from *B. subtilis* for use in food as of the time of that review (Ref. 12).

More recently, de Boer and Diderichsen (Ref. 35) searched the scientific literature for references that might implicate *B. subtilis* or *B. amyloliquefaciens* as a cause of human disease. These authors characterized *B. subtilis* as an opportunistic microorganism with no pathogenic potential to humans. Although they reported that cultures from some patients with opportunistic infections have revealed the presence of *B. subtilis* along with other microorganisms, they attributed the presence of *B. subtilis* in these cultures to the virtual ubiquity of this microorganism in the environment (e.g., *B. subtilis* commonly occurs in the soil and can be isolated in the home environment from sites such as the kitchen and bathroom). De Boer and Diderichsen also noted that only patients treated with immunosuppressive drugs appeared to be susceptible to such infections. Moreover, viable cells, which are not present in finished enzyme preparations, would be a prerequisite for any opportunistic infection in an immunocompromised patient. De Boer and Diderichsen also reported that their search for references on *B. amyloliquefaciens* infections revealed no such cases. As discussed in section IV.A.2 of this document, any references to *B. amyloliquefaciens* prior to the late 1980's would be expected to occur under the name *B. subtilis*.

A few reports have implicated *B. subtilis* as a potential source of food poisoning when present as a contaminant in food (Refs. 36 and 37). However, a particular strain of virtually any microorganism may, under certain circumstances, mutate to become an opportunistic pathogen. Therefore, FDA considered these reports in the context of: (1) The information summarized in the monograph on microbial enzymes (Ref. 12); (2) the scientific review article describing *Bacillus* species other than those in the *B. cereus* group as nontoxigenic (Ref. 23); (3) the documented consumption of *B. subtilis* bacteria in the Japanese food natto (Ref. 35); and (4) the characterization by de Boer and Diderichsen of *B. subtilis* as an opportunistic microorganism with no pathogenic potential to humans (Ref. 36). Based on this information, FDA concludes that nontoxigenic and nonpathogenic strains of *B. subtilis* are widely available and have been safely used in a variety of food applications. Because an enzyme preparation derived from a toxigenic or pathogenic source would not be GRAS, a condition of agency affirmation of GRAS status for the enzyme preparations that are the subject of this document is that the bacterial strains used as a source of these enzyme preparations be nontoxigenic and nonpathogenic.

c. Manufacturing methods and processing aids. Enzyme preparations

that are manufactured in accordance with CGMP using the methods described in section III.B of this document meet the general requirements and additional requirements in the monograph on enzyme preparations in the Food Chemicals Codex, 4th ed. (Ref. 3). Such enzyme preparations are produced using substances that are acceptable for use in foods and under culture conditions that ensure a controlled fermentation, thus preventing the introduction of extraneous microorganisms that could be the source of toxic materials and other toxic substances (Ref. 3).

FDA concludes that generally available and accepted data and information corroborate the safety of carbohydrase and protease enzyme preparations derived from nontoxigenic and nonpathogenic strains of *B. subtilis* or *B. amyloliquefaciens* and manufactured in accordance with CGMP by establishing that any added substances or impurities derived from the enzyme source or introduced during the manufacturing of such enzyme preparations would not be expected to present health concerns.

V. Comments

FDA received seven comments in response to the filing notice and none in response to the amendment notices. Of these, FDA received two comments from food manufacturers, two from trade associations, one from a manufacturer of enzymes for use in animal feed, one from a pharmaceutical manufacturer, and one from a consumer group. Six comments supported the petition for GRAS affirmation, stating that the enzyme preparations included in the petition have a long history of use in foods such as cheese, bread, and corn syrup.

One comment stated that *B. subtilis* has a history of use in animal feed and requested GRAS affirmation for this use. However, the petition is for the use of certain enzyme preparations in human food, and not in animal feed. Therefore, the agency finds that this comment is not relevant to the petition.

One comment asserted that enzyme preparations should not be considered GRAS. The comment further asserted that the use of enzyme preparations should be declared on the label of foods and that consumers should be warned about hazards inherent in their use. The comment stated that enzyme preparations are rarely purified to any significant degree and contain a variety of cellular constituents and metabolic debris. The comment further argued that, although enzyme preparations are used at low levels and are inactivated after the treatment of food, they may elicit allergic reactions and other biological activities which could be detrimental to human health. In support of this statement, the comment cited a published scientific article (Ref. 38) that reported that enzyme preparations from *B. subtilis* caused temporary weight loss and aggravated infection in mice when injected into the abdominal cavity and caused hemolysis and hemagglutination of sheep erythrocytes in in vitro studies.

FDA has evaluated the comment and the article it cited. For the following two reasons, FDA concludes that the study cited by the comment is not relevant to food uses of the bacterial enzyme preparations that are the subject of this document.

First, the paper did not identify the composition of the *B. subtilis* enzyme preparations tested. The preparations were intended for use in laundry detergents; such nonfood grade enzyme preparations need not conform to specifications for enzyme preparations used in food processing. For example, nonfood grade enzyme preparations may include processing aids that are not acceptable for food use. Because of such differences, the results from the testing of laundry cleaning enzyme preparations have little value in the safety assessment of food-processing enzyme preparations.

Second, in the cited study, adverse effects were observed in mice after the intraperitoneal administration of *B. subtilis* autolysates. However, exposure to enzyme preparations in food occurs by ingestion and not by injection. The difference in the route of exposure is particularly significant for assessing the significance of immunological effects. With intraperitoneal administration, the components of the immune system are directly exposed to a high level of the test compound. This contrasts with exposure to enzyme preparations in food, whereby low levels of the enzyme preparations are ingested and undergo hydrolysis by digestive enzymes before any interaction with the immune system. Pariza and Foster (Ref. 1) note that there are no confirmed reports of allergic reactions in consumers caused by enzymes used in food processing.

Moreover, a report of the Joint Food and Agriculture Organization/World Health Organization Expert Committee on Food Additives (JECFA) corroborates the safety of food uses of enzyme preparations from *B. subtilis* (Ref. 39). This report concluded that results from a 90-day feeding study in rats showed no adverse effects. The test diet was meat protein-based and supplemented with a protease enzyme preparation from *B. subtilis* at a 1-percent level (equivalent to approximately 1 gram of enzyme preparation per kilogram of body weight per day). This level is more than 300 times greater than the highest level that would be expected in the human diet (200 mg/person/day, or 3.3 mg/kg body weight per day for a 60 kg person), as estimated in section IV.B of this document.

With respect to the comment's assertion that enzyme preparations should be declared on the label of foods in which they are used, the agency notes that under certain circumstances, applicable regulations already require use of an enzyme preparation in a food to be declared on the label, depending upon the nature of the enzyme preparation's use and technical effect in the food. Section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)(2)) requires that all ingredients of multi-ingredient foods be listed on the label of the food. By regulation, FDA has exempted certain ingredients that are used only as processing aids from this requirement. Section 101.100(a)(3)(ii)*(a)* and (a)(3)(ii)*(c)* (21 CFR 101.100(a)(3)(ii)*(a)* and (a)(3)(ii)*(c))* provides an exemption from the ingredient listing requirement for processing aids that are added to a food for their technical or functional effect during processing, but are either removed from the food before packaging or are present in the finished food at insignificant levels and do not have any technical or functional effect in the finished food. Although many enzyme preparations are used as processing aids in food (e.g., amylase preparations used in the manufacture of glucose syrup and protease preparations used in the manufacture of protein hydrolysates), other enzyme preparations that are added during processing (e.g., protease preparations used in tenderizing meat) are not processing aids as defined in § 101.100(a)(3)(ii) because they remain active in the finished food product. For example, enzymes used in the manufacture of swiss and cheddar cheese remain active in the finished cheese, enhancing body, flavor, and aroma (49 FR 29242, July 19, 1984). Because such effects in the finished food remove the enzymes from the ingredient listing exemption for processing aids in § 101.100(a)(3)(ii)(c), the use of such enzymes must be declared on the label. Therefore, whether a label declaration is needed for the use of an enzyme preparation in a food will depend upon its function and effect in the food.

VI. Conclusions

The petitioner has provided generally available evidence demonstrating that carbohydrase and protease enzyme preparations from *B. subtilis* were in common use in food prior to 1958. FDA has determined, under § 170.30(a) and (c)(1), that this information provides an adequate basis upon which to conclude that the safety of these enzyme preparations for use in food is generally recognized among the community of experts qualified by scientific training and experience to evaluate the safety of food ingredients.

The petitioner has also provided generally available evidence demonstrating that the bacterium now known as *B. amyloliquefaciens* was formerly included within the *B. subtilis* classification. Based on its analysis of the data submitted, the agency concludes that the evidence of common use in food pertains to carbohydrase and protease enzyme preparations from the bacterium now known as *B. amyloliquefaciens* as well as to carbohydrase and protease enzyme preparations from *B. subtilis*.

This evidence of common use in food prior to 1958 is corroborated by information that the enzymes themselves and the sources from which they are derived are nontoxic and nontoxicogenic, and that manufacturing will not introduce impurities that would adversely affect the safety of the finished enzyme preparations. Moreover, the carbohydrase and protease enzyme preparations from *B. subtilis* and *B. amyloliquefaciens* are substantially equivalent to enzymes naturally present in foods that have been safely consumed in the human diet for many years.

Having evaluated the information in the petition, along with other available information related to the use of these enzyme preparations, the agency concludes that carbohydrase enzyme preparation and protease enzyme preparation derived from either *B. subtilis* or *B. amyloliquefaciens* are GRAS under conditions of use consistent with CGMP. The agency is basing its conclusion on evidence of a substantial history of safe consumption of the enzyme preparations in food by a significant number of consumers prior to 1958, corroborated by the other evidence summarized in section IV.B of this document.

FDA is affirming that the use of these bacterially-derived carbohydrase and protease enzyme preparations in food is GRAS with no limits other than CGMP (21 CFR 184.1(b)(1)). To clarify the identity of each enzyme preparation, the agency is including in §§ 184.1148(a) and 184.1150(a) the EC numbers of the enzymes that supply the characterizing enzyme activities of each preparation. In order to make clear that the affirmation of the GRAS status of these enzyme preparations is based on the evaluation of specific uses, the agency is including in §§ 184.1148(c) and 184.1150(c) the technical effect and the specific substances on which each enzyme preparation acts, although the data show no basis for a potential risk from any foreseeable use of these enzyme preparations.

For simplicity, FDA is affirming the GRAS status of both carbohydrase enzyme preparations in a single combined regulation that describes the source of the enzyme as *B. subtilis* or *B. amyloliquefaciens*, rather than affirming the GRAS status of carbohydrase derived from *B. subtilis* separately from that of carbohydrase derived from *B. amyloliquefaciens*. Likewise, FDA is affirming the GRAS status of both protease enzyme preparations in a single combined regulation that describes the source of the enzyme as *B. subtilis* or *B. amyloliquefaciens*.

To ensure that the enzyme preparations are of suitable purity for use in food, FDA is including in the regulations the general requirements and additional requirements for enzyme preparations in the monograph ''Enzyme Preparations'' in the Food Chemicals Codex, 4th ed. (1996) as general specifications for these enzyme preparations. Furthermore, to ensure that the use of these enzyme preparations does not promote the development of antibiotic resistance, the agency is specifying that the enzyme preparations must be free of antibiotic activity as determined by a suitable method (e.g., the method described in Ref. 34).

VII. Environmental Considerations

The agency has determined under 21 CFR 25.32(f) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis for Executive Order 12866

FDA has examined the impacts of this final rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million, adversely affecting in a material way a sector of the economy, competition, or jobs, or raising novel legal or policy issues. FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In addition, the agency has determined that this final rule is not a major rule for the purpose of Congressional review.

The primary benefit of this action is to remove uncertainty about the regulatory status of the petitioned substances. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited by this rule.

IX. Regulatory Flexibility Analysis

FDA has examined the impacts of this final rule under the Regulatory Flexibility Act. The Regulatory Flexibility Act (5 U.S.C. 601–612) requires agencies to consider alternatives that would minimize the economic impact of their regulations on small entities. No compliance costs are associated with this final rule because no new activity is required and no current or future activity is prohibited. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

X. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Effective Date

As this rule recognizes an exemption from the food additive definition in the Federal Food, Drug, and Cosmetic Act, and from the approval requirements applicable to food additives, no delay in effective date is required by the Administrative Procedure Act, 5 U.S.C. 553(d). The rule will therefore be effective immediately (5 U.S.C. 553(d)(1)).

XII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons

between 9 a.m. and 4 p.m., Monday through Friday.

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3. Monograph on ''Enzyme Preparations,'' *Food Chemicals Codex*, National Academy Press, Washington, DC, 4th ed., pp. 131 and 133–134, 1996.

4. Underkofler, L. A., and W. J. Ferracone, ''Commercial Enzymes—Potent Catalyzers that Promote Quality,'' *Food Engineering*, vol. 29, pp. 123, 125–126, 130, and 133, 1957.

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6. Beckhorn, E. J., M. D. Labee, and L. A. Underkofler, ''Production and Use of Microbial Enzymes for Food Processing,'' *Journal of Agricultural and Food Chemistry*, vol. 13, pp. 30–34, 1965.

7. Comments of Ad Hoc Enzyme Technical Committee regarding FDA's draft final regulations, entitled ''Enzymes Proposed for Affirmation as GRAS,'' with a letter dated December 21, 1984, from Roger D. Middlekauff, Ad Hoc Enzyme Technical Committee, to Kenneth A. Falci, FDA.

8. Response of the Enzyme Technical Association to the letter dated December 13, 1985, of Lawrence Lin regarding GRASP 3G0016, received February 18, 1986.

9. Smythe, C. V., ''Microbiological Production of Enzymes and Their Practical Applications,'' *Economic Botany*, vol. 5, pp. 126–144, 1951.

10. Reed, G., ''Enzymes, Industrial,'' Encyclopedia of Chemical Technology, edited by R. E. Kirk and D. F. Othmer, Interscience Encyclopedia, Inc., New York, 1st supplemental vol., pp. 294–312, 1957.

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List of Subjects in 21 CFR Part 184

Food additives, Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

2. Section 184.1148 is added to subpart B to read as follows:

§ 184.1148 Bacterially derived carbohydrase enzyme preparation.

(a) Bacterially derived carbohydrase enzyme preparation is obtained from the culture filtrate resulting from a pure culture fermentation of a nonpathogenic and nontoxigenic strain of *Bacillus subtilis* or *B. amyloliquefaciens*. The preparation is characterized by the presence of the enzymes α-amylase (EC 3.2.1.1) and β-glucanase (EC 3.2.1.6), which catalyze the hydrolysis of *O*-glycosyl bonds in carbohydrates.

(b) The ingredient meets the general requirements and additional requirements in the monograph on enzyme preparations in the Food Chemicals Codex, 4th ed. (1996), pp. 128–135, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are

available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. In addition, antibiotic activity is absent in the enzyme preparation when determined by an appropriate validated method such as the method ''Determination of antibiotic activity'' in the Compendium of Food Additive Specifications, vol. 2, Joint FAO/WHO Expert Committee on Food Additives (JECFA), Food and Agriculture Organization of the United Nations, Rome, 1992. Copies are available from Bernan Associates, 4611–F Assembly Dr., Lanham, MD 20706, or from The United Nations Bookshop, General Assembly Bldg., rm. 32, New York, NY 10017, or by inquiries sent to ''http://www.fao.org''. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze polysaccharides (e.g., starch).

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

3. Section 184.1150 is added to subpart B to read as follows:

§ 184.1150 Bacterially-derived protease enzyme preparation.

(a) Bacterially derived protease enzyme preparation is obtained from the culture filtrate resulting from a pure culture fermentation of a nonpathogenic and nontoxigenic strain of *Bacillus subtilis* or *B. amyloliquefaciens*. The preparation is characterized by the presence of the enzymes subtilisin (EC 3.4.21.62) and neutral proteinase (EC 3.4.24.28), which catalyze the hydrolysis of peptide bonds in proteins.

(b) The ingredient meets the general requirements and additional requirements in the monograph on enzyme preparations in the Food Chemicals Codex, 4th ed. (1996), pp. 128–135, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700 Washington, DC. In addition, antibiotic activity is absent in the enzyme preparation when determined by an appropriate validated method such as the method ''Determination of antibiotic activity'' in the Compendium of Food Additive Specifications, vol. 2, Joint FAO/WHO Expert Committee on Food Additives (JECFA), Food and Agriculture Organization of the United Nations, Rome, 1992. Copies are available from Bernan Associates, 4611–F Assembly Dr., Lanham, MD 20706, or from The United Nations Bookshop, General Assembly Bldg., rm. 32, New York, NY 10017, or by inquiries sent to ''http://www.fao.org''. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as GRAS as a direct food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an enzyme as defined in § 170.3(o)(9) of this chapter to hydrolyze proteins or polypeptides.

(2) The ingredient is used in food at levels not to exceed current good manufacturing practice.

Dated: March 26, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–10011 Filed 4–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 204

[Docket No. FR–4288–N–03]

RIN 2502–AH08

Withdrawal of Interim Rule on Builder Warranty for High Ratio FHA-Insured Single Family Mortgages for New Homes

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Withdrawal of interim rule.

SUMMARY: This notice withdraws an interim rule, published on March 25, 1999, that would have permitted FHA insurance for a mortgage on a new home to exceed a 90 percent loan-to-value ratio if the home is covered by a 1-year builder warranty that meets the requirements of HUD regulations. This rule would have replaced a 10-year builder warranty requirement.

DATES: This withdrawal is effective April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708–2700. (This is not a toll free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On March 25, 1999, HUD published an interim rule for public comment. This rule, scheduled to take effect on April 27, 1999, would have permitted FHA insurance for a mortgage on a new home to exceed a 90 percent loan-to-value ratio if the home is covered by a 1-year builder warranty that meets the requirements of HUD regulations. This rule would have eliminated a 10-year builder warranty requirement.

There was favorable reaction to HUD's change in warranty requirements when first announced. However, since publication of the interim rule, some affected parties have expressed concern about the elimination of a 10-year warranty requirement and have requested that HUD further consider the matter before allowing the change in warranty requirements to take effect.

HUD continues to believe, as noted in the interim rule, that the quality of housing and building technology has improved so substantially that a 10-year warranty requirement is excessive, and a comprehensive 1-year builder warranty provides valuable consumer protection and is consistent with current industry practices and requirements. Nevertheless, HUD agrees to further consider this issue.

HUD is therefore withdrawing the March 25, 1999 interim rule. HUD will reissue this rule as a proposed rule and take additional public comment on this subject.

Accordingly, the interim rule to amend 24 CFR parts 203 and 234, published on March 25, 1999, at 64 FR 14572, entitled, Builder Warranty for High Ratio FHA-Insured Single Family Mortgages for New Homes, is hereby withdrawn.

Dated: April 15, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–10137 Filed 4–22–99; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 61

RIN 1076–AD89

Preparation of Rolls of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is amending its regulations governing the compilation of rolls of Indians in order to reopen the enrollment application process for the Sisseton and Wahpeton Mississippi Sioux Tribe. The amendment reopens the enrollment period to comply with a directive of the Eighth Circuit Court of Appeals, and to modify the standards used to verify Sisseton and Wahpeton Mississippi Sioux Tribe ancestry.

DATES: This rule becomes effective on May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Daisy West, 202–208–2475.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Indian Affairs must reopen the enrollment application process authorized under 25 U.S.C. 1300d–3(b) to give individuals another opportunity to file applications to share in the Sisseton and Wahpeton Mississippi Sioux judgment fund distribution. The Eighth Circuit Court of Appeals decision in *Loudner* v. *U.S.*, 108 F. 3d 896 (8th Cir. 1997), held that the Bureau of Indian Affairs did not give proper notice of the application period, and that 5 months was not a sufficient time period within which to file applications, in light of the long delay in distribution of the fund.

This rule reopens the enrollment period to allow adequate time for eligible persons to enroll. It also identifies the specific rolls that we will use to verify Sisseton and Wahpeton Mississippi Sioux Tribe ancestry as required by subsection 7(c) of Pub. L. 105–387.

On July 8, 1998, the Bureau of Indian Affairs (BIA) published a proposed amendment to 25 CFR Part 61 in the **Federal Register** at 63 FR 36866. Since then, three things have happened:

(1) On November 13, 1998, Congress amended the Act of October 25, 1972, Pub. L. 555, 86 Stat. 1168, to include a provision concerning verification of Sisseton and Wahpeton Mississippi Sioux Tribe ancestry.

(2) BIA held a meeting in Sioux Falls, South Dakota with a group of approximately 30 Sisseton and Wahpeton Mississippi Sioux lineal descendants and others to discuss the proposed rule that was published on July 8, 1998.

(3) We have received two public comments on the proposed rule.

In light of these three occurences, we have made several changes to the provisions that we published in the proposed rule. We have explained these changes in the section of this preamble titled ''Changes to the Proposed Rule.''

Review of Public Comments

We received written comments from two individuals. Those comments and our responses are as follows:

1. *Comment:* We take issue with the timing proposed for establishing the application deadline date and object to steps two and three as set forth under the provisions of ''Application Deadline''. Due to the court proceedings in the *Loudner* case, there has already been a great deal of publicity, correspondence, newspaper articles, and published summaries about the rights of lineal descendants since October 1994. There have also been at least three public meetings at the Crow Creek and Yankton Sioux Reservations in South Dakota. For that reason, the lineal descendants who would be entitled to share in the judgment fund distribution already know that judgment funds are available and that they can apply for them. The application period should be set for a fixed period of 60 days.

Response: While there has been publicity in North and South Dakota about the reopening of this enrollment period, there has been little if any publicity about this in other parts of the United States. A flexible application period will allow us to continue accepting applications until the application review process is almost complete without significantly affecting the time required to complete the review process. It will also give the lineal descendants who live away from the Sioux Indian reservations the maximum opportunity to file applications. As mentioned elsewhere in this preamble, we are reducing the number of days specified in step one of the application process from 180 days to 90 days because of the number of applications already on file with the Aberdeen Area Office.

2. *Comment:* If the Bureau of Indian Affairs cannot process the applications within 90 days, the rule should either allow the Federal Court to conduct the review or enable the Secretary to retain an independent commercial agency to do the review.

Response: The approximately 3,000 applications that we have received are mostly undocumented. They do not include copies of birth certificates, marriage certificates, proof of paternity, or, if deceased, death certificates. The applications also do not include family history charts that show each generation between the applicant and an ancestor named on the Sisseton and Wahpeton Mississippi Sioux Tribe rolls specified under 25 U.S.C. 1300d–26(c). If we were to limit the review process to 90 days, we would have to deny most of the applications because they don't include these documents. We would prefer not to do this because most of the applicants are probably Sisseton and Wahpeton Mississippi Sioux lineal descendants. By extending the review process we will have time to review each application and ask the applicant for any information that we cannot find in our records.

We also do not think it is feasible for us to ''allow the Federal Court to conduct the review'' under federal regulations. If the court were to assume jurisdiction of the review, it would probably still leave the review process with us. We would be required to submit several thousand recommendations to the court for determination. Each determination would then be subject to appeal.

If the review is conducted by the Bureau of Indian Affairs, an independent contractor, or under the supervision of the court, the same problem remains—insufficient documentation to verify the applicant's ancestry. If an applicant's ancestry cannot be sufficiently documented, then the application must be denied under 25 U.S.C. 1300d–26(c).

As we've already explained, a 90-day limitation on the review process would force us to deny the many applications that do not include proof of Sisseton and Wahpeton Mississippi Sioux ancestry.

Changes to the Proposed Rule

As a result of the new legislation, we have made the following changes to the rule:

(1) We have added new criteria relating to ancestry in § 61.4(s)(1)(i)(A)–(B). These new criteria replace the

criterion in § 61.4(s)(1)(iv) of the proposed rule.

(2) We have added new names to the list in § 61.4(s)(1)(v). This list was in § 61.4(s)(1)(iv) of the proposed rule.

As a result of the public meeting and comments, we have changed the procedure that we will use to calculate the deadline for receiving applications. Specifically, we have reduced the number of days that we will use in step one of this procedure from 180 to 90. (We have explained the procedure we will use to calculate the application deadline in the section of this preamble titled ''Application Deadline.'') We have made this change because approximately 3,000 individuals have already contacted the BIA Aberdeen Area Office concerning the reopening of the Sisseton and Wahpeton Mississippi Sioux enrollment application process.

Application Deadline

We have not established a firm application deadline in this rule. In order to allow adequate time for submitting and processing applications we will establish a deadline using the following three steps:

Step 1. On August 23, 1999, we will count all applications that we have received.

Step 2. We will note the date on which we complete processing of 90 percent of the applications that we receive by August 23, 1999.

Step 3. The application deadline will be 90 days after the date in Step 2.

For example, if we receive 10 applications by August 23, 1999, the final application deadline date will be 90 days after we process 9 applications. Similarly, if we receive 10,000 applications by August 23, 1999, the final application deadline date will be 90 days after we process 9,000 applications.

After we establish the application deadline, we will notify the same area directors, agency superintendents, and local newspapers that we notify after publishing this rule. (See the section in this preamble titled ''Additional Notice and Public Meetings.'') Our notification will include application/enrollment criteria.

Additional Notice and Public Meetings

We will take several steps to ensure that all potential applicants are informed of the reopening of the enrollment application period.

(1) We will notify all BIA Area Directors and Agency Superintendents and require them to post notices in area offices, agency offices, community centers on and near reservations, and in Indian Health Clinics.

(2) We will notify tribal newspapers and newspapers of general circulation in major communities in Montana, North Dakota, South Dakota, Nebraska, and Minnesota.

(3) We will hold community meetings on Indian reservations identified from the 1909 roll, including: Cheyenne River, Crow Creek, Upper Sioux, Sisseton-Wahpeton, Spirit Lake, Fort Peck, Standing Rock, Lower Brule, Yankton, Rosebud, and Pine Ridge.

At each of the community meetings we will:

(1) Inform potential beneficiaries of the reopening of the enrollment process for this judgment fund;

(2) Inform potential beneficiaries of eligibility criteria; and

(3) Help applicants to prepare and file applications.

Previously Submitted Applications

We have on file applications submitted under § 61.4(s) that we denied because we received them after November 1, 1973. We will now process these applications. If you previously filed an application that we denied, you may wish to confirm that we have it and are processing it. To do this, please call the Aberdeen Area Tribal Enrollment Office at (605) 226–7376.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an 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.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlement, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior 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.*). Because it makes technical changes that do not affect the substance of the rules there is no economic effect at all, other than to improve the utility of the rules for users.

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. This rule:

(1) Does not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in cost or prices for consumers, individual industries, Federal, State, or geographic regions.

(3) 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.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of states.

Civil Justice Reform (E.O. 12988)

In accordance with 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.

Paperwork Reduction Act

This rule requires collection of information from many enrollees. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), the Department submitted a copy of the application to the Office of Management and Budget (OMB) for its review. OMB approved the application form and assigned form number 1076–0145 with the expiration date of September 30, 2001.

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.

List of Subjects in 25 CFR Part 61

Indians, Indians—claims.

Dated: April 14, 1999.

Kevin Gover,

Assistant Secretary for Indian Affairs.

For the reasons given in the preamble, Part 61 of Chapter 1 of Title 25 of the Code of Federal Regulations is amended as follows.

PART 61—PREPARATION OF ROLLS OF INDIANS

1. The authority citation for 25 CFR part 61 is revised to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9, 1300d–3(b), 1300d–26, 1401 *et seq.*

2. In § 61.4, paragraph (s) is revised to read as follows:

§ 61.4 Qualifications for enrollment and the deadline for filing application forms.

* * * * *

(s) *Sisseton and Wahpeton Mississippi Sioux Tribe.* (1) Persons meeting the criteria in this paragraph are entitled to enroll under 25 U.S.C. 1300d–3(b) to share in the distribution of certain funds derived from a judgment awarded to the Mississippi Sioux Indians. To be eligible a person must:

(i) Be a lineal descendent of the Sisseton and Wahpeton Mississippi Sioux Tribe;

(A) Those individuals who applied for enrollment before January 1, 1998, and whose applications were approved by the Aberdeen Area Director before that same date, are deemed to appear in records and rolls acceptable to the Secretary or have a lineal ancestor whose name appears in these records;

(B) Those individuals who apply for enrollment after January 1, 1998, or whose application was not approved by the Aberdeen Area Director before that same date, must be able to trace ancestry to a specific Sisseton or Wahpeton Mississippi Sioux Tribe lineal ancestor who was listed on:

(*1*) The 1909 Sisseton and Wahpeton annuity roll;

(*2*) The list of Sisseton and Wahpeton Sioux prisoners convicted for participating in the outbreak referred to as the ''1862 Minnesota Outbreak'';

(*3*) The list of Sioux scouts, soldiers, and heirs identified as Sisseton and Wahpeton Sioux on the roll prepared under the Act of March 3, 1891 (26 Stat. 989 *et seq.*, Chapter 543); or

(*4*) Any other Sisseton or Wahpeton payment or census roll that preceded a roll referred to in paragraphs (s)(1)(i)(B)(*1*), (*2*), or (*3*) of this section.

(ii) Be living on October 25, 1972;

(iii) Be a citizen of the United States;

(iv) Not be listed on the membership rolls for the following tribes:

(A) The Flandreau Santee Sioux Tribe of South Dakota;

(B) The Santee Sioux Tribe of Nebraska;

(C) The Lower Sioux Indian Community at Morton, Minnesota;

(D) The Prairie Island Indian Community at Welch, Minnesota;

(E) The Shakopee Mdewakanton Sioux Community of Minnesota;

(F) The Spirit Lake Tribe (formerly known as the Devils Lake Sioux of North Dakota);

(G) The Sisseton-Wahpeton Sioux Tribe of South Dakota; or

(H) The Assiniboine and Sioux Tribes of the Fort Peck Reservation.

(v) Not be listed on the roll of Mdewakantan and Wahpakoota lineal descendants prepared under 25 U.S.C. 1300d–1(b).

(2) The initial enrollment application period that closed on November 1, 1973, is reopened as of May 24, 1999. The application period will remain open until further notice.

* * * * *

[FR Doc. 99–10208 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 70

Uniform Administrative Requirements for Grants and Agreements (Including Subawards) with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

CFR Correction

In Title 28 of the Code of Federal Regulations, parts 43 to End, revised as of July 1, 1998, the text appearing on page 339, following page 238, is incorrect and should be removed. The text on page 239 should read as follows:

* * * * *

(b) Except as provided in paragraph (h) of this section, program income earned during the project period must be retained by the recipient and, in accordance with the Department regulations or the terms and conditions of the award, must be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the Department and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When the Department authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), of this section, program income in excess of any limits stipulated must be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Department does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3), of this section applies automatically to all projects or programs.

(e) Unless the Department's regulations or the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property must be handled in accordance with the requirements of the Property Standards (See § § 70.30 through 70.37).

(h) Unless the terms and conditions of the award provide otherwise, recipients will have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

(i) Recipients must account for seized assets from the date of seizure until forfeiture and liquidation of funds occur.

§ 70.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon the Department's requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients must request in writing prior approval from the Department for one or more of the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, approval is required by the Department.

(6) The inclusion, unless waived by the Department, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Institutions of Higher Education,'' OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR* * *

[FR Doc. 99–55515 Filed 4–22–99; 8:45 am]

BILLING CODE 1505–01–F

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AA69

Researcher Registration and Research Room Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule and interim rule.

SUMMARY: This rule will make it easier for students to do research in archival records and will reduce the frequency with which researchers must reapply for researcher cards to do research in NARA facilities. The rule also clarifies research room procedures to address conduct issues, to update the types of equipment that researchers can bring into the research room, and to clarify copying procedures. This rule will affect individuals who wish to use NARA research rooms in the National Archives Building and College Park facility in the Washington, DC, area, regional records services facilities, and Presidential libraries.

We are also revising the criteria and procedures for private microfilming projects to provide more specific criteria as to the types of requests that will be approved and conditions on that approval. These changes will affect organizations that wish to prepare microfilm publications from NARA holdings.

DATES: Effective: May 24, 1999.

Comments on § 1254.20(b) through (d), which is adopted as an interim rule, must be received by June 22, 1999. Comments will only be accepted on these paragraphs. NARA will issue a final rule confirming or further amending these paragraphs after this comment period closes.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: We published a notice of proposed rulemaking on August 11, 1998 (**Federal Register**, Vol. 63, No. 154, at pp. 42776–42782). Two comments were received. One endorsed the lower age limit for students to use the research room. The other respondent, a microfilm publisher, offered comments on certain proposed or existing requirements in Subpart F, Microfilming Archival Records. We have reviewed the respondent's comments and addressed them as discussed later in this **SUPPLEMENTARY INFORMATION** section.

Interim Final Rule Changes

The proposed rule contained three proposed revisions to § 1254.20 relating to revocation and reinstatement of research privileges:

- Modifying the grounds on which a researcher identification card may be revoked to add verbal and physical harassment of other researchers, NARA employees, volunteers, or contractor employees.
- Clarifying the description of unacceptable behavior to read ''actions or language.''
- Clarifying that the grounds for revoking privileges and for denying probationary reinstatement include danger to either documents or NARA property.

No comments were received on these proposed changes. In the proposed rule, the provisions were organized by the type of research privilege (researcher identification card and research privileges at research rooms where no card is required), following the format of the then existing regulations. The conditions under which privileges would be revoked, and appeal and reinstatement procedures were identical.

In drafting this final rule we reorganized the provisions to reflect the steps of the process. We believe that the reorganized format is easier to understand. No substantive changes have been made from the proposed rule. We are issuing these provisions (§ 1254.20(b) through (d)) as an interim final rule, however, to allow public comment in case our rewritten provisions inadvertently did make a change or they raise questions of the clarity on the process.

Review of Comments Made on the Proposed Rule

Conditions for Approving Requests To Microfilm Records

In response to the commenter's request that we reduce the time required to review requests for microfilm projects, we have changed the lead time for approval from 6 months to 4 months. We have also added ''a limited number of separate series related by provenance or subject'' to the definition of ''one microfilming project.''

The commenter questioned several of the criteria for approving requests in § 1254.94(a). In particular, the commenter was concerned that we intended to deny project proposals based on our assessment of their research value and that we would deny proposals to film series that may have future accessions (additional records). We have clarified § 1254.94(a) to reflect that potential research value is a criterion only when we are evaluating multiple projects and we cannot accommodate all of them at the same time. We have modified paragraph (a)(2) to state that records with future end-of-series accretions may be approved for filming.

The commenter also raised concerns with existing and proposed requirements in § 1254.94(d) relating to materials the micropublisher would furnish to us as a condition of approval. The commenter concurred with our current policy of making preservation and reference copies of the microfilm available for staff and researcher use in NARA facilities during the first seven years after the microfilming is done, but requested that we revise paragraph (d)(1) to prevent the wholesale reel duplication of the microform during this

period. The current rule adequately addresses this concern and we have made no changes to it.

The commenter agreed to the provision requiring detailed roll lists, but objected strongly to the proposed provisions requiring the micropublisher to furnish paper and electronic copies of any subject indexes, name indexes or other finding aids to its version of the microfilm, and that the electronic version should be in a form that can run easily on NARA's internal and external computer network(s). The commenter argued that this requirement was not technically feasible, and would seriously compromise the company's intellectual property rights. The finding aids are produced with proprietary software and represent significant value-added components to its microform products. We had proposed this requirement to enhance the ability of our reference staff to assist researchers using the microfilmed records. We recognize the validity of these comments and have modified the provision significantly. First, providing any finding aids other than the detailed microfilm roll lists is no longer a condition for approval of the project. Second, if a micropublisher wishes to provide other finding aids to NARA, the finding aids would be donated to us under a deed of gift which would restrict NARA's use of these products under mutually acceptable terms.

The commenter also objected to the proposed § 1254.94(k), which stated that NARA would not approve requests for microfilming records if we had insufficient staff to provide support, training, and monitoring services. The commenter stated that we should not use budgetary problems as justification for denying projects that achieve NARA goals of both preserving records and enhancing broad public access to the historical record. We believe the commenter's position is unreasonable and we have retained this provision.

Fees for Microfilm Preparation and Training Services

The commenter questioned the fees for several services covered by §§ 1254.96 and 1254.100. He stated that the declassification and reintegration of previously declassified materials to the files is a fundamental NARA function, and costs should not be imposed on microfilm publishers. We agree and have eliminated the following activities from the list of microfilm preparation activities in § 1254.96 for which a fee will be assessed: verifying or correcting the arrangement of documents after withdrawn items are reviewed and refiled when appropriate, screening documents for possible restrictions on use, declassifying security classified documents, and restoring recently declassified records to the files. The commenter stated that the assessment of fees to review document preparation work by NARA supervisors and senior staff is an effort to unfairly and disproportionately shift costs normally borne by NARA to micropublishers. Since quality control is a service that the microfilmer would expect to be included in document preparation, we have eliminated review by supervisors or senior staff as a separate fee item.

The commenter also stated his view that the training in proper document handling required by § 1254.100 did not have to be provided by NARA staff. If we provide the training, however, he urged that the program be more clearly defined and strengthened to provide for a certification renewal. We disagree with these comments. A primary goal of the training is to ensure that all persons working directly with original records receive the same information, adapted as appropriate to their specific tasks and responsibilities. Most of our training is tailored, focusing on procedures for handling specific types of records included in specific filming projects. Additional training may be required if microfilm operators work on subsequent projects involving different types of records. We believe the current description of the training is clear in conveying its purpose that ''documents are not damaged during copying and so that their original order is maintained.'' We also see no need for a formal certification program.

Equipment Standards

The commenter noted that the proposed § 1254.98(a) needlessly restricted the use of non-table top models and emerging newer, more technologically advanced cameras. We agree with this comment and have revised the section to allow free standing/floor models if permission is first received from the relevant NARA unit. A sentence has also been added stating that new or improved camera types not specified in this section will be approved for use on a case-by-case basis.

Fees for NARA Support Services

The commenter expressed concerns with the fees to be charged for support services such as document preparation, document handling training, and monitoring of microfilm projects. While the commenter supported a ''processing'' fee that is fair and equitable, he did not support paying for monitoring and document preparation services that are provided for free to our on-site contractor and to individual researchers. He also noted that the proposed rule did not address how monitoring costs will be assessed when more than one project has undertaken microfilming operations in the same area.

We believe the changes in this final rule removing document review and declassification as document preparation services partially address this comment. We note, however, that the commenter misunderstands the relationship that we have with our on-site microfilm contractor. That contractor is operating as a NARA agent in producing NARA microfilm or fee reproductions for our customers, so we would not charge the contractor these fees. The archival handling component of the fee that the customer pays for a fee reproduction includes document preparation costs that we incur for that order. Similarly, the archival handling component of self-service electrostatic copying includes the cost of monitoring that work.

We have clarified § 1254.100(b) to specify that when more than one project shares the same space, monitoring costs will be divided equally among the projects. If we determine that the microfilm project can be located in a research room that monitors researchers who are not copying records, we will not assess a monitoring charge for monitoring that is already being provided.

We also disagree with the commenter's view that we have not provided a formula for the fees to be assessed for document preparation, training, and monitoring. The proposed rule states that fees will be based on direct salary costs (including benefits). We have clarified in § 1254.94(l) of the final rule that we will provide a detailed estimate of the fees for each specific project based on this formula in our letter providing tentative approval of the project. We have also deleted the proposed § 1254.100(l), which conflicted with this provision.

Information Collections Subject to the Paperwork Reduction Act

The information collections in §§ 1254.71(e), and 1254.92 are subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The information collection in § 1254.92 has been approved by OMB with the control number 3095–0017. The information collection in § 1254.71(e) has been approved by OMB with the control number 3095–0035.

Plain Language

This regulation was published as a notice of proposed rulemaking prior to January 1, 1999. We will rewrite it in the plain language format required by the Presidential memorandum of June 1, 1998, Plain Language in Government Writing, at a future time.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget at the final rule stage. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA is amending part 1254 of title 36, Code of Federal Regulations, as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 continues to read:

Authority: 44 U.S.C. 2101—2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 1254.1 is amended by revising paragraph (d) to read:

§ 1254.1 General provisions.

* * * * *

(d) A Regional Administrator, a director of a Presidential Library, or a director of a Washington, DC, area research unit may require that researchers under the age of 14 years be accompanied by an adult researcher who agrees in writing to be present when the documents are used and to be responsible for compliance with the research room rules set forth in Subpart B.

* * * * *

3. Section 1254.2 is amended by revising paragraph (a) to read:

§ 1254.2 Location of documents and hours of use.

(a) Researchers should identify the location of the documents needed. Information about the location of records may be obtained by writing to the National Archives and Records Administration (NWCCR1), Washington, DC 20408; by sending an e-mail message to INQUIRE@NARA.GOV; sending a fax request to (301) 713–6920; or calling (202) 501–5400 or (301) 713–6800.

* * * * *

4. Section 1254.6 is revised to read:

§ 1254.6 Researcher identification card.

An identification card is issued to each person whose application is approved to use records other than microfilm. Cards are valid for 3 years. Cards may be renewed upon application. Cards are valid at each facility. Cards are not transferable and must be presented if requested by a guard or research room attendant.

§ 1254.8 [Amended].

5. In paragraphs (b) and (c) of § 1254.8, remove the phrase ''the Director of the Legal Services Staff (NXL) or his designee'' and add in its place the phrase ''the General Counsel (NGC) or his/her designee''.

6. Section 1254.10 is revised to read:

§ 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information on the registration sheet or scanning a bar-coded researcher identification card, and may be asked to provide additional personal identification.

7. Section 1254.12 is amended by revising paragraph (a) to read:

§ 1254.12 Researcher's responsibility for documents.

(a) The research room attendant may limit the quantity of documents delivered to a researcher at one time. The researcher must sign for the documents received and may be required to show his/her researcher identification card. The researcher is responsible for the proper handling of and prevention of damage to all documents delivered to him/her until he/she returns them. When the researcher is finished using the documents, the documents must be returned to the research room attendant. The reference service slip that accompanies the documents to the research room must not be removed. If asked to do so, the researcher must return documents as much as 15 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all documents in their proper containers.

* * * * *

8. Section 1254.14 is amended by revising paragraph (b) to read:

§ 1254.14 Restrictions on using microfilm readers.

* * * * *

(b) The number of researchers in the microfilm research room in the National Archives Building may be limited, for fire safety reasons, to those researchers assigned a microfilm reader.

* * * * *

9. Section 1254.16 is amended by revising paragraphs (d) and (e) to read:

§ 1254.16 Prevention of damage to documents.

* * * * *

(d) Documents must be identified for reproduction only with a paper tab provided by NARA. Documents may not be identified with paper clips, rubber bands, self-stick notes or similar devices.

(e) Microfilm must be carefully removed from and returned, rewound, to the proper microfilm boxes. Care must be taken loading and unloading microfilm from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered.

* * * * *

10. Section 1254.20 is revised to read:

§ 1254.20 Conduct.

(a) *Regulations.* Researchers are subject to the provisions of part 1280 of this chapter and to all rules and regulations issued and posted or distributed by a facility director supplementing Subpart B of this part, including rules on the use of NARA equipment. Eating, drinking, chewing gum, or using smokeless tobacco products in a research room are prohibited. Smoking is prohibited in all NARA facilities. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, computers, sound recording devices, or similar equipment must work in areas designated by the research room attendant, when so required.

(b) *Revocation of research privileges.* Researchers who refuse to comply with the rules and regulations of a NARA facility, or by their actions or language demonstrate that they present a danger to documents or NARA property, or present a danger to or verbally or physically harass or annoy other researchers, NARA or contractor employees, or volunteers may have their research privileges revoked by NARA for up to 180 days. The revocation of research privileges means that a researcher loses research privileges at all NARA research rooms nationwide and, if the researcher holds a valid researcher identification card, the loss of the card. All NARA facilities will be notified of the revocation of research privileges. A researcher whose research

privileges have been revoked will be sent a written notice of the reasons for the revocation within 3 work days of the action.

(c) *Reinstatement of research privileges.* The researcher has 30 calendar days after the date of revocation to appeal the action in writing and seek reinstatement of research privileges. Appeals should be mailed to the Archivist of the United States (address: National Archives and Records Administration (N), 8601 Adelphi Road, College Park, MD 20740–6001). The Archivist has 30 calendar days from receipt of an appeal to decide whether to reinstate research privileges. The response will be made in writing and sent to the researcher whose research privileges have been revoked. If the revocation of privileges is upheld or if no appeal is made, the researcher may request reinstatement of research privileges no earlier than 180 calendar days from the date the privileges were revoked. This request may include application for a new researcher identification card. The reinstatement of research privileges applies to all research rooms, except that in the case of a new researcher identification card, the researcher will be issued a card for a probationary period of 60 days. At the end of the probationary period, the researcher may apply for a new, unrestricted identification card, which will be issued if the researcher's conduct during the probationary period has been in accordance with the rules of conduct set forth in this part and in 36 CFR part 1280.

(d) *Extending the revocation period.* If the reinstatement of research privileges would pose a threat to the safety of persons, property, or NARA holdings, or if, in the case of a probationary identification card, the researcher has failed to comply with the rules of conduct for NARA facilities, NARA may extend the revocation of privileges for 180-day periods. Researchers will be sent a written notice all such extensions within 3 work days of NARA's decision to continue the revocation of research privileges. The researcher has 30 calendar days after the decision to extend the revocation of research privileges to appeal the action in writing. Appeals should be mailed to the Archivist at the address given above. The Archivist has 30 calendar days from receipt of an appeal to decide whether to reinstate research privileges. The response will be made in writing and sent to the researcher.

11. Section 1254.24 is amended by adding new paragraph (d) to read:

§ 1254.24 Locker use policy.

* * * * *

(d) NARA may charge a replacement fee for lost locker keys.

12. Section 1254.26 is amended by revising paragraphs (a) through (d), the introductory text of paragraph (e), paragraphs (e)(2) and (e)(3), paragraph (g), the introductory text of paragraph (h), and paragraphs (h)(2)(i), (h)(2)(ii), (h)(5), and (h)(6) to read:

§ 1254.26 Additional rules for use of certain research rooms in NARA facilities in the Washington, DC, area.

(a) Admission to research rooms in the National Archives Building and the National Archives at College Park facility is limited to individuals examining and/or copying documents and other materials in the custody of the National Archives and Records Administration. Children under the age of 14 will not be admitted to these research rooms unless they have been granted research privileges or are granted an exception to this provision to view specific documents that a parent or other accompanying adult researcher is using. The exception will be granted by the Chief of the Archives I or Archives II Research Room Services Branch for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Normally, such a child will be admitted only for the short period required to view the documents. Unless otherwise permitted, persons without a researcher card may not actively participate in research activities, e.g., removing, copying, or refiling documents. Students under the age of 14 who wish to perform research on original documents must apply in person to the Chief of the Research Room Services Branch where the documents are located and present a letter of reference from a teacher. Such students may contact NARA by phone or letter in advance of their visit to discuss their eligibility for research privileges. Students under the age of 14 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Chief of the Archives I or Archives II Research Room Services Branch specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (d) through (g) of this section apply to all research rooms in the National Archives Building (except the Microfilm Research Room) and in the National Archives at College Park facility. These procedures are in addition to the procedures specified elsewhere in this part.

(c) Researchers bringing personal computers, tape recorders, cameras, and other equipment into the National Archives Building must complete the Equipment Log at the guard's desk. The log will evidence personal ownership and will be checked by the guard when such equipment is removed from the building.

(d) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the research room. All researchers are required to register their attendance each day. Researchers will also register the time they leave the research area at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(e) Researchers may not bring into the research rooms overcoats, raincoats, hats, or similar apparel; personal paper-to-paper copiers, unless permitted in accordance with § 1254.71(e) of this part; briefcases, suitcases, day packs, purses, or similar containers of personal property; notebooks, notepaper, note cards, folders or other containers for paper. These items may be stored at no cost in lockers available for researchers. The following exceptions may be granted:

* * * * *

(2) Notes, references, lists of documents to be consulted, and other materials may be admitted if the chief of the branch administering the research room or the senior staff member on duty in the research room determines they are essential to a researcher's work requirements. Materials approved for admission will be stamped, initialed, and dated by a NARA or contractor employee, to indicate that they are the personal property of the researcher;

(3) Personal computers, tape recorders, scanners, cameras, and similar equipment may be admitted by the research room attendant provided such equipment meet the approved standards for preservation set by the NARA Preservation Programs unit. Use of researcher owned equipment may be limited to designated areas within the research rooms. If demand to use equipment exceeds the space available for equipment use, time limits may be imposed. Equipment that could potentially damage documents will not be approved. Scanners and other copying equipment must meet these minimum standards:

(i) Equipment platens or copy boards must be the same size or larger than the records. No part of a record may overhang the platen or copy board.

(ii) No part of the equipment may come in contact with records in a

manner that causes friction, abrasion, or that otherwise crushes or damages records.

(iii) Drum scanners are prohibited.

(iv) Automatic feeder devices on flatbed scanners are prohibited. When using a slide scanner, slides must be checked after scanning to ensure that no damage occurs while the slide is inside the scanner.

(v) Light sources must not raise the surface temperature of the record being copied. Light sources that generate ultraviolet light must be filtered.

(vi) All equipment surfaces must be clean and dry before being used with records. Cleaning and equipment maintenance activities, such as replacing toner cartridges, may not take place when records are present. Aerosols or ammonia-containing cleaning solutions are not permitted. A 50% water and 50% isopropyl alcohol solution is permitted for cleaning. The chief of the branch administering the research room or the senior staff member on duty in the research room will review the determination made by the research room attendant if requested to do so by the researcher; and

* * * * *

(g) The personal property of all researchers, including notes, electrostatic copies, equipment cases, tape recorders, cameras, personal computers, and other property, will be inspected before removal from the research room. Guards and research room attendants may request that a member of the research room staff examine such personal items prior to their removal from the research room.

(h) In addition to the procedures in paragraphs (c) through (g) of this section, the following procedures apply to the Motion Picture, Sound, and Video Research Room (hereinafter, the ''research room'') in the College Park facility:

* * * * *

(2) * * *

(i) Personal recording equipment brought into the unrestricted viewing and copying area in the research room may be inspected and tagged by the research room attendant prior to admittance. All equipment and accessory devices must be placed on the carts provided by NARA, except that a tripod holding a video camera may be placed on the floor in front of a film-viewing station. NARA is not responsible for damage to or loss of personal equipment and accessories.

(ii) Researchers shall remain in the research room while their personal equipment is in use at an audio or video viewing station. The film viewing stations must be attended at all times while in use. Researchers shall remove their personal equipment from the research room when they leave the room for the day.

* * * * *

(5) The NARA-furnished recorder or personal recording device and media may be used to make a copy of unrestricted archival materials in the research room.

(6) Each researcher will be provided a copy of the Motion Picture, Sound, and Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. The individual making and/or using the copy is responsible for obtaining any needed permission or release from a copyright owner for other than personal use of the copy.

* * * * *

13. Section 1254.27 is amended by revising the section heading and paragraphs (a) and (c)(3) to read:

§ 1254.27 Additional rules for use of certain research rooms in regional records services facilities and Presidential libraries.

(a) When directed by the appropriate regional administrator or library director, the following procedures shall be observed in regional records services facility and Presidential library archival research rooms where original documents are used. These procedures are in addition to the procedures specified elsewhere in this part.

* * * * *

(c) * * *

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the guard or research room attendant provided that they are inspected, approved, and tagged prior to admittance. For a regional records services facility, the regional administrator, the director or other supervisor having responsibility for research room operations in a facility, or the senior attendant on duty will review the determination made by the guard or research room attendant if requested to do so by the researcher. In a Presidential library, the director, or the senior attendant on duty in the research room will review the determination made by the guard or research room attendant if requested to do so by the researcher. In facilities where personal paper-to-paper copiers and scanners are permitted, the researcher must obtain prior written approval from the facility director to bring in the copier or scanner. The request to bring a personal copier or scanner should state the space and power consumption requirements and the intended period of use; and

* * * * *

14. Section 1254.70 is amended by revising paragraph (a) to read:

§ 1254.70 NARA copying services.

(a) The copying of documents will be done by a contractor or NARA staff with equipment belonging to NARA. NARA reserves the right to make a duplicate, at NARA expense, of any material copied. Such duplicates may be used by NARA to make additional copies for others.

* * * * *

15. Section 1254.71 is amended by revising the section heading, paragraphs (a) through (c)(2), and (d)(1); removing paragraph (g); redesignating paragraphs (e) and (f) as paragraphs (f) and (g); adding new paragraph (e), and revising redesignated paragraph (g) to read:

§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building and the National Archives at College Park.

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building and the National Archives at College Park. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (h) of this section.

(b) *Limitations and hours of use.* (1) There is a 3-minute time limit on copiers in research rooms when others are waiting to use the copier. Researchers using microfilm reader-printers may be limited to three copies when others are waiting to use the machine. Researchers wishing to copy large quantities of documents should see a staff member in the research room to reserve a copier for an extended time period.

(2) If an appointment must be canceled due to copier failure, NARA will make every effort to schedule a new mutually agreed-upon time. However, NARA will not displace researchers whose appointments are not affected by the copier failure.

(c) *Copying procedures.* (1) Individual documents to be copied shall be tabbed in accordance with the procedures governing the tabbing of documents and; brought to the research room attendant for inspection in the file unit. The research room attendant will examine the documents to determine whether they can be copied on the self-service copier. The chief of the branch administering the research room will review the determination of suitability if asked to do so by the researcher. After

reproduction is completed, documents removed from files for copying must be returned to their original position in the file container, any fasteners removed to facilitate copying must be refastened, and any tabs placed on the documents to identify items to be copied must be removed.

(2) Researchers using the reserved copier must submit the containers of documents to the attendant for review prior to the appointment. The review time required is specified in each research room. Research room attendants may inspect documents after copying.

* * * * *

(d) * * *

(1) Bound archival volumes (except when specialized copiers are provided);

* * * * *

(e) *Use of personal paper-to-paper copiers at the National Archives at College Park facility.* (1) NARA will approve a limited number of researchers to bring in and use personal paper-to-paper copying equipment in the Textual Research Room (Room 2000). Requests must be made in writing to the Chief, Archives II Research Room Services Branch (NWCCR2), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001. Requests must identify the records to be copied, the expected duration of the project, and the make and model of the equipment.

(2) NARA will evaluate requests using the following criteria:

(i) A minimum of 3,000 pages must be copied;

(ii) The project is expected to take at least 4 weeks, with the copier in use a minimum of 6 hours per day or 30 hours per week;

(iii) The copying equipment must meet the standards for preservation set by NARA's Preservation Programs unit (see § 1254.26(e)(3) of this part); and

(iv) Space is available for the personal copying project. NARA will allow no more than 3 personal copying projects in the research room at one time, with Federal agencies given priority over other users.

(3) Researchers must coordinate with research room management and oversee the installation and removal of copying equipment and are responsible for the cost and supervision of all service calls and repairs. Copying equipment and supplies must be removed within two business days after the personal copying project is completed.

(4) NARA will not be responsible for any personal equipment or consumable supplies.

(5) Each operator must obtain a valid researcher identification card and be trained by NARA staff on the proper methods for handling and copying archival documents.

(6) Operators must abide by all regulations on copying stated in paragraphs (c), (d) and (f) of this section.

(7) NARA reserves the right to discontinue the privilege of using a personal copier at any time without notice. Conditions under which NARA would discontinue the privilege include: violation of one of the conditions in paragraphs (c), (d), (e), or (f) of this section; a need to provide space for a Federal agency; or a lack of NARA staff to supervise the area.

* * * * *

(g) *Purchasing debit cards for copiers.* Researchers may use cash to purchase a debit card from a vending machine during the hours that self-service copiers are in operation. Additionally, debit cards may be purchased with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Office located in room G–1 of the National Archives Building, and the researcher lobby of the College Park facility, during posted hours. The debit card will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debit card. Researchers may add value to the debit card by using the vending machine. No refunds will be made. The fee for self-service copiers is found in § 1258.12 of this chapter.

16. Section 1254.90 is revised to read:

§ 1254.90 General.

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film accessioned archival records and donated historical materials in the legal and physical custody of the National Archives and Records Administration (NARA) by foreign and domestic government agencies, private commercial firms, academic research groups, and other entities or individuals who request exemption from obtaining copies through the regular fee schedule reproduction ordering system of NARA.

(b) Persons or organizations wishing to microfilm Federal agency records in the physical custody of the Washington National Records Center (WNRC) contact the director, WNRC, about procedures for obtaining permission from the originating agency to film those records. For information about procedures for obtaining permission from the originating agency to film records in the records center operation of one of NARA's regional records services facilities or in the physical custody of the National Personnel Records Center (NPRC), contact the Regional Administrator of the region in which the records are located, or the director, NPRC, for records in NPRC.

(c) Federal agencies needing to microfilm archival records in support of the agency's mission must contact the appropriate office as specified in § 1254.92 of this part, as soon as possible after the need is identified, for information concerning standards and procedures for microfilming archival records.

17. Section 1254.92 is amended by revising paragraphs (a) and (b) and adding new paragraphs (d)(3) and (d)(4) to read as follows:

§ 1254.92 Requests to microfilm records and donated historical materials.

(a) Requests to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the Washington, DC area must be made in writing to the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Rd., College Park, MD 20740–6001. Requests to microfilm archival records or donated historical materials held in a NARA regional records service facility must be made in writing to the Assistant Archivist for Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740–6001. Requests to microfilm records or donated historical materials in a Presidential library or donated historical materials in the Washington area under the control of the Office of Presidential Libraries must be made in writing to the Assistant Archivist for Presidential Libraries (NL), 8601 Adelphi Rd., College Park, MD 20740–6001. OMB control number 3095–0017 has been assigned to the information collection contained in this section.

(b) Requests to use privately owned microfilm equipment should be submitted four months in advance of the proposed starting date of the microfilming project. Requests submitted with less advance notice will be considered and may be approved if adequate NARA space and staff are available and if all training, records preparation and other NARA requirements can be completed in a shorter time frame. Only one project to microfilm a complete body of documents, such as an entire series, a major continuous segment of a very large series which is reasonably divisible, or a limited number of separate series related by provenance or subject, may be included in a request. NARA will not accept additional requests from an individual or

organization to microfilm records in a NARA facility while NARA is evaluating an earlier request from that individual or organization to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

* * * * *

(d) * * *

(3) If the original documents are presidential or vice-presidential records as specified in 44 U.S.C. 2201, the requester must agree to include on the film this statement: ''The documents reproduced in this publication are presidential records in the custody of the (name of Presidential library or National Archives of the United States). NARA administers them in accordance with the requirements of Title 44, U.S.C. No copyright is claimed in these official presidential records.''

(4) If the original documents are records of Congress, the requester must agree to include on the film this statement: ''The documents reproduced in this publication are among the records of the (House of Representatives/Senate) in the physical custody of National Archives and Records Administration (NARA). NARA administers them in accordance with the requirements of the (House/Senate).

* * * * *

18. Section 1254.94 is amended by adding paragraphs (a)(1) through (a)(3), (d)(3), (d)(4), (k), and (l), revising the introductory text of paragraph (d), paragraph (d)(1) and paragraph (i), to read as follows:

§ 1254.94 Criteria for granting the requests.

(a) * * *

(1) In considering multiple requests to film at the same time, NARA will give priority to microfilming records that have research value for a variety of studies or that contain basic information for fields of research in which researchers have demonstrated substantial interest.

(2) The records to be filmed should be reasonably complete and not subject to future additions, especially of appreciable volumes, within the original body of records. Records with pending or future end-of-series additions are appropriate for filming.

(3) The records to be filmed should not have substantial numbers of documents withdrawn because of continuing security classification or privacy or other restriction.

* * * * *

(d) NARA will approve only requests which specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with part 1230 of this chapter. NARA may waive any of the requirements of this paragraph at its discretion.

(1) NARA may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs immediately upon receipt, subject to the limitation in paragraph (d)(2) of this section.

* * * * *

(3) Detailed roll lists must be delivered with the microfilm. The lists must give the full range of file titles and a complete list of all file numbers on each roll of microfilm. NARA prefers that the list be provided in a fielded, electronic format to facilitate its use by staff and researchers. If the electronic format is a data file with defined or delimited fields, the records layout identifying the fields, any coded values for fields, and explanations of any delimiters should be transferred with the list.

(4) Microfilm projects may donate to NARA additional indexes and/or finding aids. NARA and the microfilm project will execute a deed of gift that will specify restrictions on NARA's use and dissemination of these products under mutually acceptable terms.

* * * * *

(i) NARA will not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. NARA also will not approve requests where the only space available for filming is in the facility's research room, and such work would disturb researchers. NARA will not move records from a facility lacking space for private microfilming to another NARA facility for that purpose. When a NARA facility does not have enough space to accommodate all the requests made, NARA may schedule separate projects by limiting the time allowed for each particular project or by requiring projects to alternate in the use of the space.

* * * * *

(k) NARA will not approve requests to microfilm records when there is not enough staff to provide the necessary support services, including document preparation, training of private microfilmers, and monitoring the filming.

(l) NARA will not approve the start of a project to microfilm records until the requestor has agreed in writing to the amount and schedule of fees for any training, microfilm preparation, and monitoring by NARA staff that is necessary to support that specific project. NARA's letter of tentative approval for the project will include an agreement detailing the records in the project and the detailed schedule of fees for NARA services for the project. NARA will give final approval when NARA receives the requestor's signed copy of the agreement.

§ 1254.96 [Amended]

19. Section 1254.96 is amended by removing paragraphs (a)(1) through (a)(3) and designating existing paragraphs (a)(4) and (a)(5) as (a)(1) and (a)(2) respectively.

20. Section 1254.98 is amended by revising paragraph (a) to read:

§ 1254.98 Equipment standards.

(a) Because space in many NARA facilities is limited, microfilm/fiche equipment should be operable from a table top unless NARA has given written permission to use free standing/floor model cameras. Only planetary type camera equipment may be used. Automatic rotary cameras and other equipment with automatic feed devices may not be used. Book cradles or other specialized equipment designed for use with bound volumes, oversized documents, or other formats may be approved by NARA on a case-by-case basis. Other camera types not specified in this section may be approved for use on a case-by-case basis.

* * * * *

21. Section 1254.100 is amended by revising paragraphs (b), (c) and (g) to read:

§ 1254.100 Microfilming procedures.

* * * * *

(b) Documents must be handled in accordance with the training and instructions provided by NARA personnel so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the documents or supervise microfilming operations. Training will be offered only in Washington, DC. NARA will charge the requester fees for training services and these fees will be based on direct salary costs (including benefits) and any related supply costs. Such fees will be specified in the written agreement required for project approval in § 1254.94(l).

(c) Documents from only one file unit may be microfilmed at a time. After reproduction is completed, documents removed from files for microfilming

must be returned to their original position in the file container, any fasteners removed to facilitate copying must be refastened, and any tabs placed on the documents to identify items to be copied must be removed.

* * * * *

(g) Microfilm equipment may be operated only in the presence of the research room attendant or a designated NARA employee. If NARA places microfilm projects in a common research area with other researchers, the project will not be required to pay for monitoring that is ordinarily provided. If the microfilm project is performed in a research room set aside for copying and filming, NARA will charge the project fees for these monitoring services and these fees will be based on direct salary costs (including benefits). When more than one project share the same space, monitoring costs will be divided equally among the projects. The monitoring service fees will be specified in the written agreement required for project approval in § 1254.94(l).

* * * * *

22. Section 1254.102 is amended by adding paragraph (e) to read:

§ 1254.102 Rescinding permission.

* * * * *

(e) If the person or organization fails to pay NARA fees in the agreed to amount or on the agreed to payment schedule.

Dated: April 16, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–10063 Filed 4–22–99; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AI92

Loan Guaranty: Requirements for Interest Rate Reduction Refinancing Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends our loan guaranty regulations concerning the requirements for Interest Rate Reduction Refinancing Loans (IRRRLs). Under the final rule, generally to obtain an IRRRL the veteran's monthly mortgage payment must decrease. Also, the final rule provides that the loan being refinanced must not be delinquent or the veteran seeking the loan must meet certain credit standard provisions. We believe these changes are necessary to ensure that IRRRLs provide a real benefit to veterans and protect the financial interest of the Government.

DATES: Effective Date: May 24, 1999.

FOR FURTHER INFORMATION CONTACT: R.D. Finneran, Supervisory Loan Specialist (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7369.

SUPPLEMENTARY INFORMATION: Under the authority of 38 U.S.C. chapter 37, VA guarantees loans made by lenders to eligible veterans to purchase, construct, improve, or refinance their homes (the term veteran as used in this document includes any individual defined as a veteran under 38 U.S.C. 101 and 3701 for the purpose of housing loans). This document amends VA's loan guaranty regulations by revising the requirements for VA-guaranteed IRRRLs.

The IRRRL program was established by Public Law 96–385, October 7, 1980. IRRRLs are designed to assist veterans by allowing them to refinance an outstanding VA-guaranteed loan with a new loan at a lower rate. The provisions of 38 U.S.C. 3703(c)(3) and 3710(e)(1)(C) allow the veteran to do so without having to pay any out-of-pocket expenses. The veteran may include in the new loan the outstanding balance of the old loan plus reasonable closing costs, including up to two discount points.

In a document published in the **Federal Register** on June 3, 1998 (63 FR 30162), we proposed to amend the loan guaranty regulations concerning the requirements for IRRRLs. Under the proposal, generally to obtain an IRRRL the veteran's monthly mortgage payment must decrease. Also, if the loan being refinanced is delinquent the lender must submit the proposed IRRRL to VA for prior approval of the veteran's creditworthiness. With respect to the proposal, we provided a 60-day comment period, which ended August 3, 1998. In the proposal, we also stated that we would consider comments submitted in response to a rescinded interim rule (62 FR 52503, 63454) which addressed the same issues that were addressed in the proposal. We received many thousands of comments, most of which were groups of identical responses in form letters. The issues raised in the comments are discussed below.

Based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule without change except for nonsubstantive changes for purposes of clarity.

Monthly Payment Reduction

The final rule generally requires that the monthly payment (principal and interest) on the new loan be lower than the monthly payment on the loan being refinanced. A number of commenters supported this change. Some commenters stated that they generally opposed any changes regarding IRRRLs and one commenter raised specific objections regarding the issue of monthly payment reduction. This commenter submitted an alternative to the proposal which would allow 10 percent of a lender's volume of IRRRLs closed during any calendar month to exceed the previous monthly payment on the loan being financed while not simultaneously reducing the term of the loan, and provide for sanctions if the 10 percent threshold were exceeded.

We believe that with the four exceptions discussed below, there is no legitimate reason for allowing the monthly payment (principal and interest) on the new loan to be as high or higher than the monthly payment on the loan being refinanced. The final rule is intended to prevent the veteran's monthly payment from increasing because of extensive costs added to the loan (including closing costs), even though the interest rate is lowered slightly. This is consistent with the Congressional intent of the IRRRL program as expressed in the House Report (H. Rep. No. 96–1165, July 21, 1980, at p. 3) which states: ''[T]he bill is * * * intended to assist veterans by allowing their monthly payments to be reduced. * * *''

The final rule also provides that the monthly payment reduction requirement would not apply to four limited situations where VA believes that other factors offset the risk of loss from an increase in monthly payment. These four situations are cases in which an adjustable rate mortgage (ARM) is being refinanced with a fixed-rate loan; cases in which the term of the new loan is shorter than the term of the loan being refinanced; cases in which the increase in monthly payment is attributable to the inclusion of energy efficient improvements, as provided in § 36.4336(a)(4); and cases in which the Secretary approves the new loan, on a case-by-case basis, in order to prevent an imminent foreclosure. We reaffirm the following rationale which was stated in the proposal (63 FR 30163) for establishing these four exceptions:

''With regard to ARMs, there is already a possibility that the monthly payment will increase in future years.

The certainty that the payment on the new loan will not increase in future years offsets the increased risk associated with the immediate increase over the veteran's current payment. VA may establish limits on the amount of such increase in future rulemaking. Although the monthly payments on shorter term loans are higher, they amortize faster, thus reducing the risk of loss to both the veteran and the Government. In future rulemaking, VA may address minimum term reduction. Current law allows veterans to include additional costs of energy efficient improvements in IRRRLs; thus, this exception would merely continue current law. Finally, with regard to imminent foreclosure, the risk of loss to the Government and veteran from such foreclosure could be greater than permitting a new loan at a higher monthly payment. VA would have to approve each such loan on a case-by-case basis under existing credit underwriting standards set forth at 38 CFR 36.4337 to ensure that it is in the best interest of the Government and that the veteran is able to afford the new payment.''

Accordingly, we are not adopting the proposed alternative suggested by the commenter. For the reasons set forth above, VA does not believe any IRRRL where the monthly payment will exceed the payments on the loan being refinanced should be permitted unless it falls within the standards discussed above. Further, VA does not believe a lender should be limited to an arbitrary 10 percent threshold for IRRRLs having an increased monthly payment if the payment increase on each individual loan is permitted under these standards.

Delinquent Loans—General Comments

Prior to the effective date of this document, VA administratively required prior approval review for an IRRRL in accordance with 38 CFR 36.4303(c) if a scheduled monthly mortgage payment of the loan being refinanced were more than 90 days past due. The final rule states that a loan being refinanced is considered delinquent and an IRRRL replacing such loan is subject to such prior approval procedures if a scheduled monthly mortgage payment of the loan being refinanced is more than 30 days past due.

Almost all commenters asserted that VA should continue to require prior approval review for an IRRRL only if a scheduled monthly mortgage payment of the loan being refinanced were more than 90 days past due. We respectfully disagree with the commenters.

This final rule makes changes needed to prevent lenders from encouraging veterans to default on their current loans, and then to refinance the delinquent loans with IRRRLs that include missed payments, fees, and late charges.

VA has become aware of a number of lenders who encourage veterans to skip two or three mortgage payments and then obtain an IRRRL which includes the missed payments, fees, and late charges. We believe the provisions of the final rule are necessary to meet the intended requirements of Public Law 96–385 which established the IRRRL program. In this regard, the legislative history of Public Law 96–385 states that ''a veteran would not be permitted under the bill to obtain cash from the proceeds of the refinancing loan for other purposes.'' H.R. Report 96–1165, 96th Congress 2d. Session (1980) at 3.

VA is aware that it is common for persons who refinance home loans to skip the payment due on the first day of the month in which their new loan will close. For example, if a lender expects to close an IRRRL on or about October 18, the lender may tell the veteran that he or she may skip the payment due October 1. The skipped payment is then included in the principal balance of the IRRRL. The changes made by this final rule would not affect this common practice. Under the final rule, only ''delinquent'' loans are subject to the prior approval procedures. Since the final rule, consistent with industry practice, defines ''delinquent'' as being more than 30 days past due, the loan in this example is not delinquent and would be eligible for streamlined processing, i.e., processing without regard to VA prior approval procedures.

As noted above, the final rule states that a loan being refinanced is delinquent and an IRRRL replacing such loan is subject to prior approval procedures if a scheduled monthly mortgage payment of the loan being refinanced is more than 30 days past due. Not only is the final rule needed to prevent lenders from causing veterans to default on their current loans, it is needed to prevent lenders from closing poor-quality IRRRLs.

Commenters disagreed with the conclusion that action was necessary because of poor quality IRRRLs. They asserted that when VA guaranteed the original loan for a veteran, VA assumed a certain risk and that a subsequent IRRRL does not increase the Government's risk. Commenters further asserted that the risk of default on an IRRRL is reduced because the interest rate is lowered. With respect to loans that are current, VA presumes that the veteran, having established creditworthiness for the original loan, continues to be creditworthy for an IRRRL. VA notes, however, that loans more than 30 days past due reflect that two payments were missed. This raises the question as to whether an underlying financial problem exists that requires attention. An IRRRL which capitalizes missed payments, fees, and late charges would have a higher loan-to-value ratio than the loan being refinanced. Thus, the IRRRL, at least initially, would be less secure than the original loan. If an IRRRL is foreclosed shortly after being made, the loss to the taxpayers likely would be greater than would have been the case had the original loan been foreclosed. Sometimes a lower interest rate on an IRRRL would reduce the monthly payment sufficiently to allow a veteran in financial distress to make the payments. This is not always true. In fact, in many cases a veteran's degree of financial distress would prevent the veteran from making even the reduced monthly payment on the IRRRL. Accordingly, prior approval procedures are necessary to ensure that the veteran who is delinquent can meet the payment terms of the IRRRL.

As noted above, the final rule states that prior approval procedures must be met for an IRRRL if a scheduled monthly mortgage payment of the loan being refinanced is more than 30 days past due. Commenters recommended that, as a compromise, the 30 day time period be changed to 59 or 60 days. One commenter submitted an alternative to the proposal which would allow an unlimited number of a lender's volume of IRRRLs closed during any calendar month to be up to 60 days past due and to allow 10 percent of a lender's volume of IRRRLs closed during any calendar month to be between 60 and 90 days past due, and provide for sanctions if the 10 percent threshold were exceeded. In response, we conclude that this would not prevent individuals from skipping payments to obtain cash and would not provide adequate protection against loans that are in financial difficulty.

Further, VA disagrees with suggestions from some commenters that skipping more than one payment is necessary for lenders to obtain accurate pay-off figures from the holder of the loan being refinanced. The modern loan servicing industry is highly computerized, and loan balances which include the latest payment are obtainable from holders within a day or two after their receipt of that payment. Lenders normally obtain pay-off figures from holders by fax or overnight express. Thus, as an example, there is no practical need for a lender which

anticipates making an IRRRL in mid-October to urge the borrower to skip the payment due September 1 in order to obtain accurate payoff information.

Commenters asserted that the final rule could cause some veterans to lose their homes due to foreclosure by removing the ability to refinance during a period of delinquency. VA agrees that there are instances where being able to refinance a loan will make a difference between saving a home or losing it to foreclosure. The final rule does not automatically preclude such a veteran from obtaining an IRRRL. If VA determines that the veteran is creditworthy and able to make the payments on the proposed IRRRL and thereby save the home, VA would approve the IRRRL. In cases where VA, after carefully considering the veteran's entire financial circumstances, concludes the veteran is unlikely to be able to make the payments on the IRRRL, the IRRRL would not be approved. Such an IRRRL would only delay for a short time an inevitable foreclosure, causing greater expense to both the veteran and the Government. If a veteran's current loan is delinquent and VA determines that the veteran does not qualify for an IRRRL because of financial difficulties, VA will use its supplemental servicing procedures to determine if other viable alternatives to foreclosure exist.

Delinquent Loans—Streamlined Feature

Commenters asserted that the adoption of the proposed rule would take away the ''streamlined'' feature of the IRRRL program contrary to the legislative intent. In response, we note that nothing in the statutory provisions authorizing the IRRRL program or the relevant legislative history requires or even suggests that VA is required to implement a streamlined procedure for closing loans. Further, streamlined processing would still be available for veterans who are not delinquent on their current loans.

Some commenters asserted that if the proposed rule is adopted, VA would be unable to process IRRRLs in a timely manner. In this regard, one commenter asserted that the review of prior approvals would increase by 35,000 per year. This commenter further asserted that an increase would become more burdensome due to a shrinking Federal workforce. We do not believe that these results suggested by the commenters will occur. We believe that in most cases this final rule will cause veterans seeking IRRRLs to make sure that their original loans are not delinquent. Further, with respect to those that are delinquent, we believe that this will cause lenders to find the underlying reason why there is a delinquency and submit to VA for prior approval only those applications for IRRRLs that have a reasonable opportunity of being approved. Moreover, we note that VA will do all that it can to process prior approvals as quickly as possible. In support of this effort, VA is consolidating its credit underwriting into nine regional loan centers with the intent to provide adequate staffing to process all loans in a timely manner. Even so, under the provisions of 38 U.S.C. 3710(b)(2) and (b)(3), VA has a statutory duty for all loans, including IRRRLs, to ensure that the veteran is creditworthy and that the veteran's total income and expenses bear a proper relationship to the loan repayment terms. This statutory duty to ensure a veteran's creditworthiness must be met even if compliance were to cause some delays.

One commenter asserted that VA is unable to provide statistical data or analysis to suggest that there has been an increased rate of foreclosure for IRRRLs under the previous policy which provided that an IRRRL was subject to prior approval review if the scheduled monthly mortgage payment of the loan being refinanced were more than 90 days past due. In response, we have compiled the following information from our loan guaranty records. Four years ago the early foreclosure rate (i.e., within 2 years of loan closing) on IRRRLs was 25% higher than on VA guaranteed purchase-money loans. Two years ago the early foreclosure rate on IRRRLs grew to 61% higher and has now further grown to 63% higher. VA analysis shows that poor origination of some IRRRLs has caused this disturbing trend. The final rule is narrowly tailored to address this issue and will not significantly impact most IRRRLs.

One commenter suggested that because VA collects a fee on the original VA loan and collects an additional fee on an IRRRL, VA collects enough to cover any losses on IRRRLs, and, consequently, the final rule is not necessary. In response, we note that the amount of fees collected on loans is established by statute (38 U.S.C. 3729). There are no statutory provisions that require VA to accept a poor credit risk merely because of fees that may have been collected to cover amounts paid due to foreclosures. Instead, as noted above, VA must ensure that all veterans receiving loans are creditworthy.

One commenter asserted that regardless of the number of delinquent payments, those payments must be allowed to be included in an IRRRL because the provisions of 38 U.S.C. 3710(e)(1)(C)(i) state that refinanced loans will include the ''sum of the balance.'' In response, we note that this must be read together with the provisions of 38 U.S.C. 3710(b)(2) and (b)(3) which provide that a veteran may obtain a guaranteed loan only if creditworthy. Accordingly, under the final rule a veteran may obtain a guaranteed loan only if creditworthy, but all of those IRRRLs that are closed may include the entire balance of the loan being refinanced, including missed payments, fees, and late charges.

One commenter asserted that the final rule would cause lenders to make extensive adjustments regarding computer systems and training. We agree that some lenders may have to make some adjustments. However, we do not believe that any necessary adjustments will be significant.

Delinquent Loans—Denial of Benefit

Commenters asserted that veterans who are delinquent on their loan payments will be denied the benefit of an IRRRL. This final rule will not automatically deny any veteran who is delinquent on an existing VA guaranteed loan the opportunity to obtain an IRRRL. In the event that a veteran is more than 30 days past due on the loan, the final rule requires that VA perform the same creditworthiness review prior to approving the IRRRL that is now performed on all other VA housing loans. If the veteran is found creditworthy, the IRRRL will be guaranteed. If the veteran is found not creditworthy, VA must decline to guarantee the loan. However, as noted above, VA will use its supplemental servicing procedures to determine if other viable alternatives to foreclosure exist.

Delinquent Loans—Out-of-Pocket Expenses

Some commenters asserted that veterans subject to the prior approval procedures would be required to provide out-of-pocket expenses at closing and that this ''will mark the beginning of the end'' of the IRRRL program by making such loans less appealing to the borrower. The vast majority of veterans seeking to obtain IRRRLs will not be in default and will be eligible to use the streamlined procedures, with only nominal, if any, out-of-pocket expenses. For those subject to the prior approval procedures, the cost of a credit report (approximately $50) would be the only additional expense the veteran is likely to incur. This cost may be included in

the loan amount. Accordingly, those subject to the prior approval procedures may avoid out-of-pocket expenses.

Delinquent Loans—Solicitation to Skip Payments

Some commenters asserted that instead of the changes made in the final rule concerning delinquent loans, VA should establish prohibitions against lenders who advertise or otherwise solicit veterans to skip payments so that they can include missed payments, fees, and late charges in an IRRRL. Some commenters asserted that VA should rely on other agencies, including the Federal Trade Commission, to enforce such prohibitions. The adoption of these suggestions would not address our concerns noted above regarding poor-quality loans. Further, in our view, the adoption of these suggestions would not provide an adequate system for regulating lenders who advertise or otherwise solicit veterans to skip payments. There is no practical way for VA or other agencies to monitor and regulate the possible means of advertising or other solicitations made by lenders. Because of the sheer volume of advertising or other solicitations (e.g., telephone, radio, cable TV, direct mail) by thousands of companies, it is not practical for VA or other agencies to even be aware of all of them, let alone review their content.

Delinquent Loans—Clarification

In § 36.4306, paragraph (a)(5) provides that if a loan is delinquent the new loan will be guaranteed only if the Secretary approves it in advance based on a finding that the borrower ''through the lender'' has provided certain information and meets certain criteria. One commenter asserted that the term ''through the lender'' is confusing and should be clarified. In response, we note that ''through the lender'' merely means that the borrower submits information to the lender who in turn submits it to VA. We believe the proposed language conveys this concept clearly to readers.

Paperwork Reduction Act

We submitted the collection of information contained in the notice of the proposed rulemaking to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(d)). The information collection subject to this rulemaking, set forth at § 36.4306a(a)(3) and (a)(5), concerns requirements for certain IRRRLs. The final rule states that a loan being refinanced is delinquent and an IRRRL replacing such loan is subject to prior approval procedures if a scheduled monthly mortgage payment of the loan being refinanced is more than 30 days past due. Under the prior approval procedures, lenders must collect certain information about the veteran (and spouse or other co-borrower, as applicable), and the veteran's credit history to ensure that the veteran is creditworthy. Collection of this type of information is normal business practice for mortgage lenders.

We invited interested parties to submit comments on the collection of information. However, we received no comments. OMB has approved this information collection under control number 2900–0601, which expires October 31, 2001.

VA is not authorized to impose a penalty on persons for failure to comply with information collection requirements which do not display a current OMB control number, if required.

Executive Order 12866

This final rule has been reviewed by OMB under Executive Order 12866.

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis is provided to meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). A copy of this final rule, including the final regulatory flexibility analysis, is available from the individual referred to in the **FOR FURTHER INFORMATION CONTACT** portion of this document.

a. A succinct statement of the need for, and objectives of, the final rule.

Response: The need for and the objectives of this final rule are to insure that IRRRLs continue to provide a real benefit to veterans and to protect the financial interest of the Government.

b. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

Response: These matters are discussed above in the preamble portion of this document.

c. A description of and an estimate of the number of small entities to which the final rule will apply or an explanation of why no such estimate is available.

Response: The final rule would apply to all lenders who make IRRRLs. In Fiscal Year 1997, 1476 lenders made at least one IRRRL. We believe a number of these lenders are small entities; however, we are unable to make an informed estimate of the number because VA does not collect information that would establish whether a lender closing IRRRLs is a small entity.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Response: Any reporting or recordkeeping requirements are discussed in the Paperwork Reduction Act portion of this document. The requirements of the final rule are discussed above in the preamble portion of this document. As noted above, we are unable to make an informed estimate of the number of small entities that would be affected by the adoption of the final rule. To comply with the provisions of the final rule, employees of lenders would not need any professional skills that would be additional to those skills already needed to process VA home loans.

e. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the final rule considered by the agency which affect the impact on small entities was rejected.

Response: Generally, limiting IRRRLs to instances where the veteran's monthly mortgage payment will decrease and requiring that the loans being refinanced either be current in their payments or meet certain credit standard provisions is intended to ensure that IRRRLs are made only when they provide a real benefit to the veteran and to protect the financial interest of the Government. One alternative would be to allow IRRRLs to be made only when the veteran's monthly mortgage payment would decrease. However, as explained above in the preamble portion of this document, this document establishes exceptions in those cases when it appears that the objectives could still be met. Another alternative would be to require that all IRRRLs meet the credit standard provisions. However, we believe this is necessary only when the loan is delinquent. Another alternative would be to transfer responsibility for policing misleading advertising of offending lenders to the Federal Trade Commission. Although VA believes referral of generic misleading advertising issues (such as

bait and switch or truth in lending violations) to FTC is appropriate, we do not believe FTC staff would be sufficiently familiar with the unique requirements of the IRRRL program to oversee lender compliance. We are aware of no alternatives which could be considered that would allow the objectives to be met and provide less stringent rules for small businesses.

The adoption of the final rule would not have a significant impact on the resources available to small entities. The type of actions that would be required are the same or similar to types of actions already being handled by employees of small entities.

We are unaware of any alternatives that would accomplish the intended purposes. Further, we are unaware of any changes we could consider regarding clarification, consolidation, or simplification that could be made for small entities and still protect veterans and the interests of the Government. The final rule does not include performance standards because we believe there is no means to ensure compliance without design standards. Further, we believe there is no good reason for any lender to act contrary to the final rule.

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: March 25, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. In § 36.4306a, paragraphs (a)(3) through (a)(5) are revised, paragraphs (a)(6) and (a)(7) are added, and a parenthetical is added to the end of the section, to read as follows:

§ 36.4306a Interest rate reduction refinancing loan.

(a) * * *

(3) The monthly principal and interest payment on the new loan must be lower than the payment on the loan being refinanced, except when the term of the new loan is shorter than the term of the loan being refinanced; or the new loan is a fixed-rate loan that refinances a VA-guaranteed adjustable rate mortgage; or the increase in the monthly payments on the loan results from the inclusion of energy efficient improvements, as provided by § 36.4336(a)(4); or the Secretary approves the loan in advance after determining that the new loan is necessary to prevent imminent foreclosure and the veteran qualifies for the new loan under the credit standards contained in § 36.4337.

(4) The amount of the refinancing loan may not exceed:

(i) An amount equal to the balance of the loan being refinanced, which must not be delinquent, except in cases described in paragraph (a)(5) of this section, and such closing costs as authorized by § 36.4312(d) and a discount not to exceed 2 percent of the loan amount; or

(ii) In the case of a loan to refinance an existing VA-guaranteed or direct loan and to improve the dwelling securing such loan through energy efficient improvements, the amount referred to with respect to the loan under paragraph (a)(4)(i) of this section, plus the amount authorized by § 36.4336(a)(4).

(Authority: 38 U.S.C. 3703, 3710)

(5) If the loan being refinanced is delinquent (delinquent means that a scheduled monthly payment of principal and interest is more than 30 days past due), the new loan will be guaranteed only if the Secretary approves it in advance after determining that the borrower, through the lender, has provided reasons for the loan deficiency, has provided information to establish that the cause of the delinquency has been corrected, and qualifies for the loan under the credit standards contained in § 36.4337. In such cases, the term ''balance of the loan being refinanced'' shall include any past due installments, plus allowable late charges.

(6) The dollar amount of guaranty on the 38 U.S.C. 3710(a)(8) or (a)(9)(B)(i) loan may not exceed the original dollar amount of guaranty applicable to the loan being refinanced, less any dollar amount of guaranty previously paid as a claim on the loan being refinanced; and

(7) The term of the refinancing loan (38 U.S.C. 3710(a)(8)) may not exceed the original term of the loan being refinanced plus ten years, or the maximum loan term allowed under 38 U.S.C. 3703(d)(1), whichever is less. For manufactured home loans that were previously guaranteed under 38 U.S.C. 3712, the loan term, if being refinanced under 38 U.S.C. 3710(a)(9)(B)(i), may exceed the original term of the loan but may not exceed the maximum loan term allowed under 38 U.S.C. 3703(d)(1).

(Authority: 38 U.S.C. 3703(c)(1), 3710(e)(1))

* * * * *

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0601)

3. In § 36.4337, paragraph (a) is revised to read as follows:

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification.

(a) *Use of standards.* The standards contained in paragraphs (c) through (j) of this section will be used to determine whether the veteran's present and anticipated income and expenses, and credit history are satisfactory. These standards do not apply to loans guaranteed pursuant to 38 U.S.C. 3710(a)(8) except for cases where the Secretary is required to approve the loan in advance under § 36.4306a.

(Authority: 38 U.S.C. 3703, 3710)

* * * * *

[FR Doc. 99–10146 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–84–1–7341a; FRL–6324–2]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves three revisions to the I/M SIP submitted by the State, thereby removing the conditions for final approval. The program was initially given conditional interim approval by the EPA on July 11, 1997 (62 FR 37138). The action is being taken under section 348 of the National Highway System Designation Act of 1995 (NHSDA) and section 110 of the Clean Air Act (Act). The EPA is removing the conditions from the interim approval because the State's SIP revisions correct the major conditions identified in the July 11, 1997, conditional interim approval action. In today's **Federal Register** action, EPA is

finding that the State has obtained the legislative authority needed to meet the major conditions contained in EPA's July 11, 1997 action. Today's action also approves into the SIP the definition of ''primarily operated,'' the State's commitment to implement On-Board Diagnostic testing, and removes the requirement for Test-on-Resale from the SIP.

DATES: This direct final rule is effective on June 22, 1999, without further notice, unless the EPA receives adverse comment by May 24, 1999. If adverse comment is received, the 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 on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

What Are the Previous Actions Related to This Action?

On October 3, 1996 (61 FR 51651), EPA published a Notice of Proposed Rule Making (NPR) proposing conditional interim approval of Texas' I/M program that was submitted to satisfy the applicable requirements of both the Act and the NHSDA. The formal SIP revision was submitted by Texas on March 14, 1996. After the NPR was published, EPA received comments requesting an extension of the comment period for 60 days which was granted on November 18, 1996 (61 FR 58671).

On July 11, 1997, (62 FR 37138), EPA finalized its conditional interim approval action and responded to comments made on the action. The **Federal Register** Notice stated that EPA was conditionally approving the Texas I/M program as a revision to the Texas SIP, based upon three major conditions to be remedied within twelve months of final interim approval. The State had made a commitment to remedy these conditions and to support the additional needed legislation to be carried out in Texas's 75th Legislative Session.

What Are the Conditions That Need To Be Met for the EPA To Grant Final Interim Approval?

Texas was required to obtain additional legal authority needed to implement its program. The specific authority needed was outlined in EPA's NPR (61 FR 51651) and was identified in a February 27, 1996, Governor's Executive Order that was submitted as part of the Texas I/M SIP. The major conditions are the legal authority identified in the Executive Order that includes: (1) The denial of re-registration of vehicles that have not complied with I/M program requirements, (2) the establishment of a class C misdemeanor penalty for operating a grossly polluting vehicle in a nonattainment area (i.e., enforcement of remote sensing), and (3) the requirement for an inspection within 60 days of resale and prior to transfer of title to nonfamily member consumers in Dallas, Tarrant, or Harris counties.

The EPA also was aware that the State of Texas had expressed plans to remove the ''test-on-resale'' provisions from their I/M plan. In the FRN, EPA stated that we would not require the State to obtain authority for and implement the test-on-resale provisions of the current State plan if the State submitted a SIP revision removing it from the SIP, since the test-on-resale provision was not required by the Act or the Federal I/M rule.

What Else Will Be Needed for EPA To Grant a Final Full Approval?

The final conditional interim approval also identified further requirements for permanent I/M SIP approval, that are not being considered in this action. In addition to complying with all the major conditions of its commitment to EPA that is being acted on in this NPR, the State needs to provide EPA with the following:

(1) A program evaluation to confirm that the appropriate amount of program credit was claimed by the State and achieved with the interim program.

(2) Final Texas Department of Public Safety program regulations.

(3) Evidence that the Texas I/M program will meet all of the requirements of EPA's I/M rule, including those *de minimus* deficiencies identified in the October 3, 1996, proposal (61 FR 51651) as minor for purposes of interim approval.

(4) Evidence that the remote sensing program is effective in identifying and obtaining repairs on vehicles with high levels of emissions, or expand the Texas I/M core program area to include the entire urbanized area for both Dallas/Fort Worth and Houston.

II. EPA Analysis of Texas' Submittals

A. May 29, 1997

The revision included a deletion of the test-on-resale element to the SIP, the Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (TNRCC) and Texas Department of Public Safety, and revision to the definition of ''primarily operated'' in the Texas I/M rules. The EPA has reviewed the State's submittal and finds it acceptable for approval.

Test-on-Resale

The removal of the test-on-resale element from the SIP fulfills one of the three major conditions required for SIP approval.

Memorandum of Understanding

The MOU outlines and specifies the respective responsibilities between the TNRCC and the Texas Department of Public Safety. It fulfills the Federal I/M rule requirement for SIP submissions contained in 40 CFR 51.372(a)(7).

Definition of ''Primarily Operated''

The State also revised its definition of primarily operated to require compliance of vehicles that are operated 60 calendar days in the nonattainment area, instead of 60 continuous days. The revision will result in a strengthening of the State I/M plan.

B. June 23, 1998

In this revision to the I/M SIP, the State commits to implementing On-board Diagnostic testing beginning on January 1, 2001. This revision was required under section 51.358 of the Federal I/M regulation.

C. December 22, 1998

During the 75th Texas legislative session, the State obtained the authority to implement a program for denial of re-registration of vehicles that have not complied with I/M program requirements, and the authority to establish a class C misdemeanor penalty for operating a grossly polluting vehicle in a nonattainment area (i.e., enforcement of remote sensing). Senate Bill 1856, signed by the Governor, and effective on June 19, 1997, revised section 382 of the Texas Health and Safety Code, and sections 502 and 548

of the Texas Transportation Code to correct legislative deficiencies identified in the July 11, 1997, conditional interim approval. A certified copy of the legislation was submitted to EPA under a letter from the Governor dated December 22, 1998.

III. Discussion of Rulemaking Action

The EPA review of this material indicates that these supplemental SIP revisions, with supporting documentation, meet the minimum requirements of the Act, NHSDA, and Federal I/M regulations. Based upon the discussion contained in the previous analysis section, EPA concludes the State's submittals satisfy the conditions established in the July 11, 1997 conditional interim approval. Therefore, EPA is granting final interim approval for the Texas I/M program.

Because EPA views the approval of these SIP revisions as non-controversial, we are taking direct final action to approve these revisions to the I/M SIP.

IV. Explanation of the Interim Approval

In the July 11, 1997, notice the 18-month interim approval was set to lapse on February 11, 1999. Prior to that date, Texas submitted a program effectiveness demonstration. The EPA is reviewing that submittal and will take action in the near future.

V. Further Requirements for Permanent I/M SIP Approval

Final approval of the State's plan will be granted based upon the criteria outlined in the background section and explained in the July 11, 1997 notice. This **Federal Register** action does not change the requirements for permanent I/M SIP approval.

VI. Final Action

The EPA is approving the State's May 29, 1997, June 23, 1998, and December 22, 1998, submittals. By this approval, EPA is giving final interim approval to the Texas I/M program. As discussed above, the State submitted the required program demonstration prior to lapse of the program approval. The EPA will take a separate action on that demonstration.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial submittal and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are 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 22, 1999, without further notice unless we receive adverse comments by May 24, 1999.

If EPA receives such comments, we 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. A second comment period will not be instituted. 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 22, 1999, and no further action will be taken.

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.

VII. Administrative Requirements

A. Executive Order (E.O.) 12866

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

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concern, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal government ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's proposed rule does not create a mandate on State, local, or tribal governments. The 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 proposed 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.

The proposed rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866, and it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly 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 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 proposed rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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 proposed rule will not have a significant impact on a substantial number of small entities because conditional approval of SIP submittals under section 110 and subchapter I, part D of the Act does not create any new requirements but simply approves requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose 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 Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See 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, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves 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. 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 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR PART 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 30, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

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. 7401–7671q.

Subpart SS—Texas

2. Section 52.2270 is amended by adding new paragraph (c)(120) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(120) Revisions submitted by the Governor on May 29, 1997, June 23, 1998, and December 22, 1998, that change the definition of ''primarily operated,'' commit to on-board diagnostic testing, remove the test-on-resale of vehicles subject to the inspection and maintenance program, and provide the legal authority for denial of re-registration of vehicles that have not complied with the I/M program requirements, and the establishment of a class C misdemeanor penalty for operating a grossly polluting vehicle in a nonattainment area.

(i) Incorporation by reference:

(A) Narrative of State Implementation Plan revision submitted May 29, 1997, by the Governor.

(B) Narrative of State Implementation Plan revision submitted June 23, 1998, by the Governor.

(C) Letter from the Governor dated December 22, 1998, submitting Senate Bill 1856.

(ii) Additional material:

(A) Senate Bill 1856.

(B) Memorandum of Agreement between the Texas Natural Resource Conservation Commission and the Texas Department of Public Safety adopted November 20, 1996, and signed February 5, 1997.

§ 52.2310 [Removed]

3. Section 52.2310, Conditional approval, is removed.

[FR Doc. 99–9460 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ33–2–191; FRL–6328–8]

Approval and Promulgation of Implementation Plans; New Jersey 15 Percent Rate of Progress Plans, Recalculation of 9 Percent Rate of Progress Plans and 1999 Transportation Conformity Budget Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a New Jersey State Implementation Plan (SIP) revision involving the State's Ozone plan. Specifically, EPA is approving the 15 Percent Rate of Progress (ROP) Plans, recalculation of the 9 Percent ROP Plans, revisions to the 1990 base year emission inventories, revisions to the

1996 and 1999 projection year emission inventories, and the 1999 transportation conformity budgets. The intended effect of this action is to approve programs required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the 1-hour national ambient air quality standard for ozone. In addition, this approved SIP revision corrects the deficiency which led EPA to disapprove, on December 12, 1997, New Jersey's 15 Percent ROP Plans. Consequently, the sanction and Federal Implementation Plan (FIP) process that was started by EPA's disapproval are terminated. The sanction clock associated with the State's failure to implement the enhanced inspection and maintenance program continues to run.

EFFECTIVE DATE: This rule will be effective April 23, 1999.

ADDRESSES: Copies of the State's submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Pollution Control, 401 East State Street, CN027, Trenton, New Jersey 08625.

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

FOR FURTHER INFORMATION CONTACT: Paul R. Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

On March 1, 1999 (64 FR 9952), EPA proposed approval of New Jersey's State Implementation Plan (SIP) submittals of July 30, 1998 and February 10, 1999. The July and February SIP submittals address the requirements for the two severe ozone nonattainment areas in New Jersey—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. For the purposes of this action, these areas will be referred to as, respectively, the Northern New Jersey nonattainment area (NAA) and the Trenton NAA. The counties located within the Northern New Jersey NAA are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton NAA are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem.

The following Clean Air Act (CAA) requirements were included in the March 1, 1999 proposal: revisions to the 1990 base year ozone emission inventory; revisions to the 1996 and 1999 ozone projection emission inventories; and the 1999 transportation conformity budgets. EPA also proposed approval of New Jersey's 15 Percent Rate of Progress (ROP) Plans and recalculation of the 9 Percent ROP Plans. New Jersey's two SIP submittals revised the previously submitted 15 Percent ROP Plans and 9 Percent ROP Plans dated December 31, 1996 and February 25, 1997.

New Jersey's new 15 ROP Plans will achieve the required emission reductions by November 15, 1999. This is the same date that the reductions would have been achieved had the enhanced I/M program started on time. The new measures along with the previously approved measures in the new 15 Percent ROP Plans being approved today meets EPA's ''as soon as practicable'' criteria.

A detailed discussion of the SIP revisions and EPA's rationale for approving them is contained in the March 1, 1999 proposal and will not be restated here. The reader is referred to the proposal for more details.

II. Public Comments

In response to EPA's proposed action on this New Jersey SIP revision, no comments were received.

III. Federal Implementation Plan

On December 12, 1997, EPA announced by letter that its conditional approval of New Jersey's 15 Percent ROP Plans had converted to a disapproval because the enhanced inspection and maintenance program, which was part of the State's plans, did not start as scheduled and resulted in an emission reduction shortfall. This disapproval applied to the New Jersey portions of the two severe ozone nonattainment areas: the Northern New Jersey NAA and the Trenton NAA.

EPA's disapproval of New Jersey's 15 Percent ROP Plans triggered an obligation to promulgate a Federal Implementation Plan (FIP). For the Trenton NAA, EPA has been under a Consent Agreement to propose a FIP by January 15, 1999, and to adopt the FIP by August 15, 1999. EPA developed such a FIP and proposed it on January 22, 1999 (64 FR 3465).

Today's approval of the July 30, 1998 addendum and the February 10, 1999 State Implementation Plan revision for the Northern New Jersey and Trenton nonattainment areas eliminates the shortfall identified in EPA's December 12, 1997 disapproval of New Jersey's 15 Percent ROP Plans and, thereby, terminates the sanction process associated with this deficiency and the requirement for EPA to promulgate a FIP. Therefore, EPA will not proceed with the FIP proposal which was published on January 22, 1999 (64 FR 3465). The sanction clock associated with the State's failure to implement the enhanced inspection and maintenance program, which was included in the December 12, 1997 disapproval, continues to run.

IV. Conclusion

EPA has evaluated these submittals for consistency with the CAA and Agency regulations and policy. EPA is approving New Jersey's: revisions to the 1990 base year ozone emission inventory; revisions to the 1996 and 1999 ozone projection emission inventories; 15 Percent ROP Plans, recalculation of the 9 Percent ROP Plans; and the 1999 transportation conformity budgets for the North Jersey Transportation Planning Authority, South Jersey Transportation Planning Organization, and Delaware Valley Regional Planning Commission.

EPA is making its approval of today's action effective upon the date of publication in the **Federal Register**, based upon a finding of good cause. Approval of this action would relieve restrictions that have been placed on New Jersey when EPA disapproved its SIP on December 12, 1997 and will not adversely affect other parties. The sanction clock associated with the State's failure to implement the enhanced inspection and maintenance program, which was included in the December 12, 1997 disapproval, continues to run.

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 of Executive Order 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.

EPA interprets E.O. 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 SIP approval is not subject to E.O. 13045 because it approves a state program implementing a Federal standard, and it is not economically significant under E.O. 12866.

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, EPA certifies 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 22, 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, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 12, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

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.*

§ 52.1580 [Amended]

2. Section 52.1580 is amended by removing and reserving paragraph (b).

§ 52.1581 [Removed and Reserved]

3. Section 52.1581 is removed and reserved.

4. Section 52.1582 is amended by adding a sentence to the end of paragraph (d)(1) and by revising paragraphs (d)(3) and (d)(4) and adding new paragraph (g) as follows:

§ 52.1582 Control strategy and regulations: Ozone (volatile organic substances) and carbon monoxide.

* * * * *

(d)(1) * * * Revisions to the 1990 base year emission inventory dated February 10, 1999 for the New York/Northern New Jersey/Long Island and Philadelphia/Wilmington/Trenton nonattainment areas of New Jersey have been approved.

* * * * *

(3) The 1996 and 1999 ozone projection year emission inventories included in New Jersey's July 30, 1998 addendum and February 10, 1999 State Implementation Plan revision for the New York/Northern New Jersey/Long Island and Philadelphia/Wilmington/Trenton nonattainment areas have been approved.

(4) The conformity emission budgets for the McGuire Air Force Base included in New Jersey's December 31, 1996 State Implementation Plan revision have been approved. The 1999 conformity emission budgets for the North Jersey Transportation Planning Authority, South Jersey Transportation Planning Organization and Delaware Valley Regional Planning Commission included in New Jersey's July 30, 1998 addendum and the February 10, 1999 State Implementation Plan revision have been approved.

* * * * *

(g) The 15 Percent Rate of Progress (ROP) Plans and the recalculation of the 9 Percent ROP Plans included in the July 30, 1998 addendum and the February 10, 1999 State Implementation Plan revision for the New York/Northern New Jersey/Long Island and Philadelphia/Wilmington/Trenton nonattainment areas have been approved.

[FR Doc. 99–9872 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA126–0129a; FRL–6233–1]

Approval and Promulgation of Implementation Plans for Arizona and California; General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves various revisions to State Implementation Plans (SIP) which contain regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993. EPA is approving SIP revisions which contain general conformity rules for the Arizona SIP and the California SIP for the following California Air Pollution Control Districts (APCD) and Air Quality Management Districts (AQMD): El Dorado County APCD, Great Basin Unified APCD, Monterey Bay Unified APCD, San Joaquin Valley Unified APCD, Santa Barbara County APCD, South Coast AQMD, Feather River AQMD, Placer County APCD, Sacramento Metro AQMD, Imperial County APCD, Bay Area AQMD, San Diego County APCD, Butte County AQMD, Ventura County APCD, Mojave Desert AQMD and Yolo-Solano AQMD.

The approval of these general conformity rules into the SIP will result in the SIP criteria and procedures governing general conformity determinations instead of the Federal rules at 40 CFR Part 93, Subpart B for those actions under the jurisdiction of the SIPs. Federal actions by the Federal Highway Administration and Federal Transit Administration (under Title 23 U.S.C. or the Federal Transit Act) are covered by the transportation conformity rules under 40 CFR Part 51, Subpart T-Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act (and 40 CFR Part 93, Subpart A) and are not affected by this action.

EPA approves these SIP revisions under sections 110(k) and 176(c) of the Clean Air Act (CAA or the Act). A more detailed discussion of this action is provided below and in the support documentation.

DATES: This rule is effective on June 22, 1999 without further notice, unless EPA receives adverse comments by May 24, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to: Doris Lo, Planning Office [AIR2], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012
California Air Resources Board, 2020 L Street, P.O. Box 2815, Sacramento, California 95812
El Dorado County APCD, 2850 Fairlane Court, Placerville, California 95667
Great Basin Unified APCD, 157 Short Street, Suite #6, Bishop, California 93514
Monterey Bay Unified APCD, 24580 Silver Cloud Court, Monterey, California 93940
San Joaquin Valley Unified APCD, 1999 Tuolumne Street, Suite 200, Fresno, California 93721
Santa Barbara County APCD, 26 Castillian Drive, B–23, Goleta, California 93117
South Coast AQMD, 21865 E. Copley Drive, Diamond Bar, California 91765–4182
Feather River AQMD, 463 Palora Avenue, Yuba City, California 95991–4711
Placer County APCD, 11464 B Avenue, Auburn, California 95603
Sacramento Metro AQMD, 8411 Jackson Road, Sacramento, California 95826
Bay Area AQMD, 939 Ellis Street, San Francisco, California 94109
Imperial County APCD, 150 South Ninth Street, El Centro, California 92243–2850
San Diego County, APCD 9150 Chesapeake Drive, San Diego, California 92123–1096
Butte County AQMD, 9287 Midway, Suite 1A, Durham, California 95938
Ventura County APCD, 669 County Square Drive, Ventura, California 93003
Mojave Desert AQMD, 15428 Civic Drive, Suite 200 Victorville, California 92392–2383

Yolo-Solano AQMD, 1947 Galileo Court, Suite 103, Davis, California 95616

FOR FURTHER INFORMATION CONTACT: Doris Lo, Planning Office (AIR2), Air Division, U.S., Environmental Protection Agency, Region IX,75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1287.

SUPPLEMENTARY INFORMATION:

I. Background

Section 176(c) of the Act requires that all Federal actions conform to an applicable implementation plan. Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the National Ambient Air Quality Standards and achieving expeditious attainment of such standards, and that such activities will not: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

As required by section 176(c) of the Act, EPA published the final general conformity rules implementing this statutory section on November 30, 1993 (58 FR 63214), which are codified under 40 CFR part 51 subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. Among other things, EPA's general conformity rules require the States and local air quality agencies (where applicable) to adopt and submit a general conformity SIP revision to EPA which are ''no less stringent than the requirements'' of Subpart W (40 CFR Part 51.851(b)). *See also,* § 176(c)(4)(C).

The governors of Arizona and California submitted SIP revisions in accordance with 40 CFR part 51, subpart W that contained general conformity rules for the following areas on the following dates summarized below.

Arizona Rule and Submittal Date

—Arizona Administrative Code Title 18, Chapter 2, Article 14, *Conformity Determinations,* 3/3/95

California District Rules and Submittal Dates

—El Dorado County APCD, Rule 502 General Conformity Rule, 11/30/94
—Great Basin Unified APCD, Reg XIII Conformity of General Federal Actions to SIPs, 11/30/94
—Monterey Bay Unified APCD, (Appendix G) General Conformity, 11/30/94
—San Joaquin Valley Unified APCD, Rule 9110 General Conformity, 11/30/94
—Santa Barbara County APCD, Rule 702 General Conformity, 11/30/94
—South Coast AQMD, Rule 1901 General Conformity, 11/30/94
—Feather River AQMD, Rule 10.4 General Conformity, 12/22/94
—Placer County APCD, Rule 508 General Conformity, 12/22/94
—Sacramento Metro AQMD, Rule 104 General Conformity, 12/22/94
—Bay Area AQMD, Federal General Conformity Regulation, 12/28/94
—Imperial County APCD, Rule 925 General Conformity, 2/24/95
—San Diego County APCD, Rule 1501 General Conformity, 5/24/95
—Butte County AQMD, Rule 1103 General Conformity, 5/25/95
—Ventura County APCD, Rule 220 General Conformity, 8/10/95
—Mojave Desert AQMD, Rule 2002-General Federal Actions Conformity, 5/10/96
—Yolo-Solano AQMD, Rule 10.3 General Conformity, 12/3/98

II. EPA Evaluation and Final Action

EPA compared each of the submitted rules to the Federally promulgated rule at 40 CFR part 51. EPA believes that all of the submitted SIP revisions are consistent with 40 CFR 51.851(b) and are no less stringent than the Federal rule. EPA is thus approving the above rules into the SIP under 110(k) and 176(c) of the CAA. A more detailed discussion of EPA's evaluation can be found in the Support Documentation available at the EPA Region 9 Office.

EPA is publishing these rules without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions should adverse comments be filed. These rules will be effective June 22, 1999 without further notice unless the Agency receives adverse comments by May 24, 1999.

If the EPA receives any adverse comments, then EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 22, 1999 and no further action will be taken on the proposed rule.

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.

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 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 22, 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, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California and the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 29, 1999.

Laura Yoshii,

Acting Regional Administrator.

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 D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(92) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(92) Plan revisions were submitted on March 3, 1995, by the Governor's designee.

(A) Arizona State Administrative Code Title 18, Chapter 2, Article 14, adopted on December 23, 1994.

* * * * *

Subpart F—California

3. Section 52.220 is amended by adding paragraphs (c)(205) introductory text, (c)(205)(i) introductory text, (c)(205)(i)(B)(*2*), (c)(207)(i)(B)(*5*), (c)(207)(i)(E)(*2*), (c)(207)(i)(F), (c)(207)(i)(G), (c)(207)(i)(H), (c)(207)(i)(I), (c)(210)(i)(F), (c)(210)(i)(G), (c)(210)(i)(H), (c)(215)(i)(E), (c)(220)(i)(D), (c)(221)(i)(B), (c)(224)(i)(B)(*2*), (c)(231)(i)(C) and (c)(259) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(205) New and amended plans for the following APCDs were submitted on December 28, 1994, by the Governor's designee.

(i) Incorporation by reference.

* * * * *

(B) * * *

(*2*) Federal General Conformity Regulation, adopted on September 7, 1994.

* * * * *

(207) * * *

(i) * * *

(B) * * *

(*5*) Rule 502, adopted on November 8, 1994.

* * * * *

(E) * * *

(*2*) Appendix G General Conformity, adopted on October 19, 1994.

(F) Great Basin Unified Air Pollution Control District.

(*1*) Regulation XIII, adopted on October 5, 1994.

(G) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 9110, adopted on October 20, 1994.

(H) Santa Barbara County Air Pollution Control District.

(*1*) Rule 702, adopted on October 20, 1994.

(I) South Coast Air Quality Management District.

(*1*) Rule 1901, adopted on September 9, 1994.

* * * * *

(210) * * *

(i) * * *

(F) Feather River Air Quality Management District.

(*1*) Rule 10.4, adopted on November 7, 1994.

(G) Placer County Air Pollution Control District.

(*1*) Rule 508, adopted on November 3, 1994.

(H) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 104, adopted on November 3, 1994.

* * * * *

(215) * * *

(i) * * *

(E) Imperial County Air Pollution Control District.

(*1*) Rule 925, adopted on November 29, 1994.

* * * * *

(220) * * *

(i) * * *

(D) San Diego County Air Pollution Control District.

(*1*) Rule 1501, adopted on March 7, 1995.

* * * * *

(221) * * *

(i) * * *

(B) Butte County Air Quality Management District.

(*1*) Rule 1103, adopted on February 16, 1995.

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(224) * * *

(i) * * *

(B) * * *

(*2*) Rule 220, adopted on May 9, 1995.

* * * * *

(231) * * *

(i) * * *

(C) Mojave Desert Air Quality Management District.

(*1*) Rule 2002, adopted on October 26, 1994.

* * * * *

(259) New and amended regulations for the following APCDs were submitted on December 3, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Yolo-Solano Air Quality Management District.

(*1*) Rule 10.3, adopted on February 8, 1995.

* * * * *

[FR Doc. 99–9996 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD056–3022a; FRL–6330–7]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Maryland; Control of Emissions From Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the municipal waste combustor (MWC) 111(d)/129 plan submitted by the Air and Radiation Management Administration, Maryland Department of the Environment, on December 4, 1997, and as amended on October 7, 1998. The plan was submitted to fulfill requirements of the Clean Air Act (CAA), and EPA emission guidelines (EG) applicable to existing MWC facilities with a unit combustor capacity of more than 250 tons per day (TPD) of municipal solid waste. An existing MWC unit is defined as one for which construction has commenced on or before September 20, 1994.

DATES: This direct final rule is effective on June 22, 1999, without further notice, unless the EPA receives adverse comment by May 24, 1999. If adverse comment is received, the 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 Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania; and the Air and Radiation Management Administration, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov. While information may be obtained via e-mail, any comments must be submitted, in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION:

I. Background

Section 111(d) of the CAA requires that ''designated'' pollutants controlled under standards of performance for new stationary sources by section 111(b) of the CAA must also be controlled at existing sources in the same source category. Also, section 129 of the CAA specifically addresses solid waste combustion. It requires EPA to establish emission guidelines (EG) for MWC units and requires states to develop state plans for implementing the promulgated EG. The part 60, subpart Cb, EG for MWC units differ from other EG adopted in the past because the rule addresses both sections 111(d) and 129 CAA requirements. Section 129 requirements override certain related aspects of section 111(d).

On December 19, 1995, pursuant to sections 111 and 129 of the CAA, EPA promulgated new source performance standards (NSPS) applicable to new MWCs (i.e., those for which construction was commenced after September 20, 1994) and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate MWC emissions. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides).

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day (TPD) of municipal solid waste (MSW), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA,* 101 F.3d 1395 (D.C. Cir. 1996), *as amended,* 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (i.e., large MWC units). The amended requirements of the EG and NSPS were published in the **Federal Register** on August 25, 1997. *See* 62 FR 45119 and 45124 for the EG amendments.

Section 129(b)(2) of the CAA requires States to submit to EPA for approval State plans that implement and enforce the EG. State plans must be ''at least as protective'' as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. However, EPA amended subpart B on December 19, 1995, to allow the source specific subparts (e.g., subpart Cb) developed under section 129 to include requirements that supersede the general provisions in subpart B regarding the schedule for submittal of State plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

As required by section 129(b)(3) of the CAA, on November 12, 1998 EPA promulgated a Federal Implementation Plan (FIP) for large MWCs for which construction was commenced on or before September 20, 1994. The FIP is a set of emissions limits, compliance schedules, and other requirements that implement the MWC EG, as amended. The FIP is applicable to those large existing MWC not specifically covered by an approved State plan under sections 111(d) and 129 of the CAA. It fills a Federal enforceability gap until State plans are approved and ensures that the MWC units stay on track to complete pollution control equipment retrofit schedules to meet the final statutory compliance date of December 19, 2000. However, the FIP no longer applies once a State plan is approved. An approved State plan is a State plan that EPA has reviewed and approved based upon the requirements of 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cb. *See* 63 FR 63192.

As noted above, emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). These pollutants can cause adverse effects to the public health and the environment. Dioxin, lead and mercury can bioaccumulate in the environment. Acid gases contribute to the acid rain that lowers the pH of surface waters and watersheds, harms forests, and damages buildings. In addition, nitrogen oxides emissions contribute to the formation of ground level ozone, which is associated with a number of adverse health and environmental effects.

II. Review of Maryland's MWC Plan

EPA has reviewed the Maryland 111(d)/129 plan for existing large MWC units in the context of the requirements of 40 CFR part 60, and subparts B and Cb, as amended. A summary of that review is provided below.

A. Identification of Enforceable State Mechanism for Implementing the EG

The regulation at 40 CFR 60.24(a) requires that the section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as '' a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions.'' The State of Maryland through the MDE, has adopted State regulations to control MWC emissions. The applicable Code of Maryland Regulations (COMAR) for large MWC is found at COMAR 26.11.08, Control of Incinerators. The applicable portion of the regulation relating to large MWC was adopted on October 24, 1997, and became effective on November 17, 1997. COMAR 26.11.08 amendments were adopted on August 18, 1998 and became effective on September 7, 1998. The MDE has met the requirements of 40 CFR 60.24(a) to have a legally enforceable emission standard.

B. Demonstration of Legal Authority

Title 40 CFR 60.26 requires the 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules. The MDE has demonstrated that it has the legal authority to adopt and implement the emission standards governing MWC emissions. MDE's legal authority is derived from Title 2 of the Environment Article, Annotated Code of Maryland, sections 2–103(b) and 2–301. Furthermore, Maryland has submitted and EPA has approved previous Maryland 111(d) plans for other designated facilities that demonstrate the required legal authority. This meets the requirements of 40 CFR 60.26.

C. Inventory of MWCs in Maryland Affected by the EG

Title 40 CFR 60.25(a) requires the 111(d) plan to include a complete source inventory of all existing large MWCs (i.e., unit capacity greater than 250 TPD). The MDE has identified three (3) facilities with individual MWC units having combustion capacities greater than 250 TPD. The first facility, the Baltimore Resco plant has a total capacity of 2,250 TPD, consisting of three 750 TPD units each with emissions controlled by an electrostatic precipitator. The second facility, the Ogden Martin Systems of Montgomery County plant, has a total capacity of 1,800 TPD, consisting of three 600 TPD units each with emissions controlled by dry lime furnace injection and post combustion scrubbers for acid gases; ammonia injection for nitrogen oxides; carbon injection for mercury and dioxins; and baghouses for particulate matter and metals. The third facility, the Pulaski Highway MWC plant, has a total capacity of 1,500 TPD; however, this plant was shut down on September 15, 1995.

D. Inventory of Emissions From MWC in Maryland

Title 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG. Emissions from MWCs contain organics (dioxin/furans), metals (cadmium, lead, mercury, particulate matter, opacity), and acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides). For each MWC plant, the MDE plan contains information on estimated MWC emission rates in pounds per hour and tons per year based on stack test data and continuous emission monitoring data. This meets the emission inventory requirements of 40 CFR 60.25(a).

E. Emission Limitations for MWCs

Title 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG, except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met. However, this exception clause is superseded by section 129(b)(2) of the CAA which requires that state plans be ''at least as protective'' as the EG. Title 40 CFR 60.33b of the EG contains the emissions limitations applicable to existing large MWCs. The MDE MWC regulation meets the emission limitation requirements by specifying emission limitations that are consistent and ''at least as protective'' as those in the EG, as amended.

F. Compliance Schedules

A state section 111(d) plan must include a compliance schedule that owners and operators of affected MWCs must meet in complying with the requirements of the plan. Any proposed revision to a compliance schedule is subject to the requirements of subpart B 60.28, Plan revisions by the State. Title 40 CFR 60.39b of the EG provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG requirements must be accomplished within 3 years of EPA plan approval, but in no case later than December 19, 2000. As a result of the *Davis County* litigation, noted above, compliance with supplemental EG emissions limits for lead, sulfur dioxide, hydrogen chloride, and nitrogen oxides could extend until August 26, 2002, or 3 years after EPA approval of the 111(d)/129 plan, whichever is earlier. However, section 129(f)(2) of the CAA states that requirements promulgated pursuant to sections 111 and 129 must be effective ''as expeditiously as practicable after approval of a State plan.'' Title 40 CFR 60.39b(c)(1) provides that any compliance schedule, extending more than 1 year beyond the date of EPA plan approval, must include measurable and enforceable increments of progress. The minimum increments of progress are specified in 40 CFR 60.21(h); they include deadlines for submitting a final control plan, awarding of contracts for emission control systems, initiating of on-site construction or installation of emission control equipment, completing of on-site construction/installation of emission control equipment, and final compliance. In addition, 60.39b(c)(5) requires that all large MWCs for which construction was commenced after June 26, 1987 must meet the mercury and dioxins/furans emissions limitations within one year following issuance of a revised construction or operating permit, if a permit modification is required, or within one year following EPA approval of the State plan, whichever is later.

The MDE has determined that source compliance with the EG emissions limits, including the supplemental limits, requires compliance no later than December 19, 2000. For any large MWC for which construction commenced after June 26, 1987, the MDE regulation requires compliance with all applicable emission standards and requirements on or before January 1, 1999. The MDE MWC regulation establishes interim and final compliance dates, as required by subpart B 60.21(h)(1), and subpart Cb 60.39b.

H. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The EG at 40 CFR 60.38b and 60.39b cross reference applicable MWC NSPS (subpart Eb) requirements relating to performance testing, monitoring, reporting and recordkeeping requirements that State plans must include. The MDE regulation meets the requirements of 40 CFR 60.38b and 60.39b.

I. A Record of Public Hearing on the State Plan

The public hearings on the applicable portions of the MDE MWC regulation, COMAR 26.11.08, were held September 17, 1997 and July 22, 1998. The applicable portions of the regulation became effective November 17, 1997. The subsequent regulation amendments for large MWCs became effective on September 7, 1998. The State provided evidence of complying with public notice and other hearing requirements, including a record of public comments received. The 40 CFR 60.23 requirement for a public hearing on the 111(d)/129 plan has been met by the MDE.

J. Provision for Annual State Progress Reports to EPA

The MDE will submit to EPA on an annual basis a report which details the progress in the enforcement of the MWC 111(d)/129 plan in accordance with 40 CFR 60.25. The first progress report will be submitted to EPA one year after approval of Maryland's MWC 111(d)/129 plan.

III. Final Action

Based upon the rationale discussed above and in further detail in the technical support document (TSD) associated with this action, EPA is approving the Maryland MWC 111(d)/129 plan for the control of MWC emissions from affected facilities. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. Providing the Pulaski MWC facility remains closed, it is not subject to the COMAR 26.11.08 emission limitations, operator training, and compliance schedule requirements under the 111(d)/129 plan. As provided by 40 CFR 60.28(c), any revisions to Maryland's MWC 111(d)/129 plan or associated regulations will not be considered part of the applicable plan until submitted by the State of Maryland in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules Section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d)/129 plan should relevant adverse or critical comments be filed. This rule will be effective June 22, 1999 without further notice unless the Agency receives relevant adverse comments by May 24, 1999. If 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. EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on this section should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 22, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.'' Because today's rule does not create a mandate on state, local or tribal governments, it 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. This final 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. 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. Under the Regulatory Flexibility Act (RFA), because the Federal 111(d) 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. Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), 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.

B. Submission to Congress and the General Accounting Office

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

C. 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 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule pertaining to the State of Maryland MWC 111(d)/129 plan does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

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

Dated: April 15, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

40 CFR Part 62, Subpart V, is amended as follows:

PART 62—[AMENDED]

Subpart V—Maryland

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

Authority: 42 U.S.C. 7401–7642.

2. A new center heading, and §§ 62.5110, 62.5111, and 62.5112 are added to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With a Unit Capacity Greater Than 250 Tons Per Day

§ 62.5110 Identification of plan.

111(d)/129 plan for municipal waste combustors (MWCs) with a unit capacity greater than 250 tons per day (TPD) and the associated Code of Maryland Regulation (COMAR 26.11.08), as submitted by the Air and Radiation Management Administration, Maryland Department of the Environment, on December 4, 1997, and as amended on October 7, 1998.

§ 62.5111 Identification of sources.

The plan applies to all existing MWC facilities with a MWC unit capacity greater than 250 TPD of municipal solid waste.

§ 62.5112 Effective date.

The effective date of the 111(d)/129 plan is June 22, 1999.

[FR Doc. 99–10229 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[A–1–FRL–6325–3]

Authorization To Implement Section 111 and 112 Standards; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve the mechanism that will allow EPA to authorize the State of Connecticut to implement and enforce specific national emission standards for hazardous air pollutants for source categories (NESHAPs) and new source performance standards (NSPS) under the Clean Air Act. This authority will be limited to only facilities that have obtained a Clean Air Act Title V operating permit under Connecticut's approved program.

EFFECTIVE DATE: This rule will become effective on May 24, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Donald Dahl at (617) 918–1657.

SUPPLEMENTARY INFORMATION:

I. Background

On December 6, 1996 (61 FR 64651), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval under section 112(l)(5) of the Clean Air Act (CAA, 42 U.S.C. 7401 *et seq.*) and 40 CFR 63.91 of Connecticut's mechanism for receiving authorization to implement section 112 standards for part 70 sources that are unchanged from the federal standards as promulgated. Section 112 of the CAA provides for the control of air toxics emissions through the issuance of federal National Emission Standards for Hazardous Air Pollutants. EPA's approval was contingent on Connecticut making an amendment to its authority for enforcing federal standards. The state made the necessary changes to its statute. See section 22(a)–174(c), as amended by Public Act 97–124 section 4. The legislation, a copy of which can be found in the docket, became effective on October 1, 1997. The NPR also proposed using the same mechanism to authorize state implementation of future NSPS standards that are unchanged from 40 CFR part 60. The authorization mechanism does not cover sources which do not obtain a Title V permit.

Section 112(l) of the Clean Air Act, as inserted by the 1990 CAA amendments, authorizes EPA to approve state or local air pollution control agencies to implement and enforce the standards set out in 40 CFR parts 61 and 63, National Emission Standards for Hazardous Air

Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR part 63, subpart E, establishing procedures for EPA's approval of state rules or programs under section 112(l) (see 58 FR 62262).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR part 63, subpart E. To streamline the approval process for future applications, a state or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. See 40 CFR 63.90 (introduction) and 63.91(a). If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for authorization to implement CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the does not adequately implement or enforce an approved rule or program. See 40 CFR 63.96.

Other specific requirements and the rationale for EPA's proposed action were explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving a mechanism that will allow Connecticut to accept authorization to implement CAA sections 111 and 112. EPA is also reconfirming previously authorized parts 60 and 61 standards as indicated in Table I. Although EPA reserves its right, pursuant to 40 CFR 63.96, to review the appropriateness of any future authorization request, EPA will not institute any additional comment periods on future authorization actions.

This authorization will give Connecticut the primary implementation and enforcement responsibility of 40 CFR parts 60, 61 and 63 standards for sources that obtain a Title V permit. However, EPA still retains the right, pursuant to CAA sections 111(c) and 112(l)(7), to enforce any applicable emission standard or requirement under CAA sections 111 or 112. In addition, EPA is not authorizing Connecticut to implement any authorities that require approval rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA sections 111 or 112.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 **Federal Register** 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13045

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

C. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, 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 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.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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

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 authorizing Connecticut to implement standards developed

under sections 111 and 112 of the CAA does not create any new requirements, but simply allows the state to implement the standards. Therefore, because an authorization of NSPS or MACT standard does not impose any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to , 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.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either, local, or tribal governments in the aggregate, or to the private sector. This Federal approves action the State of Connecticut to implement pre-existing requirements under state 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 22, 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 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 111 and 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: April 6, 1999.

John P. DeVillars,

Regional Administrator, Region I.

TABLE TO THE PREAMBLE

[Authorization of Connecticut to implement part 60 and 61 standards as they apply to sources with permits under Connecticut's Title V Operating Permits Program]

Part 60—Subpart Categories	
D	Fossil-Fuel Fired Steam Generators
Da	Electric Utility Steam Generators
Db	Industrial-Commercial-Institutional Steam Generating Units
Dc	Small Industrial Commercial Institutional Steam Generating Units
E	Incinerators
Ea	Municipal Waste Combustors
F	Portland Cement Plants
G	Nitric Acid Plants
H	Sulfuric Acid Plants
I	Asphalt Concrete Plants
J	Petroleum Refineries
K	Petroleum Liquid Storage Vessels
Ka	Petroleum Liquid Storage Vessels
Kb	Volatile Organic Liquid Storage Tanks
L	Secondary Lead Smelters
M	Secondary Brass and Bronze Production Plants
N	Basic Oxygen Process Furnaces Primary Emissions
Na	Basic Oxygen Process Steelmaking—Secondary Emissions
O	Sewage Treatment Plants
T	Phosphate Fertilizer Wet Process
U	Phosphate Fertilizer—Superphosphoric Acid
V	Phosphate Fertilizer—Diammonium Phosphate
W	Phosphate Fertilizer—Triple Superphosphate
X	Phosphate Fertilizer—Granular Triple Superphosphate Storage
AA	Steel Plants—Electric Arc Furnaces
CC	Glass Manufacturing Plants
EE	Surface Coating of Metal Furniture
GG	Stationary Gas Turbines
HH	Lime Manufacturing Plants
LL	Metallic Mineral Processing Plants
QQ	Graphic Arts—Rotogravure Printing

TABLE TO THE PREAMBLE—Continued

[Authorization of Connecticut to implement part 60 and 61 standards as they apply to sources with permits under Connecticut's Title V Operating Permits Program]

RR	Tape and Label Surface Coatings
SS	Surface Coating: Large Appliances
TT	Metal Coil Surface Coating
UU	Asphalt Processing Roofing
VV	Equipment Leaks of VOC in SOCMI
WW	Beverage Can Surface Coating
XX	Bulk Gasoline Terminals
BBB	Rubber Tire Manufacturing
DDD	VOC Emissions from Polymer Manufacturing Industry
FFF	Flexible Vinyl and Urethane Coating and Printing
GGG	Equipment Leaks of VOC in Petroleum Refineries
HHH	Synthetic Fiber Production
III	VOC from SOCMI Air Oxidation Unit
JJJ	Petroleum Dry Cleaners
NNN	VOC from SOCMI Distillation
OOO	Nonmetallic Mineral Plants
SSS	Magnetic Tape Coating
TTT	Surface Coating of Plastic Parts for Business Machines
VVV	Polymeric Coating of Supporting Substrates

Part 61—Subpart Categories

C	Beryllium
D	Beryllium—Rocket Motor
E	Mercury
F	Vinyl Chloride
J	Equip Leaks of Benzene
M	Asbestos
N	Arsenic—Glass Manufacturing
Q	Radon—DOE Facilities
V	Equip Leaks (Fugitive Emission Sources)
Y	Benzene Storage Vessels

[FR Doc. 99–9472 Filed 4–22–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6330–9]

Wyoming: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of immediate final rule.

SUMMARY: We are withdrawing the immediate final rule for Wyoming: Final Authorization of State Hazardous Waste Management Program Revision published on February 25, 1999, which approved the first revision to Wyoming's Hazardous Waste Rules. We stated in the immediate final rule that if we received adverse comment, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received adverse comment. We will address the adverse comment in a subsequent final action based on the proposed rule also published on February 25, 1999, and the extension of the public comment period published in a separate document in the ''Proposed Rules'' section of this **Federal Register**.

DATES: As of April 23, 1999, we withdraw the immediate final rule published at 64 FR 9278, on February 25, 1999.

FOR FURTHER INFORMATION CONTACT: Kris Shurr (8P–HW), phone number: (303) 312–6312, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

SUPPLEMENTARY INFORMATION: Because we received adverse comment, we are withdrawing the immediate final rule for Wyoming: Final Authorization of State Hazardous Waste Management Program Revision published on February 25, 1999 at 64 FR 9278, which intended to grant authorization for the first revision to Wyoming's Hazardous Waste Rules. We stated in the immediate final rule that if we received adverse comment by March 29, 1999, we would publish a timely notice of withdrawal in the **Federal Register**. Subsequently, we received adverse comment. We will address all comments in a subsequent final action based on the previously published proposed rule and an extension of the public comment period published in the ''Proposed Rules'' section of this **Federal Register**. We will not provide for additional public comment during the final action. Any party interested in commenting must do so during the extended comment period.

Dated: April 16, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–10231 Filed 4–22–99; 8:45 am]
BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1802, 1804, 1812, 1852, 1853, and 1871

Administrative Revisions to the NASA FAR Supplement

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform NASA FAR Supplement MidRange Administrative Procedures with FAR 19.11, 19.12, 19.13, and make editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

DATES: This rule is effective April 23, 1999.

ADDRESSES: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, (202) 358–1645, e-mail: celeste.dalton@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

Recent changes to FAR Subpart 19.11, Price Evaluation Adjustment for Small Disadvantaged Business Concerns, and FAR Subpart 19.12, Small Disadvantaged Business Participation Program, established mechanisms to benefit small disadvantaged business (SDB) firms at the prime and subcontract levels. This rule incorporates these changes into MidRange Procedures and provides guidance on the evaluation of the extent of SDB participation, as required by FAR 19.12, under MidRange Best Value Selection (BVS) procedures. NASA MidRange Procurement Procedures require that all acquisitions be reserved for small business concerns. Changes at FAR 19.13, implementing the SBA Historically Underutilized Business Zone (HUBZone) Program, change the order of priority for small business set-asides. This rule incorporates this change into the MidRange Procedures. Additional administrative changes are made to the MidRange Procedures to: reflect the expiration of the pilot test period and synopsis waiver for these procedures; modify the dollar threshold for MidRange acquisitions; correct a FAR citation noted in section 1871.401–1(b)(3); delete redundant coverage of NASA Acquisition Internet Service (NAIS) usage at section 1871.405; and add prescribed NASA Forms 1667 and 1668 to Part 1853. Other editorial changes unrelated to MidRange are made to: revise the language at 1812.301(f)(i) to clarify that use of the clauses listed is authorized without obtaining a waiver; add clause 1852.223–71, Frequency Authorization, to the list of clauses authorized for use in commercial acquisitions in accordance with the authority at FAR 12.301(f); and revise several references to Lewis Research Center (LeRC) to the Glenn Research Center at Lewis Field (GRC).

Impact

Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5. U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1802, 1804, 1812, 1852, 1853, and 1871

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1802, 1804, 1812, 1852, 1853, and 1871 are amended as follows:

PART 1802—DEFINITIONS OF WORDS AND TERMS

1. The authority citation for 48 CFR Parts 1802, 1804, 1812, 1852, 1853, and 1871 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. In the definition ''Contracting activity'' in section 1802.101, ''Lewis Research Center'' is removed and ''Glenn Research Center at Lewis Field'' is added in alphabetical order after ''Dryden Flight Research Center''.

PART 1804—ADMINISTRATIVE MATTERS

3. In paragraph (a) to section 1804.7102, under the heading ''Installation'', ''Lewis Research Center'' is removed and ''Glenn Research Center at Lewis Field'' is added in its place and the entry is placed in alphabetical order after ''Dryden Flight Research Center''.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

4. Section 1812.301, is revised to read as follows:

1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items. (NASA Supplements paragraph (f))

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

(A) 1852.214–71, Grouping for Aggregate Award.

(B) 1852.214–72, Full Quantities.

(C) 1852.215–84, Ombudsman.

(D) 1852.219–75, Small Business Subcontracting Reporting.

(E) 1852.219–76, NASA Small Disadvantaged Business Goal.

(F) 1852.223–71, Frequency Authorization.

(G) 1852.228–72, Cross-Waiver of Liability for Space Shuttle Services.

(H) 1852.228–76, Cross-Waiver of Liability for Space Station Activities.

(I) 1852.228–78, Cross-Waiver of Liability for NASA Expendable Launch Vehicles.

(J) 1852.232–70, NASA Progress Payment Rates.

(K) 1852.246–72, Material Inspection and Receiving Report.

PART 1852—SOLICITATION PROVISIONS AND CONRACT CLAUSES

5. In paragraph (b)(i) to section 1852.103, ''CW'' and ''LERC'' are removed, and ''GRC'' is added in alphabetical order after ''DFRC''.

PART 1853—FORMS

6. Section 1853.271 is added to read as follows:

1853.271 MidRange procurement procedures (NASA Forms 1667 and 1668).

The following forms are prescribed in 1871.105(f):

(a) NASA Form 1667, Request for Offer.

(b) NASA Form 1668, Contract.

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

7. Subpart 1871.1 is revised to read as follows:

Subpart 1871.1—General

Sec.

Subpart 1871.1—General

1871.101 Purpose.

The purpose of this part is to establish policies and procedures that implement the MidRange procurement process.

1871.102 Applicability.

(a) This part applies to all acquisitions at NASA, except as provided in 1871.401–4(a)(3), the aggregate amount of which is not more than $10,000,000 including options, and for commercial items (FAR Part 12) not more than $25,000,000 including options. This part may be used for commercial item contracts above $25,000,000 at the installation's discretion.

(b) For other than commercial items, if the Government estimate exceeds the limits of paragraph (a) of this section, the acquisition will be processed under FAR and NFS procedures applicable to large acquisitions (see FAR Parts 14 and 15). When the estimate is within the threshold of paragraph (a) of this section and the acquisition was started using these procedures but the offered prices/costs exceed the MidRange ceiling, the acquisition may continue under MidRange procedures, provided that—

(1) The price/cost can be determined to be fair and reasonable;

(2) The successful offeror accepts incorporation of required FAR and NFS clauses applicable to large acquisitions; and

(3) The acquisition does not exceed $15,000,000 for the total requirement.

1871.103 Definitions.

The following terms are used throughout part 1871 as defined in this subpart.

(a) MidRange procurement procedure means a set of procedures contained in this part and within the applicability of 1871.102.

(b) Request for Offer (RFO) means the solicitation used to request offers for all authorized MidRange procurements.

(c) Clarification and Discussion are used as defined in FAR 15.306.

(d) Commercial item is used as defined in FAR 2.101.

1871.104 Policy.

(a) Unless stated otherwise, acquisitions conducted using MidRange procedures shall comply with all applicable parts of the FAR and NFS (e.g. FAR 15.4 and 1815.4—Contract Pricing, and FAR 19.7 and 1819.7—The Small Business Subcontracting Program).

(b) Acquisitions conducted under Part 1871, unless otherwise properly restricted under the provisions of FAR Part 6, are considered to be full and open competition after exclusion of sources when set aside for competitions among small business concerns (FAR 6.203), 8(a) concerns (FAR 6.204), or HUBZone small businesses (FAR 6.205).

(c) Options may be included in the acquisition provided they conform to 1871.102(a).

(d) The appropriate part 1871 post-selection processes (negotiation, award, and publication of award) may be used to the extent applicable for Small Business Innovation Research (SBIR), broad agency announcements, unsolicited proposals, and Small Business Administration 8(a) acquisitions within the applicability of 1871.102(a).

(e) The NASA Acquisition Internet Service (NAIS) will be used to the maximum extent practicable to disseminate advance acquisition information and conduct part 1871 acquisitions.

(f) Use of locally generated forms is encouraged where their use will contribute to the efficiency and economy of the process. NASA Forms 1667, Request for Offer, and 1668, Contract, or computer generated versions of these forms, may be used as the solicitation and contract cover sheets, respectively, except that the SF1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used for construction acquisitions and the SF1449, Solicitation/Contract/Order for Commercial Items, shall be used for commercial item acquisitions. Contractor generated forms or formats for solicitation response should be allowed whenever possible. There is no requirement for uniform formats (see FAR 15.204).

8. In section 1871.204, paragraphs (a), (d), and (f) are revised and paragraph (h) is added to read as follows:

1871.204 Small business set-asides.

(a) Except as provided in paragraphs (b) through (f) of this section, each MidRange acquisition shall be reserved exclusively for small business concerns. (See FAR subparts 19.5 and 19.13. See FAR 19.1305(a) regarding priority considerations).

* * * * *

(d) If the buying team procurement member determines that the conditions for a HUBZone set-aside, HUBZone sole source, or small business set-aside cannot be satisfied, the buying team may purchase on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document the contract file with the reason for the unrestricted acquisition.

* * * * *

(f) If the buying team proceeds with a small business MidRange set-aside and receives an offer from only one responsible small business concern at a reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the acquisition on an unrestricted basis utilizing MidRange procedures. If the acquisition is a HUBZone set-aside and only one acceptable offer is received, the buying team should proceed with the award in accordance with FAR 19.1305(d). The buying team procurement members shall document in the file the reason for the unrestricted purchase.

* * * * *

(h) Each model contract under a HUBZone MidRange set-aside shall contain the clause at FAR 52.219–3, Notice of Total HUBZone Set-Aside.

9. In section 1871.401–1, paragraph (b)(3) is revised and paragraph (b)(5) is added to read as follows:

1871.401–1 Sealed offers.

* * * * *

(b) * * *

(3) All offers shall be examined for mistakes in accordance with FAR 14.407–1 and 14.407–2. The buying team shall determine that a prospective contractor is responsible and that the prices offered are reasonable (see FAR 14.408–2).

* * * * *

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for small disadvantaged business (SDB) concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

10. In section 1871.401–2, the section heading is revised and paragraph (b)(5) is added to read as follows:

1871.401–2 Two-step competitive acquisition.

* * * * *

(b) * * *

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

11. In section 1871.401–3, the section heading is revised and paragraph (a)(4) is added to read as follows:

1871.401–3 Competitive negotiated acquisition not using qualitative criteria.

(a) * * *

(4) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

* * * * *

12. In section 1871.401–4 paragraph (a)(5) is added to read as follows:

1871.401–4 Competitive negotiations using qualitative criteria (Best Value Selection).

(a) * * *

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns. SDB concerns that choose the FAR 19.11 price evaluation adjustment shall receive no consideration under a MidRange BVS value characteristic that addresses the FAR 19.1202 SDB participation evaluation;

(ii) FAR 19.1202 regarding the evaluation of the participation of SDB concerns in performance of the contract. For BVS MidRange acquisitions, SDB participation shall be evaluated as a BVS value characteristic (see 1871.603(b)); and

(iii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

* * * * *

13. In section 1871.401–5, paragraph (b) is revised to read as follows:

1871.401–5 Noncompetitive negotiations.

* * * * *

(b) Procedures.

(1) The buying team shall request pricing information in accordance with FAR 15.402 and 15.403.

(2) The technical member of the buying team shall provide technical assistance to the procurement member during evaluation and negotiation of the contractor's offer.

14. Section 1871.405 is removed.

15. Section 1871.505 is revised to read as follows:

1871.505 Notifications to unsuccessful offerors.

For solicitations that were posted on the NAIS, a preaward notice shall be electronically transmitted to the offerors. In addition, contracting officers shall comply with the preaward notices for small business programs in FAR 15.503(a)(2).

16. In section 1871.602, the second sentence is revised to read as follows:

1871.602 Specifications for MidRange procurements.

* * * The offeror will be guided in meeting the Government's needs by a separate set of value characteristics which establish what the Government considers to be valuable in an offer beyond the baseline requirement. * * *

17. In section 1871.603, paragraphs (b) and (c) are redesignated as paragraphs (d) and (e), and new paragraphs (b) and (c) are added to read as follows:

1871.603 Establishment of evaluation criteria.

* * * * *

(b) For unrestricted acquisitions, small disadvantaged business (SDB) participation shall be evaluated as a BVS value characteristic (see FAR 19.1202–3). In order to receive consideration under the value characteristic, the offeror must propose a target for SDB participation greater than the baseline requirement. The baseline requirement for SDB participation is zero or no SDB participation. SDB concerns that choose the price evaluation adjustment under FAR 19.11 shall receive no consideration under this MidRange BVS value characteristic. Like other value characteristics, offerors meeting the baseline, but proposing no value above the baseline, and which are otherwise acceptable, are to be considered for award if they are finalists.

(c) Past performance may be included as a value characteristic or considered as a separate evaluation criteria. If considered as a separate criterion, the relative importance of past performance in relation to cost and technical must be defined in the solicitation.

* * * * *

[FR Doc. 99–10126 Filed 4–22–99; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

CFR 48 Part 1842

Contracting Officer's Technical Representative (COTR) Training

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to make the required COTR training subjects more logically coherent and flexible. Specifically, this change: (1) eliminates the Service Contract Act as a mandatory topic; (2) combines coverage of the Anti-Deficiency Act with the Limitation of Funds and Limitation of Cost clauses; and (3) enables Procurement Officers to credit local ethics training against the requirement for instruction in Procurement Integrity.

EFFECTIVE DATE: April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), (202) 358–0460, e-mail: patrick.flynn@hq.nasa.gov.

SUPPLEMENTARY INFORMATION:

Background

The objective of NASA's COTR training is to provide a common background in contract management processes and contract mechanisms for NASA's COTRs to successfully apply their delegated authority toward project objectives. In fiscal year 1998, a review of NASA's training program resulted in actions to clarify the subjects that are required to be addressed and give NASA field installations more flexibility in how they implement the training.

Impact

Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for comments is not required. However, comments from small business entities concerning the affected NFS coverage will be considered in accordance with 5 U.S.C. 610. Such comments may be submitted separately and should cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1842

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Part 1842 is amended as follows:

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

1. The authority citation for 48 CFR Part 1842 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. In section 1842.270, paragraph (f) is revised to read as follows:

1842.270 Contracting officer technical representative (COTR) delegations.

* * * * *

(f)(1) Mandatory training for COTRs and their alternates shall include the following core topic areas:

(i) Contracting authority and contract modifications (including non-personal services and inherently governmental functions);

(ii) Inspection and surveillance;

(iii) Changes and performance-based contracting;

(iv) Contract financial and property management (including ''Limitation of Cost'' clause, Anti-Deficiency Act, ''Limitation of Funds'' clause); and

(v) Disputes.

(2) Procurement officers are responsible for assuring that the course(s) utilized by their center address the mandatory core topics in sufficient detail for the purpose of COTR training. Procurement officers may accept the following training alternative(s) in satisfaction of comparable requirement(s) specified in paragraph (f)(1) of this section:

(i) Another center's COTR training; or

(ii) Annual ethics training.

* * * * *

[FR Doc. 99–10125 Filed 4–22–99; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 64, No. 78
Friday, April 23, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–117–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The proposed AD would require inspecting the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and adjusting as necessary. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent the inability to steer the airplane because of excessive free play in the steering linkage, which could result in loss of control of the airplane during take-off, landing, or taxi operations.

DATES: Comments must be received on or before May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–117–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–117–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–117–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports a recent incident where the operator of one of the affected airplanes lost control while the airplane was on the ground and veered off the runway. Inspection of this airplane following the incident revealed an unacceptable amount of free play in the nose landing gear steering linkage because of excessive wear in the steering selector differential.

This condition, if not corrected in a timely manner, could result in loss of control of the airplane during take-off, landing, or taxi operations.

Relevant Service Information

British Aerospace has issued the following:

—Jetstream Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2: December 17, 1998, which specifies procedures for inspecting the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and adjusting as necessary; and

—Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998, which specifies removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual.

The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions

of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and adjusting as necessary. Accomplishment of the proposed actions would be in accordance with British Aerospace Jetstream Alert Service Bulletin 32-A-JA980840, Original Issue: October 28, 1998, Revision No. 2, December 17, 1998.

The FAA is proposing in another action (Docket No. 98–CE–115–AD) a repetitive requirement of removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual.

Differences Between the Service Bulletin and the Proposed AD

British Aerospace Jetstream Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2, December 17, 1998, specifies calendar compliance times based on the number of landings each airplane has accumulated. In order to keep the compliance time equal for all airplane operators, the FAA is proposing the inspection when the airplane has 10,000 landings. In order to assure that no affected airplane is inadvertently grounded, the FAA is proposing 100 landings as a grace period. The proposed compliance time is as follows:

''Upon accumulating 10,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later.''

Cost Impact

The FAA estimates that 350 airplanes in the U.S. registry would be affected by the proposed inspection, that it would take approximately 6 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $126,000, or $360 per airplane.

These figures only take into account the costs of the proposed inspection and do not take into account the costs associated with any adjustments that would be necessary if the free play was not within acceptable limits. The FAA has no way of determining the number of airplanes that would need adjustments to the nose wheel steering system based on the results of the proposed inspection.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–117–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category.

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

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

To prevent the inability to steer the airplane because of excessive free play in the steering linkage, which could result in loss of control of the airplane during take-off, landing, or taxi operations, accomplish the following:

(a) Upon accumulating 10,000 landings or within the next 100 landings after the effective date of this AD, whichever occurs later, inspect the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits. Accomplish this inspection in accordance with the A. *Inspection* portion of the Accomplishment Instructions section of British Aerospace Jetstream Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2, December 17, 1998.

Note 2: If the number of landings is unknown, hours time-in-service (TIS) may be used by dividing 10,000 and 100 by 0.75. If hours TIS are utilized to calculate the number of landings, this would calculate the 10,000 landings compliance time to 13,333 hours TIS; and the 100 landings grace period compliance time to 133 hours TIS.

(b) If the free play between the steering handle or knob and the nose wheels is not within the acceptable limits, prior to further flight, adjust in accordance with the B. *Rectification* portion of the Accomplishment Instructions section of British Aerospace Jetstream Alert Service Bulletin 32–A–

JA980840, Original Issue: October 28, 1998, Revision No. 2, December 17, 1998.

Note 3: The FAA is proposing in another action (Docket No. 98–CE–115–AD) a repetitive requirement of removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual.

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

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to British Aerospace Jetstream Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2: December 17, 1998, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 5: The subject of this AD is addressed in British Aerospace Jetstream Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2: December 17, 1998. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on April 15, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10174 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; deHavilland Inc. Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all deHavilland Inc. (deHavilland) Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. The proposed AD would require repetitively inspecting the rear fuselage bulkhead at Station 228 for cracks. The proposed AD would also require repairing any crack found or replacing any cracked rear fuselage bulkhead in accordance with a repair or replacement scheme obtained from the manufacturer through the Federal Aviation Administration (FAA). The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. The actions specified by the proposed AD are intended to detect and correct cracking of the rear fuselage bulkhead at Station 228, which could result in structural damage of the fuselage to the point of failure with consequent loss of airplane control.

DATES: Comments must be received on or before May 21, 1999.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted. Service information that applies to the proposed AD may be obtained from Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James Delisio, Aerospace Engineer, FAA, New York Aircraft Certification Office, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; telephone: (516) 256–7521; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–05–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–05–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Transport Canada, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all deHavilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes. Transport Canada reports three incidents of cracks found in the rear fuselage bulkhead at Station 228. The airplanes involved in these incidents had between 10,000 and 12,000 hours time-in-service (TIS).

This condition, if not detected and corrected in a timely manner, could result in structural damage of the fuselage to the point of failure with consequent loss of airplane control.

Relevant Service Information

Bombardier Inc. has issued the following service information to address the above-referenced condition:

—deHavilland Beaver Service Bulletin 2/52, dated August 30, 1998, which specifies procedures for inspecting the rear fuselage bulkhead at Station 228 for cracks on Models DHC–2 Mk. I and DHC–2 Mk. II airplanes; and

—deHavilland Beaver Service Bulletin TB/60, dated August 30, 1998, which specifies procedures for inspecting the rear fuselage bulkhead at Station 228 for cracks on Model DHC–2 Mk. III airplanes.

Transport Canada classified these service bulletins as mandatory and issued Canadian AD No. CF–98–38, dated October 15, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

The FAA's Determination

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above.

The FAA has examined the findings of Transport Canada; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other deHavilland Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require the following:

—Repetitively inspecting the rear fuselage bulkhead at Station 228 for cracks in accordance with the previously referenced service information; and

—Repairing any crack found or replacing any cracked rear fuselage bulkhead in accordance with a repair or replacement scheme obtained from the manufacturer through the FAA.

Compliance Time of the Proposed AD

The compliance time of the proposed AD is presented in both calendar time and hours TIS. While cracks are generally a result of classic fatigue (i.e., aging and cylic operation), the FAA and Bombardier believe that the condition could develop over time regardless of how often the airplane is operated. In order to assure that rear fuselage bulkhead cracking does not go undetected, a compliance time of specific hours TIS and calendar time (whichever occurs first) is proposed.

Cost Impact

The FAA estimates that 350 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be $21,000, or $60 per airplane. These figures only take into the account the costs of the initial inspection and do not take into account the costs of the repetitive inspections or the cost of any repair or replacement necessary if any rear fuselage bulkhead was found cracked. The FAA has no way of determining the number of repetitive inspections each owner/operator would incur over the life of his/her affected airplane or the number of airplanes that would have a cracked rear fuselage bulkhead and need repair or replacement.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

deHavilland Inc. Docket No. 99–CE–05–AD.

Applicability: Models DHC–2 Mk. I, DHC–2 Mk. II, and DHC–2 Mk. III airplanes, all serial numbers, certificated in any category.

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

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

To detect and correct cracking of the rear fuselage bulkhead at Station 228, which could result in structural damage of the fuselage to the point of failure with consequent loss of airplane control, accomplish the following:

(a) Within the next 400 hours time-in-service (TIS) after the effective date of this AD or within the next 12 calendar months after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 2,000 hours TIS or 5 years, whichever occurs first, inspect the rear fuselage bulkhead at Station 228 for cracks. Inspect in accordance with the Accomplishment Instructions section of whichever of the following service bulletins that is applicable:

(1) *For the Models DHC–2 Mk. I and DHC–2 Mk. II airplanes:* deHavilland Beaver

Service Bulletin 2/52, dated August 30, 1998; or

(2) *For the Model DHC–2 Mk. III airplanes:* deHavilland Beaver Service Bulletin TB/60, dated August 30, 1998.

(b) If any crack(s) is/are found in the rear fuselage bulkhead at Station 228 during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the following:

(1) Obtain a repair or replacement scheme from the manufacturer through the FAA, New York Aircraft Certification Office (ACO), 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200; facsimile: (516) 568–2716.

(2) Incorporate this repair or replacement scheme.

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

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, New York Aircraft ACO, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

(e) Questions or technical information related to deHavilland Beaver Service Bulletin TB/60, dated August 30, 1998, and deHavilland Beaver Service Bulletin 2/52, dated August 30, 1998, should be directed to Bombardier Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5; telephone: (416) 633–7310. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Canadian AD No. CF–98–38, dated October 15, 1998.

Issued in Kansas City, Missouri, on April 15, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10172 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 99–06–02, which currently requires repetitively inspecting the wing spar center web cutout on both wings for cracks between Wing Station (WS) 8 and WS 17.5 on certain Fairchild Aircraft (Fairchild) SA226 and SA227 series airplanes, and immediately repairing any area found cracked. The repair will eliminate the need for the repetitive inspections on that particular wing spar. Since that AD became effective, the FAA has determined that it inadvertently omitted certain serial numbers of the Model SA227–CC/DC airplanes. The proposed AD would retain the actions of AD 99–06–02, and would add these Model SA227–CC/DC airplanes to the Applicability section of the AD. The actions specified by the proposed AD are intended to continue to detect and correct fatigue cracking of the wing spar center web cutout area, which could result in structural failure of the wing spar to the point of failure with consequent loss of control of the airplane.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Field Support Engineering, Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5155; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–12–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–12–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 99–06–02, Amendment 39–11066 (64 FR 11761, March 10, 1999), currently requires the following on certain Fairchild SA226 and SA227 series airplanes:

—Repetitively inspecting the wing spar center web cutout on both wings for cracks between Wing Station (WS) 8 and WS 17.5; and

—Immediately repairing any area found cracked. This repair will eliminate the need for the repetitive inspections on that particular wing spar.

Accomplishment of the actions as specified in AD 96–06–02 is required in

accordance with the following documents:

—Fairchild Airframe Airworthiness Limitations Manual ST–UN–M001, Rev. No. C–6, dated April 7, 1998;
—Fairchild Airframe Inspection Manual ST–UN–M002, Rev. No. A–6, dated December 8, 1997;
—Fairchild Airframe Airworthiness Limitations Manual ST–UN–M003, Rev. No. 5, dated April 7, 1998;
—SA226/227 Series Structural Repair Manual, part number (P/N) 27–10054–079, pages 57 through 90; Initial Issue: March 1, 1983; Revision 28, dated June 24, 1998; and
—SA227 Series Structural Repair Manual, P/N 27–10054–127, pages 47 through 60; Initial Issue: December 1, 1991; Revision 7, dated June 24, 1998.

The actions specified in AD 99–06–02 are intended to detect and correct fatigue cracking of the wing spar center web cutout area, which could result in structural failure of the wing spar to the point of failure with consequent loss of control of the airplane.

AD 99–06–02 was the result of reports of cracks in the wing spar center web cutout caused by fatigue due to airplane maneuvering and wind gusts.

Actions Since Issuance of Previous Rule

Since AD 99–06–02 became effective, the FAA has determined that it inadvertently omitted certain serial numbers of the Fairchild Model SA227–CC/DC airplanes. In particular, the FAA restricted the applicability of these airplanes to serial numbers CC/DC784 and CC/DC790 through CC/DC878. Any Fairchild Model SA227–CC/DC airplane incorporating a serial number from CC/DC879 through CC/DC896 should also be affected by the actions of AD 99–06–02.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—The actions of AD 99–06–02 should also apply to the serial numbered Fairchild Model SA227–CC/DC airplanes referenced above; and
—AD action should be taken to continue to detect and correct fatigue cracking of the wing spar center web cutout area, which could result in structural failure of the wing spar to the point of failure with consequent loss of control of the airplane.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild SA226 and SA227 series airplanes of the same type design, the FAA is proposing AD action to supersede AD 99–06–02. The proposed AD would retain the actions of AD 99–06–02, and would add these Model SA227–CC/DC airplanes to the Applicability section of the AD.

Cost Impact

The FAA estimates that 508 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed initial inspection specified in this AD on U.S. operators is estimated to be $152,400, or $300 per airplane.

These figures only take into account the costs of the proposed initial inspection and do not take into account the costs of repetitive inspections and the costs associated with any repair that would be necessary if cracks are found. The FAA has no way of determining the number of repetitive inspections an owner/operator will incur over the life of the airplane, or the number of airplanes that will need repairs.

If an affected airplane would have cracks in both wing spar center webs, the repair would take 400 workhours to accomplish at an average labor rate of $60 per hour. Parts to accomplish this repair cost approximately $400 per airplane. Based on these figures, the cost to repair cracked wing spar center webs on both sides of the airplane would be approximately $24,400 per airplane.

The only difference between AD 99–06–02 and the proposed AD is the addition of 18 Fairchild Model SA227–CC/DC airplanes that the FAA inadvertently omitted from the ''Applicability'' section of AD 99–06–02. Therefore, the only impact the proposed AD would have over that already required by AD 99–06–02 is the cost of the proposed actions on these 18 additional airplanes.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 99–06–02, Amendment 39–11066, and by adding a new AD to read as follows:

Fairchild Aircraft, Inc.: Docket No. 99–CE–12–AD; Supersedes AD 99–06–02, Amendment 39–11066.

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

Model	Serial Nos.
SA226–AT	AT001 through AT074.
SA226–TC	TC201 through TC419.
SA226–T	T201 through T291.
SA226–T(B)	T(B)276 and T(B)292 through T(B)417.

Model	Serial Nos.
SA227–TT	TT421 through TT541.
SA227–TT(300)	TT(300)447, TT(300)465, TT(300)471, TT(300)483, TT(300)512, TT(300)518, TT(300)521, TT(300)527, TT(300)529, and TT(300)536.
SA227–AC	AC406, AC415, AC416, and AC420 through AC785.
SA227–AT	AT423 through AT631 and AT695.
SA227–BC	BC762, BC764, BC766, and BC770 through BC789.
SA227–CC/DC	CC/DC784 and CC/DC790 through CC/DC896.

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

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

To detect and correct fatigue cracking of the wing spar center web cutout area, which could result in structural failure of the wing spar to the point of failure with consequent loss of control of the airplane, accomplish the following:

(a) Upon accumulating 6,500 hours time-in-service (TIS) on each wing spar; within the next 2,000 hours TIS after the last inspection accomplished per the applicable Airworthiness Limitations Manual (referenced in the paragraphs below); or within the next 500 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished (accomplishment of AD 99–06–02, including any FAA-approved alternative methods of compliance with AD 99–06–02); and thereafter at intervals not to exceed 2,000 hours TIS, inspect each wing spar center web cutout for cracks between Wing Station (WS) 8 and WS 17.5. Accomplish this inspection in accordance with one of the following, as applicable:

(1) *For Models SA227–TT, SA227–AT, SAA227–AC, and SA227–BC airplanes:* In accordance with Fairchild Airframe Airworthiness Limitations Manual ST–UN–M001, Rev. No. C–6, dated April 7, 1998;

(2) *For Models SA226–T, SA226–T(B), SA226–AT, and SA226–TC airplanes:* In accordance with Fairchild Airframe Inspection Manual ST–UN–M002, Rev. No. A–6, dated December 8, 1997; or

(3) *For Models SA227–CC and SA227–DC airplanes:* In accordance with Fairchild Airframe Airworthiness Limitations Manual ST–UN–M003, Rev. No. 5, dated April 7, 1998.

(b) If any crack(s) is/are found during any inspection required by paragraph (a) of this AD, prior to further flight, repair the crack(s) in accordance with one of the following, as applicable. This repair eliminates the repetitive inspections (2,000 hours TIS intervals) required in paragraph (a) of this AD for that particular wing spar.

(1) *For Models SA226–T, SA226–T(B), SA226–AT, SA226–TC, SA227–TT, SA227–AT, SA227–AC, and SA227–BC airplanes:* In accordance with Fairchild SA226/227 Series Structural Repair Manual, part number (P/N) 27–10054–079, pages 57 through 90; Initial Issue: March 1, 1983; Revision 28, dated June 24, 1998; or

(2) *For Models SA227–CC and SA227–DC airplanes:* In accordance with Fairchild SA227 Series Structural Repair Manual, P/N 27–10054–127, pages 47 through 60; Initial Issue: December 1, 1991; Revision 7, dated June 24, 1998.

(c) The repetitive inspections required by paragraph (a) of this AD may be terminated if the wing spar center web repair specified in paragraph (b) of this AD has been accomplished on both the left and right wing spar. If one wing spar center web has been repaired, then repetitive inspections are still required on the other one if the repair has not been incorporated.

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

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, FAA, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

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

(2) Alternative methods of compliance approved in accordance with AD 99–06–02 are considered approved as alternative methods of compliance for this AD.

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

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Field Support Engineering, Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 99–06–02, Amendment 39–11066.

Issued in Kansas City, Missouri, on April 15, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10170 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–115–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The proposed AD would require repetitively removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by the proposed AD are intended to prevent the inability to steer the airplane because of wear in the nose landing gear steering selector differential, which could result in loss of control of the airplane during take-off, landing, or taxi operations.

DATES: Comments must be received on or before May 28, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–

115–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–115–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–115–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes. The CAA reports a recent incident where the operator of one of the affected airplanes lost control while the airplane was on the ground and veered off the runway. Investigation of this incident revealed an unacceptable amount of free play in the nose landing gear steering linkage because of an excessive amount of wear in the steering selector differential.

This condition, if not corrected in a timely manner, could result in loss of control of the airplane during take-off, landing, or taxi operations.

Relevant Service Information

British Aerospace has issued the following:

—Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998, which specifies removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual; and

—Jetstream Alert Service Bulletin 32–A–JA980840, Original Issue: October 28, 1998, Revision No. 2: December 17, 1998, which specifies procedures for inspecting the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, and adjusting as necessary.

The CAA classified these service bulletins as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the same in the United Kingdom as the FAA issuing an AD in the United States.

The FAA's Determination

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other British Aerospace HP137 Mk1, Jetstream series 200, and Jetstream Models 3101 and 3201 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively removing the nose landing gear steering selector valve and installing either a new nose landing gear steering selector valve or one that has been overhauled in accordance with the appropriate component maintenance manual. Accomplishment of the proposed action would be in accordance with the applicable maintenance manual, as specified in British Aerospace Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998.

The FAA is proposing in another action (Docket No. 98–CE–117–AD) a one-time inspection of the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, with adjustment as necessary.

Cost Impact

The FAA estimates that 350 airplanes in the U.S. registry would be affected by the proposed initial replacement, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $2,500 per airplane. Based on these figures, the total cost impact of the proposed initial replacement on U.S. operators is estimated to be $959,000, or $2,740 per airplane.

These figures only take into account the cost of the initial overhaul or replacement and do not take into account the cost of subsequent overhauls or replacements. The FAA has no way of determining the number of overhauls or replacements that each owner/operator of the affected airplanes would incur over the life of his/her airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and

the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–115–AD.

Applicability: HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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: Upon accumulating 10,000 hours time-in-service (TIS) on the nose landing gear selector valve or within the next 12 calendar months after the effective date of this AD, whichever occurs later, unless already accomplished; and thereafter each time 10,000 hours TIS is accumulated on a nose landing gear selector valve.

To prevent the inability to steer the airplane because of wear in the nose landing gear steering selector differential, which could result in loss of control of the airplane during take-off, landing, or taxi operations, accomplish the following:

(a) Remove the nose landing gear steering selector valve, part number (P/N) 8668C or AIR86002–0 (or FAA-approved equivalent part number), and install one of the following in accordance with the applicable maintenance manual, as specified in British Aerospace Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998:

(1) A new steering selector valve, P/N 8668C or AIR86002–0 (or FAA-approved equivalent part number); or

(2) An FAA-approved nose landing gear steering selector valve that has been overhauled in accordance with the appropriate component maintenance manual.

Note 2: The FAA is proposing in another action (Docket No. 98–CE–117–AD) a one-time inspection of the nose wheel steering system to assure that the free play between the steering handle or knob and the nose wheels is within acceptable limits, with adjustment as necessary.

(b) 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.

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

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

(d) Questions or technical information related to British Aerospace Jetstream Service Bulletin 32–JA980841, Original Issue: October 28, 1998, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in British Aerospace Jetstream Alert Service Bulletin 32–JA980841, Original Issue: October 28, 1998. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on April 15, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10168 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–371–AD]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Lockheed Model 382 series airplanes. This proposal would require a one-time visual inspection of the under floor to ring fittings at fuselage station 817E to verify installation of the correct sized fasteners; and follow-on corrective actions, if necessary. This proposal is prompted by notification from the manufacturer indicating that during production incorrect sized fasteners were installed on the under floor to ring fittings at fuselage station 817E. The actions specified by the proposed AD are intended to prevent fatigue cracking of the fastener holes and adjacent fuselage structure due to installation of the incorrect sized fasteners, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by June 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–371–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Lockheed Martin Aeronautical Systems Support Company (LMASSC), Field Support Department, Dept. 693, Zone

0755, 2251 Lake Park Drive, Smyrna, Georgia 30063. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–371–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–371–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received notification from the manufacturer indicating that during production, incorrect sized fasteners were installed on Lockheed Martin Model 382 series airplanes. These fasteners are located on the under floor to ring fittings (aft ''pork chop'' fittings) at fuselage station 817E. The installation of 5/32-inch diameter fasteners in lieu of the correct 3/16-inch diameter fasteners could cause fatigue cracking of the fuselage structure by increasing the stress loads of the fuselage skin. Such cracking, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Lockheed Hercules Alert Service Bulletin A382–53–57, Revision 1, dated January 30, 1997, which describes procedures for a one-time visual inspection of the under floor to ring fittings (aft ''pork chop'' fittings) at fuselage station 817E to verify installation of the correct sized fasteners; and follow-on corrective actions, if necessary. The follow-on corrective actions involve measurement of the distance between the incorrect sized fasteners, removal of discrepant fasteners, and a visual inspection of the fastener holes and surrounding areas to detect discrepancies (damage, corrosion, or misdrilled or elongated fastener holes). The alert service bulletin also describes procedures for redrilling the fastener holes at fuselage station 817E, visually inspecting the fastener holes to confirm damage removal, and installing new fasteners. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that the alert service bulletin specifies that visual inspection and/or rework of the under floor to ring fasteners at fuselage station 817E be accomplished upon receipt of the alert service bulletin, or an immediate cabin pressurization limit of 8.75 in Hg (4.3 psi) is to be implemented. However, the FAA finds that a 30-day compliance time for accomplishment of the inspection and rework is adequate in that the FAA has determined that fatigue cracking originating at the fastener holes caused by the installation of incorrect size of fasteners could result in loss of pressurization, but not an ''explosive decompression'' or severe structural degradation. In light of this, the FAA finds that it is not necessary to implement an immediate cabin pressurization limit of 8.75 in Hg (4.3 psi) for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 112 airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,080, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Lockheed: Docket 98–NM–371–AD.

Applicability: Model 382 series airplanes as listed in paragraph 1.A.(1) (''Effectivity'') of Lockheed Hercules Alert Service Bulletin A382–53–57, Revision 1, dated January 30, 1997; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fastener holes and adjacent fuselage structure due to installation of the incorrect sized fasteners, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection of the under floor to ring fittings at fuselage station 817E to verify installation of the correct sized fasteners, in accordance with Lockheed Hercules Alert Service Bulletin A382–53–57, Revision 1, dated January 30, 1997.

Note 2: Inspections, repairs, or replacements that have been accomplished prior to the effective date of this AD, in accordance with Lockheed Hercules Alert Service Bulletin A382–53–57, dated January 16, 1997, are considered acceptable for compliance with the applicable action specified by this AD.

(1) If all fasteners are the correct size, no further action is required by this AD.

(2) If any fastener is determined to be the incorrect size, prior to further flight, measure the distance between the fastener centers in accordance with the alert service bulletin.

(i) If the distance between the fastener centers is less than 0.57 inch, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate.

(ii) If the distance between the fastener centers is greater than or equal to 0.57 inch, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) For all airplanes on which the distance between the fastener centers is greater than or equal to 0.57 inch: Prior to further flight, remove any incorrect sized fastener and perform a one-time visual inspection of the fastener holes and adjacent fuselage structure to detect discrepancies (damage, corrosion, or misdrilled or elongated fastener holes) in accordance Lockheed Hercules Alert Service Bulletin A382–53–57, Revision 1, January 30, 1997.

(1) If no discrepancy is detected, prior to further flight, redrill the fastener holes to the correct size and install correct sized fasteners in accordance with the alert service bulletin.

(2) If any discrepancy is detected, prior to further flight, redrill the fastener holes to the correct size and perform an additional one-time visual inspection of the redrilled holes to detect remaining discrepancies (damage, corrosion, or misdrilled or elongated fastener holes) of the affected area, in accordance with the alert service bulletin.

(i) If no remaining discrepancy is detected, prior to further flight, install the correct sized fasteners in accordance with the alert service bulletin.

(ii) If any remaining discrepancy is detected, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

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.

Issued in Renton, Washington, on April 19, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10185 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–364–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Series Airplanes Equipped with Rolls-Royce 532–7 ''Dart 7'' (RDa-7) Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes. This proposal would require a revision to the Airplane Flight Manual (AFM) to provide the flightcrew with modified operational procedures to ensure continuous operation with the high pressure cock (HPC) levers in the lockout position. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent overspeed and burnout of the engines during flight by ensuring that the HPC levers are in a permanent lockout position.

DATES: Comments must be received by May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–364–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on Fokker Model F27 series airplanes equipped with Rolls-Royce 532–7 ''Dart 7'' (RDa-7) series engines. The RLD advises that there have been numerous incidents of cruise lock hang-up on Fokker Model F27 series airplanes. This malfunction of the cruise lock withdrawal system, combined with failure of the flightcrew to select the high pressure cock (HPC) levers to the lockout position, has resulted in incidents of engine overspeed and burnout. Additionally, there have been reports of erroneous selection of the HPC levers to the closed position, resulting in unnecessary engine shutdown. These conditions, if not corrected, could result in overspeed and burnout of the engines during flight.

Explanation of Relevant Service Information

The manufacturer has issued Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997; including Fokker F27 Manual Change Notification (MCNO) F27–001, dated June 30, 1997; which describes procedures for revision of the Emergency, Normal, and Abnormal Procedures Sections of the Airplane Flight Manual (AFM). The MCNO introduces a change that specifies placing the HPC levers in a permanent lockout position (with the cruise lock withdrawal system disabled) during operation of the airplane. The RLD classified this service information as mandatory and issued Dutch airworthiness directive 1996–130(A), dated October 31, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a revision of the Emergency, Normal, and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with modified operational procedures to ensure continuous operation with the HPC levers in the lockout position (with the cruise lock withdrawal system disabled). The actions would be required to be accomplished in accordance with the service information described previously, except as discussed below.

Differences Between Proposed Rule and Dutch Airworthiness Directive

Operators should note that the related Dutch airworthiness directive recommends verification that the modifications described in two Rolls-Royce Service Bulletins (DA72–198 and DA72–348) have been accomplished on Rolls-Royce 532–7 ''Dart 7'' (RDa-7) series engines installed on Fokker F27 airplanes. However, this proposed AD would not require such verification. The FAA has been advised that accomplishment of the two modifications of the Rolls-Royce engines is recommended to prevent the loss of propeller control in the event of an annulus gear failure. Such engine gearbox failures are not related to malfunction of the cruise lock withdrawal system, and accomplishment of these engine modifications is not intended to address the identified unsafe condition of this proposed AD. Therefore, the FAA has determined that verification of accomplishment of these engine modifications, if necessary, will be addressed by separate rulemaking action.

Cost Impact

The FAA estimates that 34 Model F27 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this proposed regulation: (1)

Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 98–NM–364–AD.

Applicability: Model F27 series airplanes, as listed in Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overspeed and burnout of the engines during flight by ensuring that the high pressure cock (HPC) levers are in a permanent lockout position, accomplish the following:

AFM Revision

(a) Within 6 months after the effective date of this AD: Revise the Emergency, Normal, and Abnormal Procedures Sections, as applicable, of the FAA-approved Airplane Flight Manual (AFM) by incorporation of Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997; including Fokker F27 Manual Change Notification (MCNO) F27–001, dated June 30, 1997. [MCNO F27–001 specifies procedures for placing the HPC levers in a permanent lockout position (with the cruise lock withdrawal system disabled) during operation of the airplane.] This action may be accomplished by inserting a copy of the MCNO into the AFM.

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

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 1996–130 (A), dated October 31, 1996.

Issued in Renton, Washington, on April 19, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10184 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–62–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A300–600 series airplanes, that currently requires repetitive high frequency eddy current inspections to detect cracks in bolt holes where parts of the main landing gear are attached to the rear spar, and repair, if necessary. This action would require repetitive ultrasonic inspections to detect cracking in certain bolt holes of the rear spar, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–62–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 20, 1995, the FAA issued AD 95–20–02, amendment 39–9380 (60 FR 52618, October 10, 1995), applicable to certain Airbus Industrie Model A300–600 series airplanes, to require repetitive high frequency eddy current (HFEC) inspections to detect cracks in bolt holes where parts of the main landing gear are attached to the rear spar, and repair, if necessary. That action was prompted by a report that cracks emanating from bolt holes in the rear spar were found during full-scale fatigue testing. The requirements of that AD are intended to prevent unnecessary degradation of the structural integrity of the airframe due to cracks in the rear spar.

Explanation of Relevant Service Information

Since the issuance of AD 95–20–02, Airbus Industrie has issued Service Bulletin A300–57–6017, Revision 2, dated January 14, 1997, and Revision 3, dated November 19, 1997. Airbus Industrie Service Bulletin A300–57–6017, Revision 2, describes procedures for an ultrasonic inspection to be performed in lieu of the HFEC inspection that was described in Revision 1, dated July 25, 1994. The ultrasonic inspection method allows the inspection to be performed without removing bolts in the area to be inspected, which is necessary for accomplishment of the HFEC inspection described in Revision 1. Revision 3 of the service bulletin adds new procedures for airplanes that have been inspected previously in accordance with the original issue, dated November 22, 1993, or Revision 1 of the service bulletin. Accomplishment of the actions specified in Airbus Industrie Service Bulletin A300–57–6017, Revision 3, is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified Revision 2 of this service bulletin as mandatory and issued French airworthiness directive 94–031–155(B)R1, dated May 7, 1997, in order to assure the continued airworthiness of these airplanes in France. The DGAC also approved Revision 3 of this service bulletin.

Airbus Industrie also has issued Service Bulletin A300–57–6073, dated September 30, 1997. That service bulletin describes procedures for modification of certain bolt holes of the rear spar by oversizing and cold working the bolt holes, and installing oversize studs. For airplanes on which no cracks are found during the ultrasonic inspections proposed by this AD, and on which Airbus Modification 07716 (reference Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993) has not been accomplished, accomplishment of the modification described in service bulletin A300–57–6073 would eliminate the need for the inspections described previously.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 95–20–02 to require repetitive ultrasonic inspections to detect cracking in certain bolt holes of the rear spar, and repair, if necessary. The actions would be required to be accomplished in accordance with Revision 3 of Airbus Industrie Service Bulletin A300–57–6017, described previously. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Clarification of Repetitive Inspection Interval for Certain Airplanes

The FAA finds that paragraph (c)(1) of the existing AD may be misleading to operators in terms of specifying the applicable repetitive inspection interval. Paragraph (c)(1) of the existing AD states (for airplanes on which a crack was detected but on which Airbus Industrie Modification 07716 has not been accomplished), ''After accomplishing the oversizing and HFEC inspection, repeat the inspection as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph.'' The FAA finds that the repair procedures specified in Airbus Industrie Service Bulletin 300–57–6017, Revision 1, are substantially similar to those described in Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993 (which is the service bulletin associated with Airbus Industrie Modification 07716). Therefore, the FAA has determined that airplanes on which Airbus Industrie Modification 07716 has not been accomplished, but on which cracks were detected and repaired in accordance with Airbus Industrie Service Bulletin 300–57–6017, Revision 1, should be subject to repetitive inspections at the same interval as those airplanes on which Airbus Industrie Modification 07716 has been accomplished. Note 4 has been included in this proposal to clarify the intent of paragraph (c)(1) of this AD.

Differences Between the Proposed Rule and the French Airworthiness Directive

The proposed AD would differ from the parallel French airworthiness directive in that the proposed AD would require accomplishment of the repetitive ultrasonic inspections in accordance with Revision 3 of the service bulletin. The French airworthiness directive specifies accomplishment of the repetitive ultrasonic inspections in accordance with Revision 2 of the service bulletin. The FAA's determination is based on the fact that Revision 3 of the service bulletin includes appropriate inspection thresholds and repetitive intervals for airplanes inspected previously in accordance with Revision 1 of the service bulletin. Because the existing AD requires accomplishment of HFEC inspections in accordance with Revision 1 of the service bulletin, the FAA finds that Revision 3 is the appropriate source of service information for the inspections proposed by this AD.

Cost Impact

There are approximately 54 airplanes of U.S. registry that would be affected by this proposed AD.

The new inspections that are proposed in this AD action would take approximately 226 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $732,240, or $13,560 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9380 (60 FR 52618, October 10, 1995), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–62–AD. Supersedes AD 95–20–02, Amendment 39–9380.

Applicability: Model A300–600 series airplanes, having manufacturer's serial numbers (MSN) 252 through 553 inclusive, certificated in any category; except those airplanes on which Airbus Industrie Production Modification No. 07601 has been accomplished prior to delivery.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the rear spar of the wing, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 95–20–02

Note 2: Accomplishment of the inspections and repair of cracking in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, prior to November 9, 1995 (the effective date of AD 95–20–02, amendment 39–9380), is acceptable for compliance with the applicable action specified in this amendment.

(a) Perform a high frequency eddy current (HFEC) rototest inspection to detect cracks in certain bolt holes where the main landing gear (MLG) forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 1 (includes Appendix 1), dated July 25, 1994.

Note 3: This service bulletin also references Airbus Industrie Service Bulletin A300–57–6020, dated November 22, 1993, as an additional source of service information.

(1) For airplanes that have accumulated 17,300 total landings or less as of November 9, 1995: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after November 9, 1995, whichever occurs later.

(2) For airplanes that have accumulated 17,301 or more total landings, but less than 19,300 total landings as of November 9, 1995: Inspect within 1,500 landings after November 9, 1995.

(3) For airplanes that have accumulated 19,300 or more total landings as of November 9, 1995: Inspect within 750 landings after November 9, 1995.

(b) If no crack is found during the inspection required by paragraph (a) of this AD, repeat that inspection thereafter at the time specified in either paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 (as described in Airbus Industrie Service Bulletin A300–57–6020) has not been accomplished, inspect at the time specified in paragraph (b)(1)(i) or (b)(1)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 13,000 landings, until the inspection required by paragraph (d)(2)(i)(A) has been accomplished.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection at intervals not to exceed 8,400 landings, until the inspection required by paragraph (d)(2)(i)(B) has been accomplished.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished, inspect at the time specified in either paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 11,800 landings, until the inspection required by paragraph (d)(2)(ii)(A) has been accomplished.

(ii) For airplanes having MSN 252 through 464 inclusive: Repeat the inspection within 10,700 landings following the initial inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 7,500 landings, until the inspection required by paragraph (d)(2)(ii)(B) has been accomplished.

(c) If any crack is found during the inspection required by either paragraph (a) or (b) of this AD, prior to further flight, accomplish the requirements of either paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which Airbus Industrie Modification 07716 has not been accomplished: Oversize the bolt hole by 1/32 inch and repeat the HFEC inspection required by paragraph (a) of this AD, in accordance with Airbus Industrie Service Bulletin 300–57–6017, Revision 1, dated July 25, 1994. After accomplishing the oversizing and HFEC inspection, repeat the inspection as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (d)(2)(ii)(A) has been accomplished.

Note 4: For the purposes of this AD, airplanes that are repaired in accordance with Airbus Industrie Service Bulletin 300–57–6017, Revision 1, are considered to be subject to repetitive inspections at the same interval as those airplanes on which Airbus

Industrie Modification 07716 has been accomplished.

(i) If no cracking is detected, install the second oversize bolt in accordance with the service bulletin.

(ii) If any cracking is detected, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(2) For airplanes on which Airbus Industrie Modification 07716 has been accomplished: Repair in accordance with a method approved by the Manager, International Branch, ANM–116. After repair, repeat the inspections as required by paragraph (b) of this AD at the applicable schedule specified in that paragraph, until the inspection required by paragraph (d)(2)(ii)(B) has been accomplished.

New Requirements of This AD:

New Initial and Repetitive Inspections

(d) Perform an ultrasonic inspection to detect cracks in certain bolt holes where the MLG forward pick-up fitting and MLG rib 5 aft are attached to the rear spar, in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 3, dated November 19, 1997; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

Note 5: Inspections accomplished prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, Revision 2, dated January 14, 1997, are considered acceptable for compliance with paragraph (d) of this AD.

(1) For airplanes not inspected prior to the effective date of this AD in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993, or Revision 1 (includes Appendix 1), dated July 25, 1994: Inspect at the time specified in paragraph (d)(1)(i), (d)(1)(ii), or (d)(1)(iii) of this AD, as applicable. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(i) For airplanes that have accumulated 17,300 total landings or fewer as of the effective date of this AD: Inspect prior to the accumulation of 17,300 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 17,301 total landings or more but fewer than 19,300 total landings as of the effective date of this AD: Inspect within 1,500 landings after the effective date of this AD.

(iii) For airplanes that have accumulated 19,300 total landings or more as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

(2) For airplanes on which an HFEC inspection was performed prior to the effective date of this AD in accordance with paragraph (a) of AD 95–20–02, or in accordance with Airbus Industrie Service Bulletin A300–57–6017, dated November 22, 1993: Inspect at the time specified in paragraph (d)(2)(i) or (d)(2)(ii), as applicable.

(i) If no cracking was detected during any HFEC inspection accomplished prior to the effective date of this AD, and if Airbus Industrie Modification 07716 has *not* been accomplished: Inspect at the time specified in paragraph (d)(2)(i)(A) or (d)(2)(i)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 13,000 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(i) of this AD.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 8,400 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 5,500 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (b)(1)(ii) of this AD.

(ii) If any cracking was detected during any HFEC inspection performed prior to the effective date of this AD, regardless of the method of repair, or if Airbus Industrie Modification 07716 *has* been accomplished: Inspect at the time specified in paragraph (d)(2)(ii)(A) or (d)(2)(ii)(B) of this AD, as applicable.

(A) For airplanes having MSN 465 through 553 inclusive: Inspect within 11,800 landings after the most recent HFEC inspection, and thereafter at intervals not to exceed 8,200 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(B) For airplanes having MSN 252 through 464 inclusive: Inspect within 10,700 landings after the initial inspection in accordance with paragraph (a) of AD 95–20–02, or within 7,500 landings after the most recent HFEC inspection, whichever occurs later, and thereafter at intervals not to exceed 4,900 landings. Accomplishment of this inspection constitutes terminating action for the repetitive inspection requirement of paragraph (c)(1) or (c)(2) of this AD, as applicable.

(e) If no cracking is detected during the ultrasonic inspection required by paragraph (d)(1) of this AD, repeat that inspection thereafter at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) For airplanes having MSN 465 through 553 inclusive: Repeat the inspection at intervals not to exceed 8,900 landings.

(2) For airplanes having MSN 232 through 464 inclusive: Repeat the inspection at intervals not to exceed 5,500 landings.

Repair

(f) If any cracking is detected during any inspection performed in accordance with paragraph (d) or (e) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the Direction Générale de l'Aviation Civile (or its delegated agent).

Terminating Action

(g) Accomplishment of Airbus Industrie Modification 11440 (Airbus Industrie Service Bulletin A300–57–6073, dated September 30, 1997) constitutes terminating action for the repetitive inspection requirements of paragraphs (d) and (e) of this AD, as applicable.

Alternative Methods of Compliance

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

Note 6: 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

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

Note 7: The subject of this AD is addressed in French airworthiness directive 94–031–155(B)R1, dated May 7, 1997.

Issued in Renton, Washington, on April 19, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10182 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 970626156–9077–02]

RIN No. 0648–AK01

Regulation of the Operation of Motorized Personal Watercraft in the Gulf of the Farallones National Marine Sanctuary

AGENCY: Marine Sancturaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule.

SUMMARY: The National Oceanic and Atmospheric Administration proposes to amend the regulations governing the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) in the nearshore waters of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards

(approximately 0.5 nautical mile), including seaward of the Farallon Islands. This proposed action responds to a petition from the Environmental Action Committee of West Marin, California, to ban operation of MPWC in the Sanctuary. This document also responds to comments received in response to a Notice of Inquiry/Request for Information that NOAA published on August 21, 1997, to obtain additional information on the operation and impacts of MPWC. The proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users of the Sanctuary.

A Draft Environmental Assessment (DEA) has been drafted on the proposed rule and is available for comment. The DEA may be obtained from the address below.

DATES: Comments on the proposed rule or DEA must be received by May 24, 1999. A public hearing on this proposed rule will be held at a time and location to be published in a separate document.

ADDRESSES: Comments should be sent to Ed Ueber, Sanctuary Manger, Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, California 94123; fax: (415) 561–6616; email: ed.ueber@noaa.gov. Comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Ueber at (415) 561–6622.

SUPPLEMENTARY INFORMATION:

I. Background

In recognition of the national significance of the unique marine environment of the Gulf of the Farallones, California, the GFNMS was designated in January 1981. Final regulations became effective April 5, 1981, and March 30, 1982. The GFNMS regulations at 15 CFR part 922, Subpart H prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities.

On April 18, 1996, the Environmental Action Committee (EAC) of West Marin, California, petitioned the GFNMS to ban the use of MPWC in the Sanctuary. Operation of MPWC are currently not regulated by the Sanctuary. The EAC identified a number of concerns regarding the use of MPWC within the Sanctuary. In its petition, the EAC asserted that: MPWC are completely incompatible with the existence of a marine sanctuary; pose a danger to the biological resources of the sanctuary, such as marine mammals, wildfowl, kelp beds, anadromous fish, and other marine life; create noise, water and air pollution; and threaten mariculture and other commerce throughout the Sanctuary. The EAC also stated that MPWC create a hazard for other Sanctuary users, including swimmers, sailboats, windsurfers, open-water rowing shells and kayaks. NOAA also received 195 letters from members of the public in response to media publicity about the petition. Sixty-four percent opposed regulation of MPWC; 33 percent supported the ban; one percent expressed no clear opinion.

To supplement existing information on the use and impacts of MPWC, NOAA published a Notice of Inquiry/Request for Information in the **Federal Register** on August 21, 1997, initiating a 45-day comment period that ended October 6, 1997. NOAA requested information on the following: (1) The number of motorized personal watercraft being operated in the Sanctuary; (2) possible future trends in such numbers; (3) the customary launching areas for motorized personal watercraft in or near the Sanctuary; (4) the areas of use of motorized personal watercraft activity in the Sanctuary, including areas of concentrated use; (5) the periods (e.g., time of year, day) of use of motorized personal watercraft in the Sanctuary, including periods of high incidence of use; (6) studies or technical articles concerning the impacts of motorized personal watercraft on marine resources and other users; (7) first person or documented accounts of impacts of motorized personal watercraft on marine resources and other users; and (8) any other information or other comments that may be pertinent to this issues. NOAA received 160 public comments in response to the notice of inquiry and two signature petitions during the comment period. One hundred fifty-three (96 percent) supported banning the operation of MPWC within the GFNMS. Two signature petitions were also received; one, with 276 signatures, supported the ban; the second, with 41 signatures, opposed the ban. Forty-four people spoke at a public meeting held to gather information during the comment period, all but one of whom supported the petition. Half of the speakers at the public meeting had previously submitted written comments.

Responses to and investigation of the specific questions in the notice revealed that: (1) The number of MPWC currently being operated in Sanctuary waters is believed by the proprietors of Lawson's Landing, the primary MPWP launch site in Sanctuary waters, to be less than 200 launches per year by approximately 20 users; (2) the use of MPWC in Sanctuary waters is believed to be increasing; (3) there are two established MPWC launch sites in the Sanctuary, at Bodega Harbor and Lawson's Landing; (4) the areas in the Sanctuary where MPWC are operated are in the vicinity of the mouth of Tomales Bay and the area outside Bodega Harbor. Over 95 percent of MPWC operation that occurs in the Sanctuary occurs in these areas; (5) April through November appear to be the times of highest use of MPWC in Sanctuary waters; (6, 7, 9) numerous studies, technical articles, and personal documentation such as photos, letters and logs of the impacts of MPWC on marine resources and other users were received and collected.

The following have been identified throughout NOAA's review of this issue: (1) Water-based recreational activity is increasing in the United States; (2) water-based recreational activity has impacted coastal habitats, seabirds, marine mammals and fish; (3) operation of MPWC is a relatively new and increasingly popular water sport; (4) MPWC, are different from other types of motorized watercraft in their structure (smaller size, shallower draft, two-stroke engine, and exhaust venting to water as opposed to air) and their operational impacts (operated at faster speeds, operated closer to shore, make quicker turns, stay in a limited area, tend to operate in groups, and have more unpredictable movements); (5) MPWC have been operated in such a manner as to create a safety hazard to other resource users in the vicinity; (6) MPWC may interfere with marine commercial uses; (7) MPWC have disturbed natural quiet and aesthetic appreciation; (8) MPWC have interfered with other marine recreational uses; (9) MPWC have impacted coastal and marine habitats; (10) MPWC have disturbed waterfowl and seabirds; (11) MPWC have disturbed and marine mammals; (12) MPWC may disturb fish; (13) Other jurisdictions have had problems with MPWC and have proposed and implemented various means of attempting to solve the problems; (14) the Sanctuary has sensitive areas that were deemed worthy of protection by the designation of a National Marine Sanctuary, including five State designated Areas of Special Biological Significance and four semi-enclosed estuarine areas; (15) MPWC present a present and potential threat to resources and users of the GFNMS.

The waters of the Sanctuary are home to rich biological diversity. The importance and uniqueness of Sanctuary waters has been internationally recognized by the incorporation of Sanctuary waters in the Golden Gate International Biosphere Reserve, and the designation of Bolinas

Lagoon as a RAMSAR (the Convention for Wetlands of International Significance) site. The Sanctuary provides habitat for hundreds of species of birds, marine mammals, pinnipeds, otters, sea turtles, and marine fauna and algae.

Among the hundreds of bird species that reside in or migrate through the Sanctuary, many are endangered, threatened or of special concern. These include the following species [1], which are found in the nearshore waters of the Sanctuary and the Farallon Islands:

[Key: FE=Federally listed as endangered; FT=Federally listed as threatened; SE=listed in the State of California as endangered; ST=listed in the State of California as threatened; CSC=California species of concern]

Swimmers [ducks and duck-like]		
Aleutian Canada goose	*Branta canadensis leucopareia*	FT
Barrow's goldeneye	*Bucephala islandica*	CSC
Common loon	*Gavia immer*	CSC
Double-crested cormorant	*Palacrocorax auritus*	CSC
Harlequin duck	*Histrionicus histrionicus*	CSC
Marbled murrelet	*Brachyramphus marmoratus*	FT/SE
Aerialists [gulls and gull-like]		
American white pelican	*Pelecanus erythorhynchos*	CSC
Ashy storm petrel	*Oceanodroma homochroa*	CSC
California brown pelican	*Pelecanus occidentalis californicus*	FE/SE
California gull	*Larus californicus*	CSC
California least tern	*Sterna antillarum browni*	FE/SE
Elegant tern	*Sterna elegant*	CSC
Hawaiian dark-rumped petrel	*Pterodroma phaeopygia*	FE
Short-tailed albatross	*Diomedea albatrus*	FE
Long-legged waders [herons, cranes, etc.]		
California black rail	*Laterallus jamaicensis corurniculus*	ST
White-faced ibis	*Plegadis chihi*	CSC
Smaller waders [plovers, sandpipers, etc.]		
Long-billed curlew	*Numenius americanus*	CSC
Western snowy plover (coastal)	*Charadrius alexandrinus niv.*	FT/CSC
Birds of prey [hawks, eagles, owls]		
Bald eagle	*Haliaeetus leucocephalus*	FT
Ferruginous hawk	*Buteo regalis*	CSC
Osprey	*Pandion haliaetus*	CSC
Prairie falcon	*Falco mexicanus*	CSC
Passerine birds [perching]		
Saltmarsh common yellowthroat	Geothlypis trichas sinuosa	CSC

There are at least twelve critical marine bird nesting areas along the shoreline of the Sanctuary. More than twelve species of marine birds breed in the Sanctuary. The nesting seabird population of the Farallon Islands comprises the largest concentration of breeding marine birds in the continental U.S.

Thirty-three species of marine mammals have been observed in the Sanctuary including six species of pinnipeds and twenty-five species of cetaceans. More than 20 percent of the state's harbor seals live within the boundaries of the Sanctuary, and Northern Fur seals have pupped here for the first time since the Sanctuary was designated. Of the twenty-six species of cetaceans that occur in Sanctuary waters, nineteen are migratory, and seven are considered resident species. Many of these marine mammals occur in large concentrations and are dependent on the productive and secluded habitat of the Sanctuary's waters and adjacent coastal areas for breeding, pupping, hauling-out, feeding, and resting during migration. Three areas in the Sanctuary have been identified as critical feeding areas for the threatened Steller sea lion, including the nearshore areas around Point Reyes, and the northern half of Tomales Bay. The Harbor seals, elephant seals, California sea lion, Dall's porpoise, harbor porpoise and Gray whales are common in the nearshore waters and protected bays of the Sanctuary. In addition, four species of endangered sea turtles are known to reside in or migrate through Sanctuary waters. A listing of all threatened and endangered marine mammals and sea turtles follows.

[1] Bird classifications from Peterson, R.T. 1990. A field guide to western birds. Houghton Mifflin Company.

[Key: FE=Federally listed as endangered; FT=Federally listed as threatened; ST=listed in the State of California as threatened]

Pinnipeds		
Guadelupe fur seal	*Arctocephalus townsendi*	FT/ST
Stellar (Northern) sea lion	*Eumetopias jubatus*	FT
Mustelids		
Southern sea otter	*Enhydra lutris nereis*	FT
Cetaceans		
Blue whale	*Balaenoptera musculus*	FE
Humpback whale	*Magaptera noveangliae*	FE
Sei whale	*Balaenoptera robustus*	FE
Sperm whale	*Physeter macrocphalus*	FE
Sea Turtles		
Green turtle	*Chelonia mydas*	FE
Leatherback turtle	*Dermochelys coriancea*	FE
Loggerhead turtle	*Caretta caretta*	FE
Olive (Pacific) ridley sea turtle	*Lepidochelys olivacea*	FE

Because of its unique geology and geography, the Sanctuary's marine fauna may be more diverse than in other areas along the Pacific Coast. The protected bays and coastal wetlands of the Sanctuary, such as Tomales Bay, Drakes Bay, Bolinas Lagoon, and the esteros, include intertidal mudflats, sand flats, salt marshes, submerged rocky terraces, and shallow subtidal areas. These areas support large populations of benthic fauna and concentrations of burrowing organisms living on marine plants. Submerged eel grass (*Zostra*) beds are prevalent in the northern portion of Tomales Bay, and support crucial habitat for more than 50 resident, breeding, and migratory bird populations, for a wide array of marine invertebrates, and for the egg masses of herring and other fish. It is estimated that approximately 30 million herring annually spawn in the eelgrass beds of Tomales Bay (Fox, 1997). The shallow protected bays and estuaries within the Sanctuary, such as Tomales Bay, Drakes Bay, Bolinas Lagoon, and the esteros, are important habitat for anadromous fish, several species of surfperches, and flatfish. Numerous and diverse fish and invertebrate species are found in Sanctuary waters. Over 150 species of fish are found in the Sanctuary, and include predator and prey species, and commercial fishing species. Among the fish found in Sanctuary waters are the endangered winter-run chinook salmon and tidewater goby, and coho salmon, Federally listed as a threatened species.

The nearshore waters of the Sanctuary are particularly vulnerable areas where myriad marine invertebrates and algae reside, where bird rookeries and pinniped haulout sites are present, where many critical nursery and food source habitats for wildlife are located, and where many nearshore users of the Sanctuary's water tend to concentrate. The nearshore waters of the Sanctuary are also those areas most impacted by the operation of MPWC. Lawson's Landing, a current MPWC launch site, is situated at the largest pinniped haulout in Tomales Bay, and is also within a quarter mile of Walker Creek delta, where the highest concentration of wading and shore birds occurs in the Sanctuary, and where sea otters have been regularly observed.

The nearshore waters of the Sanctuary are the areas most heavily used for recreation. Areas such as Tomales Bay and Dillon Beach are used for sailing, canoeing, rowing, kyaking and swimming. These activities are often conducted very close to shore and may be dependent on calm waters. The ability of MPWC to go very close to shore (due to their shallow draft) and move in unpredictable ways may be detrimental to the safety and aesthetic experience of those conducting these more benign recreational activities. NOAA believes that MPWC operation in nearshore areas creates a user conflict that can be avoided by keeping MPWC offshore.

Because of the biological diversity of the Sanctuary waters, the importance of the nearshore areas of the Sanctuary to that diversity, the potential for adverse environmental impacts that operation of MPWC pose to these nearshore areas, and because the the high potential for user conflicts, NOAA has decided to prohibit their operation from the nearshore waters of the Sanctuary, including waters surrounding the Farallon Islands. After discussions with the National Park Service, the Environmental Action Committee of West Marin, the MPWC industry, the Audubon Canyon Ranch, and individual ornithologists, NOAA is proposing a 1,000-yard buffer as a reasonable area to protect the nearshore waters. Specifically, the proposed rule would prohibit the operation of MPWC from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile). The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio, except for an access corridor from the launch site at Bodega Harbor leading into Bodega Bay.

Historically, there have been 4 (four) launch sites in the area—Lawson's Landing at Dillion Beach, Millerton Point Park, Inverness, and Bodega Harbor. As of 1 November 1998, launching MPWC from Point Reyes National Seashore (PRNS) or Golden Gate National Recreation Areas (GGNRA) is prohibited (U.S. Dept. of Interior, 1998a & b). Millerton Point Park and Inverness are within GGNRA and PRNS boundaries, respectively, and therefore can no longer be used. Lawson's Landing is situated at the most critical Harbor seal and shore bird area in Tomales Bay (Walker Creek Delta). Continued use of Lawson's Landing would result in unacceptable disturbance of these sensitive resources. Therefore, NOAA is proposing Bodega Harbor as the most appropriate launch site, and the access corridor proposed in designed to facilitate access by MPWC

to the GFNMS from this site. This change in primary launch site should not cause a significant inconvenience for any of the customary users of MPWC within the GFNMS as Bodega Harbor is within five (5) miles of Lawson's Landing and is easier to access.

II. Comments and Responses on Notice of Inquiry/Request for Information

The following is a summary of comments received on the Request for Information, and NOAA's responses.

(1) Comment: Prohibiting operation of MPWC in the Sanctuary would unfairly single out one type of vessel.

Response: NOAA disagrees. Several Federal resource agencies have recognized MPWC as a unique type of recreational vessel that is relatively recent in origin (U.S. Fish and Wildlife Service, 1992; NOAA, 1992; U.S. Dept. of Interior, 1998c). MPWC are designed to be operated at high speeds, closer to shore, and to make quicker turns than other types of motorized vessels. MPWC have a disproportional thrust capability and horsepower to vessel length and/or weight, in some cases four times that of conventional vessels (U.S. Dept. of Interior, 1998c). Research indicates that impacts associated with MPWC tend to be locally concentrated, producing effects that are more geographically limited yet potentially more severe than motorboat use, due to repeated disruptions and an accumulation of impacts in a shorter period of time (Snow, 1989). The Washington, D.C., Circuit Court of Appeals agreed with NOAA that there was a difference between MPWC and other kinds of watercraft: ''personal watercraft were small, highly maneuverable, and fast, and * * * they operated close to shore, in areas of high concentrations of kelp forests, marine mammals, and sea birds. That differentiated all larger craft, all slower craft, all less maneuverable craft, and all craft that did not tend to use the same areas in the same manner.'' (PWIA v. Dept of Commerce, 1995) There are at least five salient differences between the use of MPWC and other types of watercraft: (1) MPWC operators rarely engage in sedentary activities such as fishing; (2) MPWC operators often travel in groups of more than two vessels; (3) MPWC operators generally run their craft at high speeds and drive in patterns of repeated circuitous trips; (4) MPWC operators repeatedly circumnavigate small islands in shallow waters, and/or may repeatedly jump nearshore waves; and (5) because of MPWC size, speed and maneuverability, MPWC operators may run unpredictable transits, and can access shallow, nearshore areas that other types of motorized watercraft cannot.

(2) Comment: MPWC impact the environment less that other boats, primarily due to their smaller size and jet propulsion system.

Response: NOAA disagrees. MPWC are generally of smaller size, with a shallower draft (4 to 9 inches), and lower horsepower (around 75, as compared to up to 250 for large pleasure craft) than most other kinds of motorized watercraft (Ballestero, 1990; Snow, 1989). The smaller size and shallower draft of MPWC means they are more maneuverable, operable closer to shore and in shallower waters than other types of motorized watercraft. This maneuverability greatly increases the potential for MPWC to disturb fragile nearshore habitats and organisms. Although wakes of MPWC may be smaller than wakes of conventional motor boats, they can be more damaging (e.g., flooding of coastal bird nests; erosion of shoreline) because MPWC are often operated faster, closer to shore and repeatedly in the same area (Snow, 1989). Also, equipment can be installed on MPWC to create more and higher spray, which exacerbates the effects of MPWC wake.

Research indicates that MPWC increase turbidity and may redistribute benthic invertebrates, and these impacts may be prolonged as a result of repeated use by multiple machines in a limited area. Research has shown that MPWC can foul water with their discharge, and increase local erosion rates by launching and beaching repeatedly in the same locations (Snow, 1989). The Bodega Bay access route proposed in this regulation is an established corridor from an active launch ramp, and would not result in unreasonable additional environmental impacts.

MPWC are powered by a jet-propelled system that typically involves a two-stroke engine with an exhaust expulsion system that vents into the water. Most conventional recreational boats use a four-stroke engine. The two-stroke engines found on the vast majority of MPWC in the United States discharge more of their fuel (ranging from 10 percent to more than 50 percent of the unburned fuel/oil mixture, depending on manufacturing conditions and operating variables) than the four-stroke engines found on conventional recreational boats (Tahoe Research Group, 1997). These emissions pose a serious threat to the environment, as two-stroke engines introduce more volatile organic compounds (by a factor of 10) into the water than four-stroke engines (Juttner et al., 1995; Tjarnlund et al., 1995). These emission can have significant adverse impacts in many areas of the Sanctuary, particularly shallow nearshore coastal areas and estuaries.

In addition, the gasoline additive MTBE (methyl tert-butyl ether) is being found to contaiminate various water bodies (National Research Council, 1996). When discharged into water, MTBE tends to float on the surface microlayer of the water. Research has indicated that chromosomal damage, malformation, reduced growth, and high mortality rates of fish larvae may occur at extremely low levels of surface layer hydrocarbon pollution (Long, 1997). MTBE, classified as a possible human carcinogen, has been implicated in human complaints of headaches, coughs, and nausea, and may also have detrimental effects on wildlife (National Research Council 1996). MTBE is more soluble in water than other hydrocarbons, is not readily biodegradable, is not subject to photolysis, and does not readily absorb to organic or inorganic particles. It is expected to volatilize approximately 10 times slower than other compounds (Miller and Fiore, 1997; Squillace et al., 1996). Since two-stroke engines emit more exhaust into the water, they therefore emit more MTBE into the water, posing a more serious ecological threat than do four-stroke engines.

(3) Comment: MPWC may disturb fish, waterfowl and seabirds.

Response: NOAA agrees. Research in the Everglades National Park indicated that fishing success dropped to zero when fishing occurred in the same waters used by MPWC, and scientists in the Pacific Northwest have been concerned about the effects of MPWC on spawning salmon (Snow, 1989; Sutherland and Ogle, 1975). Research in Florida indicates that MPWC cause wildlife to flush at greater distances, with more complex behavioral responses than observed in disturbances caused by automobiles, all-terrain vehicles, foot approach, or motorboats. This was partially attributed by the scientists to the typical operation of MPWC, where they accelerate and decelerate repeatedly and unpredictably, and travel at fast speeds directly toward shore, while motorboats generally slow down as they approach shore (Rodgers, 1997). Scientific research also indicates that even at slower speeds, MPWC were a significantly stronger source of disturbance to birds than were motorboats. Levels of disturbance were further increased when MPWC were used at high speeds or outside of established boating channels (Burger, 1998). Research notes that declining

nesting success of grebes, coots, and moorhens in the Imperial National Wildlife Refuge were due to the noise and physical intrusion of MPWC (Snow, 1989). In addition, MPWC have been observed flushing wading birds and nesting osprey from their habitats, contributing to abnormally high numbers of abandoned osprey nests on certain islands in the Florida Keys (U.S. Fish and Wildlife Service, 1992). The number of active osprey nests in the lower Florida Keys ''backcountry'' dropped from five to zero between 1986 and 1990. Biologists believe this was due to MPWC flushing parents from the nests (Cuthbert and Suman, 1995). Research suggests that declines in nesting birds in some states occurred simultaneous with MPWC operation. Numerous shoreline roost sites exist within the Sanctuary, and research has shown that human disturbance at bird roost sites can force birds to completely abandon an estuary. Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of their feeding cycle, and when flushed from feeding areas, such as eelgrass beds, will usually abandon the area until the next tidal cycle (Kelly, 1997).

(4) Comment: MPWC disturb marine mammals.

Response: NOAA agrees. There is a general conclusion that marine mammals are more disturbed by watercraft such as MPWC, which run faster, on varying courses, or often change direction and speed, than they are by boats running parallel to shore with no abrupt course or major speed change. Researchers note that MPWC may be disruptive to marine mammals when they change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because MPWC lack low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry, 1996; Osborne, 1996).

Possible disturbance effects of MPWC on marine mammals could include shifts in activity patterns and site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; and avoidance by whales (Gentry, 1996; Richardson et al., 1995).

Comment: MPWC are excessively noisy, and disturb the peace of other users of the Sanctuary.

Response: In general, unless modified by the operator (i.e., removal or alteration of the muffler), MPWC do not appear to be any louder in the air than similarly powered conventional motorized watercraft (MPWC and conventional watercraft both registered between 74 and 84 decibels in tests conducted in 1990) (Wooley, 1996) and appear to be quieter underwater (Gentry, 1996). However, many MPWC operators alter or remove the mufflers to enhance craft performance, thus increasing the noise generated by their craft. Also, MPWC may be perceived as being louder than other boats because they can travel faster, closer to shore often travel in groups, tend to frequently accelerate and decelerate, and ''wake-jump.''These characteristics create uneven, persistent noise apparently more bothersome to people and potentially to wildlife. In addition, research indicates that the constancy of speed figures into noise generation, as most people adjust to a constant drone and cease to be disturbed by it, even at elevated levels, but the changes in loudness and pitch of MPWC are more disturbing to people than other watercraft (Wagner, 1994).

(6) Comment: MPWC may interfere with other recreational uses of the Sanctuary.

Response: NOAA agrees. The Sanctuary encourages multiple uses of its waters that are compatible with resource protection. When used as designed and in the current manner, MPWC have significant potential to interfere with a large number of other Sanctuary users. Numerous respondents to the Notice of Inquiry/Request for Information noted that MPWC were interfering with, and often jeopardizing the well-being of, swimmers, kayakers, canoeists, and other recreational boaters and users of nearshore areas in the Sanctuary. MPWC have been involved in numerous accidents, and thus pose a hazard to other water users. Although MPWC make up approximately 11 percent of vessels registered in the country (U.S. Dept. of Interior, 1998c), Coast Guard statistics show that in 1996, 36 percent of all watercraft involved in accidents were MPWC (U.S. Coast Guard, 1999). In addition, numerous commentors noted that the operation of MPWC in nearshore areas diminishes the aesthetic qualities of many beach and recreational areas, and may interfere with other economic uses of the areas based upon these aesthetic qualities.

(7) Comment: MPWC are incompatible with the purposes of the Sanctuary.

Response: The Sanctuary was designated in 1981 to ''protect and preserve the extraordinary ecosystems, including marine birds, mammals, and other natural resources, of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource.'' When used as designed and in the current manner, the combined attributes of MPWC interfere with resource protection, multiple compatible use of Sanctuary resources, and the long-term ecological integrity of the nearshore Sanctuary waters. While use of MPWC in certain areas of the GFNMS could adversely impact resources and create conflicts, uses outside these areas may not be incompatible with the Sanctuary's purposes. For the reasons outlined in responses 1 through 7, NOAA believes that operation of MPWC are incompatible with the protection and preservation of the sensitive natural resources of the nearshore waters of the Sanctuary.

III. Summary of Regulations

Due to the many bird, pinniped, mustelid, cetacean and fish species, dependent solely or in the part on the Sanctuary's nearshore waters, some of which are listed by the State of California and/or the Federal Government as endangered, threatened, or of concern, and the effects the operation of MPWC has on these species and other human users of the Sanctuary's waters (as detailed above), NOAA proposes to restrict the operation so MPWC within Sanctuary waters to those areas outside a 1,000-yard nearshore zone, including around the Farallon Islands. In proposing this rule, NOAA is responding to the April 1996 petition of the Environmental Action Committee of West Marin, California and to the agency's constituents, including the public, marine commercial interests, and other governments agencies. In responding, the agency has taken into account all expressed viewpoints, and has attempted to balance these fully and in accordance with the Gulf of the Farallones National Marine Sanctuary's stated mission to ''protect and preserve the extraordinary ecosystem, including marine birds, mammals, and other natural resources, of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource.'' In responding thus, the agency also aims to proactivity carry out the mission of the MFNMS by addressing the operation of a unique type of vessel in sensitive marine and estuarine habitats.

Amendments to the GFNMS regulations are proposed in this rulemaking as follows:

The proposed amendment is the addition to 15 CFR 922.82(a) of a prohibition against operation of motorized personal watercraft in the nearshore waters of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile), including seaward of the Farallon Islands. The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio, except for an access corridor in Bodega Bay, as described in Appendix B of Subpart H of 15 CFR Part 922. The prohibition would include an exception for the use of MPWC for emergency search and rescue and law enforcement (other than training activities) by Federal, State and local jurisdictions.

Section 922.81 would also be amended by adding a definition of ''motorized personal watercraft'' as ''a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.''

As discussed in detail above, this regulation is necessary to protect sensitive biological resources and important, to minimize user conflict, and to protect the ecological, aesthetic, and recreational qualities of the nearshore area of the Sanctuary.

IV. Miscellaneous Rulemaking Requirements

Executive Order 12866: Regulatory Impact

This proposed rule has been determined to be not significant for purposes of Executive order 12866.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have federal implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration as follows:

The proposed rule would amend the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) regulations to prohibit the operation of motorized personal watercraft in the nearshore areas of the Sanctuary. Specifically, the operation of MPWC would be prohibited from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile). The proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users of the Sanctuary.

There are currently two established launch sites for MPWC operation in the Sanctuary; Lawson's Landing and Bodega Harbor. The proposed regulation would remove Lawson's Landing as a MPWC launch site due to its proximity to critical harbor seal and shore bird areas. Lawson's Landing, on the eastern shore at the mouth of Tomales Bay, had 169 MPWC launches in 1997 at $5/launch. According to the owner of Lawson's Landing, the total annual value of MPWC launch business was under $800, because some of the launches were free. Neither launch site rents MPWC. The Bodega Harbor launch site will still be available for MPWC, and is less than 5 miles north of Lawson's Landing. The owner of Lawson's Landing says that this is a minor portion of the total revenues. The majority of the Sanctuary (over 95 percent) will still be available to MPWC, so rentals should not be affected by the 1,000-yard prohibited buffer. Consequently, the rule is not expected to significantly impact a substantial number of small business entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A draft environmental assessment has been prepared. It is available for comment from the address listed at the beginning of this notice.

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List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Authority: 16 U.S.C. Section 1431 *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

April 3, 1999.

Ted Lillestolen,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR 922, Subpart H is proposed to be amended as follows:

PART 922, SUBPART H—THE GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

1. Section 922.81 is amended by adding the following definition, in the appropriate alphabetical order.

§ 922.81 Definitions.

* * * * *

Motorized personal watercraft means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

2. Section 922.82 is amended by adding new paragraph (a)(7) as follows:

§ 922.82 Prohibited or otherwise regulated activities.

(a) * * *

(7)(i) Except for transit through an established access corridor described in Appendix B to this subpart, operation of any motorized personal watercraft from the mean high-tide line seaward to 1,000 yards (approximately 0.5 nautical mile), including 1,000 yards seaward from the Farallon Islands. The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio.

(ii) This prohibition shall not apply to the use of personal watercraft for emergency search and rescue missions or law enforcement operations carried out by National Park Service, U.S. Coast Guard, San Francisco Fire or Police Departments or other Federal, State or local jurisdictions.

* * * * *

3. A new appendix is added to subpart H, as follows:

Appendix B to Subpart H of Part 922—Access Corridor Within the Sanctuary Where the Operation of Motorized Personal Watercraft Is Allowed

There shall be an access corridor at Bodega Bay where MPWC can launch and motor out to waters that are outside the 1,000 yard buffer where operation of MPWC are prohibited. This access corridor shall be between the following coordinates at Bodega Harbor: South Jetty: 38__ 18′18″ N, 123__ 02′54″ W; North Jetty: 38__ 18′22″ N, 123__ 02′56″ W; and out 1,000 yards into the Bay on a 090__ T bearing.

[FR Doc. 99–9981 Filed 4–22–99; 8:45 am]

BILLING CODE 3510–08–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

Waivers of Rights and Claims: Tender Back of Consideration

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is publishing this notice of proposed rulemaking (NPRM) to address issues related to the United States Supreme Court's decision in *Oubre* v. *Entergy Operations, Inc.,* 522 U.S. 422 (1998).

DATES: To be assured of consideration by EEOC, comments must be in writing and must be received on or before June 22, 1999.

ADDRESSES: Written comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, D.C. 20507.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, or Paul E. Boymel, Senior Attorney-Advisor, 202–663–4689 (voice), 202–663–7026 (TDD).

SUPPLEMENTARY INFORMATION:

A. Background

1. Introduction

In *Oubre* v. *Entergy Operations, Inc.,* 522 U.S. 422 (1998), the Supreme Court held that an individual was not required to return (''tender back'') consideration for a waiver in order to allege a violation of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. 621 *et seq.*, as amended by the Older Workers Benefit Protection Act of 1990 (OWBPA). The Court explained that, because the release did not comply with the ADEA, plaintiff's retention of the consideration did not constitute a ratification that made the release valid. Moreover, the employer could not invoke the employee's failure to tender back consideration as a way of excusing its own failure to comply with the statute.

EEOC is issuing proposed legislative regulations to address issues raised by the *Oubre* decision. In summary, EEOC's position is that: (1) an individual alleging that a waiver agreement was not knowing and voluntary under the ADEA is not required to tender back the consideration as a precondition for challenging that waiver agreement; (2) a covenant not to sue or any other condition precedent, penalty, or other limitation adversely affecting any individual's right to challenge a waiver agreement is invalid under the ADEA; (3) although in some cases an employer may be entitled to setoff, recoupment, or restitution against an individual who has successfully challenged the validity of a waiver agreement, such setoff, recoupment, or restitution cannot be greater than the consideration paid to the individual or the damages awarded to the individual, whichever is less; and (4) no employer may unilaterally abrogate its duties under a waiver agreement, even if one or more of the signatories to the agreement successfully challenges the validity of that agreement under the ADEA.

2. The Older Workers Benefit Protection Act of 1990

Title II of OWBPA amended the ADEA to set out rules governing the validity of a waiver agreement. Section 7(f)(1) of the ADEA provides that ''[a]n

individual may not waive any right or claim under [the ADEA] unless the waiver is knowing and voluntary.'' Section 7(f)(1) provides a list of minimum requirements that must be met in order for a waiver to be knowing and voluntary. The statutory language and legislative history of OWBPA make it clear that the listing in § 7(f)(1) is nonexhaustive, and that even waiver agreements meeting the stated minimum requirements would not satisfy the ADEA if, under the totality of the circumstances, the waiver were not knowing and voluntary. As recognized in *Oubre,* the ADEA waiver rules extend to the tender back situation.

3. Tender Back Requirement Before Oubre

Prior to the Supreme Court's decision in *Oubre,* the circuits were split on the issue of whether an individual who signed an agreement waiving rights and claims under the ADEA was required to tender back any consideration paid by the employer in order to challenge the validity of the waiver in court. Several courts took the position that an individual who accepted consideration in exchange for a waiver agreement was not required to tender back that consideration to the employer before challenging in court either the validity of the waiver agreement or any employment discrimination. *See, e.g., Long* v. *Sears Roebuck & Co.,* 105 F.3d 1529 (3d Cir. 1997), *cert denied,* 118 S.Ct. 1033 (1998); *Oberg* v. *Allied Van Lines,* Inc., 11 F.3d 679 (7th Cir. 1993). Other courts took the position that the tender back of consideration was necessary before an individual could challenge the waiver and the discrimination in court. These courts concluded that by retaining the consideration, the individual ''ratified'' the waiver agreement and therefore could not challenge the agreement in court. *See, e.g., Blistein* v. *St. John's College,* 74 F.3d 1459, 1465–66 (4th Cir. 1996); *Wamsley* v. *Champlin Refining & Chemicals, Inc.,* 11 F.3d 534 (5th Cir. 1993).

4. The Oubre Decision

In *Oubre* v. *Entergy Operations, Inc.,* 522 U.S. 422 (1998), the Supreme Court resolved the split among the circuits on the question of tender back. The facts in *Oubre* involved an employee who, upon her termination, signed an agreement waiving all claims against her employer in exchange for payments totalling $6,258. The waiver agreement failed to comply with at least three of the requirements of § 7(f)(1) of the ADEA. It did not: (1) give her the statutorily mandated 21 days to consider the waiver agreement, but instead provided only 14 days; (2) give her seven days to revoke the agreement; or (3) make specific reference to ADEA claims. *Oubre,* 522 U.S. at 424. After the employee received all of the consideration for the waiver, she filed an ADEA suit against the employer without tendering back the consideration. The lower courts ruled that she could not proceed with her lawsuit because she had not offered to return the consideration to the employer, agreeing with the employer's arguments under state contract and common law. *See Oubre* v. *Entergy Operations, Inc.,* 112 F.3d 787 (5th Cir. 1996), *rev'd* 522 U.S. 422 (1998).

The Supreme Court reversed the Fifth Circuit's decision, stating that under § 7(f)(1) of the ADEA:

> [T]he employee's mere retention of monies [did not] amount to a ratification equivalent to a valid release of her ADEA claims, since the retention did not comply with the OWBPA any more than the original release did. The statute governs the effect of the release on ADEA claims, and the employer cannot invoke the employee's failure to tender back as a way of excusing its own failure to comply.

Oubre, 522 U.S. at 428. Thus, the Court allowed the employee's case to proceed even though she had not tendered back the consideration for the waiver agreement.

In its decision, the Court addressed three main concerns. First, the Court stated that the ADEA foreclosed the employer's argument that state contract law and common law principles apply to ADEA waiver issues. The Court emphasized that ''the OWBPA sets up its own regime for assessing the effect of ADEA waivers, separate and apart from contract law.'' 522 U.S. at 427. The Court also noted that the contract law principles cited by the employer ''may not be as unified as the employer asserts.'' *Id.* at 426.

Second, the Court reasoned that the practical effect of the employer's position, requiring tender back of consideration as a condition of bringing suit, could frustrate the purposes of the ADEA and lead to an evasion of the statute:

> In many instances a discharged employee likely will have spent the monies received and will lack the means to tender their return. These realities might tempt employers to risk noncompliance with the OWBPA's waiver provisions, knowing it will be difficult to repay the monies and relying on ratification.

Oubre, 522 U.S. at 427.

Finally, the Court observed that lower ''courts may need to inquire whether the employer has claims for restitution, recoupment, or setoff against the employee, and these questions may be complex where a release is effective as to some claims but not as to ADEA claims.'' 522 U.S. at 428. The Court saw no need to resolve such questions in this case, however, and simply reversed the Fifth Circuit's judgment and remanded for further proceedings consistent with its opinion. *Id.*

5. EEOC Negotiated Rulemaking on Waivers Under OWBPA

In 1995 and 1996, EEOC conducted a negotiated rulemaking on ADEA waivers under OWBPA. Although the Rulemaking Committee considered the issue of tender back and ratification during its deliberations, the Committee decided that it would not reach consensus and the issue was not addressed in the regulatory language recommended by the Committee to the Commission. EEOC promulgated a final regulation at 29 CFR 1625.22 on June 5, 1998, 63 FR 30624. The preamble to the final regulation confirmed that the issues raised in *Oubre* would not be addressed in that section, but that the tender back issue would be covered in other guidance.

B. Purpose and Discussion of This Proposed Rule

1. Purpose: Pursuant to its regulatory authority under § 9 of the ADEA, EEOC has developed this proposed legislative regulation to address issues related to the *Oubre* decision. This proposal would add a new legislative regulation at 29 CFR § 1625.23.

2. Discussion: This regulation sets forth EEOC's position on several important issues concerning tender back.

a. An individual alleging that a waiver agreement was not knowing and voluntary under the ADEA is not required to tender back the consideration given for that agreement before filing either a lawsuit or a charge of discrimination with EEOC or any state or local fair employment practices agency. Retention of consideration does not foreclose a challenge to any waiver agreement; nor does the retention constitute the ratification of any waiver. A clause requiring tender back is invalid under the ADEA.

(i) *The Oubre Decision:* The Court in *Oubre* made it clear that ''[a]n employee 'may not waive' an ADEA claim unless the waiver or release satisfies the OWBPA's requirements. . . . Courts cannot with ease presume ratification of that which Congress forbids.'' 522 U.S. at 427. The Court emphasized that ''the employee's mere retention of monies [does not] amount to a ratification

equivalent to a valid release * * *'' *Id.* at 848.

The facts of the *Oubre* case concerned a waiver agreement that clearly did not satisfy at least three of the requirements of § 7(f)(1), and thus was invalid on its face. However, the holding and rationale of *Oubre,* which are based on the ADEA as well as important public policy concerns, are not limited to cases in which the terms of the waiver agreement are facially invalid. The ADEA's overarching standard is that waivers must be knowing and voluntary, and the specific provisions in § 7(f)(1) are only minimum requirements. While a waiver agreement that fails to meet these minimum criteria cannot be knowing and voluntary, even agreements that do meet these criteria still may not be knowing and voluntary under the ADEA.

For example, a waiver agreement that meets all of the enumerated requirements in § 7(f)(1) still would not be knowing and voluntary if the employer obtained an employee's signature by force or compulsion. As another example, an agreement might state on its face that an individual had 45 days to accept the offer. If the individual in fact were given only 5 days to make this decision, the waiver would not be knowing and voluntary under the ADEA. *See* 29 CFR 1625.22(e). Finally, with regard to the informational requirements under § 7(f)(1)(H), it is impossible to assess an employer's compliance by a mere examination of the waiver agreement. These requirements depend on the unique facts of a particular workforce reduction or voluntary termination program. *See* 29 CFR 1625.22(i); *see, e.g., Griffin* v. *Kraft General Foods, Inc.,* 62 F.3d 368 (11th Cir. 1995)(analyzing the validity of the information provided under § 7(f)(1)(H), the court found that, where the employer may have considered several plants for closure before it decided to close the plant at issue, it might need to provide information about employees at multiple facilities).

In summary, compliance with § 7(f)(1) of the ADEA cannot be determined based solely on the face of a waiver document. Because a waiver agreement may be invalid due to circumstances beyond the document itself, the Supreme Court's rationale in *Oubre* precludes tender back as a condition for any lawsuit or charge.

(ii) *ADEA Statutory Language and Legislative History:* In the ADEA, as amended by the OWBPA, Congress clearly contemplated that courts would decide the validity of waiver agreements. A requirement of tender back would, as the Oubre Court pointed out, effectively prevent access to the courts for many employees and therefore would undermine this statutory scheme.

Section 7(f) of the ADEA contemplates that the courts have the authority to determine the validity of a waiver agreement. Section 7(f)(3) states that:

> In any dispute that may arise over whether any of the requirements [of §§ 7(f)(1) or (2)] have been met, the party asserting the validity of a waiver shall have the burden of proving *in a court of competent jurisdiction* that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

(Emphasis supplied). Thus, the statute does not envision a waiver agreement as a complete bar to litigation, but rather suggests that a waiver is an affirmative defense. A tender back requirement would be inconsistent with this statutory design.

A tender back requirement is inconsistent with the OWBPA legislative history, which also shows that Congress contemplated that litigation would be available for deciding the validity of waiver agreements. Here, Congress expressly stated that the burden of proof described in § 7(f)(3) establishes ''an affirmative defense.'' *See* S. 1511, Final Substitute Statement of Managers, 136 Cong. Rec. 13596–97 (1990). In reference to an earlier version of the OWBPA legislation, the Senate Committee on Labor and Human Resources explained:

> The Committee expects that courts reviewing the ''knowing and voluntary'' issue will scrutinize carefully the complete circumstances in which the waiver was executed. * * * The bill establishes specified minimum requirements that must be satisfied before a court may proceed to determine factually whether the execution of a waiver was ''knowing and voluntary.''

S. Rep. No. 101–263, at 32 (1990), *reprinted in* 1990 U.S.C.C.A.N. 1509, 1537 (hereinafter ''Senate Report'').

The law also is clear that a waiver agreement cannot interfere with an individual's right to file a charge of discrimination or assist EEOC in any administrative or legal proceedings. Section 7(f)(4) of the ADEA states:

> No waiver agreement may affect the Commission's rights and responsibilities to enforce [the ADEA]. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

See also 29 CFR 1625.22(i); *EEOC Enforcement Guidance on Non-Waivable Employee Rights under EEOC Enforced Statutes,* #915.002, April 10, 1997, 3 EEOC Compl. Man. (BNA) No. 2345. In light of the *Oubre* Court's concern about the chilling effect of a tender back requirement, imposition of such a requirement as a condition for filing an EEOC charge clearly would ''interfer[e] with the protected right of an employee to file a charge * * *,'' and therefore would contravene the statute. 29 CFR § 1625.22 (i).

b. A covenant not to challenge a waiver agreement, or any other arrangement that imposes any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to challenge a waiver agreement, is invalid under the ADEA, whether the covenant or other arrangement is part of the agreement or is contained in a separate document. A provision allowing an employer to recover costs, attorneys' fees, and/or damages for the breach of any covenant or other arrangement is not permitted.

(i) Covenants not to sue and other similar arrangements purport, on their face, to bar an individual's right to challenge a waiver agreement in court.[1] Like a tender back requirement, such a covenant or other arrangement directly offends the congressional intent to afford an individual the right to challenge the validity of a waiver agreement. The ADEA clearly envisions that courts would have authority to determine the validity of the waiver and, therefore, necessarily contemplates that individuals would have the opportunity to bring such a challenge. *See* § 7(f)(1) of the ADEA (setting out the specific standards for a court to determine the validity of a waiver agreement); § 7(f)(3) of the ADEA (referring to a ''court of competent jurisdiction'' as the entity expected to decide the validity of a challenged waiver); *accord* Senate Report at 32. See also *Raczak* v. *Ameritech Corp.,* 103 F.3d 1257, 1271 (6th Cir. 1997) (''[i]t was the intent of Congress that waivers would not preclude parties from bringing suit under the OWBPA''), *cert. denied,* 118 S.Ct. 1033 (1998).

(ii) Covenants not to sue and other such arrangements also carry with them the threat of a counterclaim for breach of the covenant and liability for costs, attorneys' fees, and damages. The threat of such a counterclaim or a similar threat,[2] with the prospect of being

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[1] No waiver agreement, covenant, or other arrangement may prohibit any person from filing a charge of discrimination or assisting EEOC in its law enforcement activities. *See* 29 CFR 1625.22(i).

[2] For example, it would be impermissible for an employer to bring an independent legal action, such as a state or federal breach of contract lawsuit, because an employee filed a charge of discrimination or challenged a waiver agreement in court. Such lawsuits would constitute retaliation

forced to pay defendant's legal expenses, easily could chill persons with valid claims from challenging waiver agreements. This chilling effect runs counter to the purposes of the ADEA, a remedial civil rights statute that encourages employees to challenge illegal conduct by employers. *See generally, Commonwealth of Massachusetts* v. *Bull HN Information Systems, Inc.*, 16 F.Supp. 2d 90, 106 (D. Mass. 1998) (''[u]nder Bull's proffered interpretation, employers could functionally insulate themselves from ADEA suits and ignore the waiver provisions of the OWBPA simply by including a drastic penalty provision in the waiver as Bull has done. This interpretation offends the intent of Congress. * * *''); *Carroll* v. *Primerica Financial Services Insurance Marketing,* 811 F.Supp. 1558 (N.D.Ga. 1992); *Isaacs* v. *Caterpillar, Inc.*, 702 F.Supp. 711, 713 (C.D.Ill. 1988); *EEOC* v. *United States Steel Corp.*, 671 F.Supp. 351, 358–59 (W.D.Pa. 1987) (the court enjoined a waiver provision wherein an employee promised not to file a charge or claim under the ADEA since the waiver ''has the potential of deterring individuals from participating in ADEA claims. * * * [I]f an individual is deterred from bringing such an action in the first instance, the validity of the waiver of rights will not be able to be determined.'')

A position permitting covenants not to sue or similar arrangements would render the OWBPA amendments and the *Oubre* decision a nullity. Such provisions, coupled with the threat of counterclaims, would as a practical matter undo the ADEA's carefully crafted criteria for a knowing and voluntary waiver by encouraging employers to ignore those provisions. This in turn would undermine the ADEA's objective to ''ensure that older workers are not coerced or manipulated into waiving their rights to seek legal relief under the ADEA.'' Senate Report at 5. EEOC does not find cases allowing covenants not to sue persuasive, because they are fundamentally at odds with the holding and rationale of the Supreme Court in *Oubre. See, e.g., Astor* v. *International Business Machines Corp.*, 7 F.3d 533, 540 (6th Cir. 1993) (covenant not to sue permissible in release of ERISA rights); *Artvale Inc.* v *Rugby Fabrics Corp.*, 363 F.2d 1002, 1008 (2d Cir. 1966).

(iii) An employer does not need to bring a counterclaim to obtain what it purchased with the waiver. With a valid waiver, an employer receives an affirmative defense against ADEA claims. *See Isaacs* v. *Caterpillar,* 765 F.Supp. 1359, 1371 (C.D.Ill. 1991); Senate Report at 53. Assuming that a waiver agreement is upheld in court, and consequently serves as an affirmative defense to a discrimination suit, the employer has received the benefit of its bargain. If the waiver is not upheld because it is not knowing and voluntary under the ADEA, the employer has no right to the benefit of its bargain.

c. In some circumstances an employer may be entitled to restitution, recoupment, or setoff against an employee's recovery of damages in court (or in the administrative process).

In *Oubre,* the Court commented that, ''[i]n further proceedings in this or other cases, courts may need to inquire whether the employer has claims for restitution, recoupment, or setoff against the employee. * * *'' 522 U.S. at 428.[3] In EEOC's view, restitution, recoupment, or setoff should be in the discretion of the court but never exceed the lesser of the consideration given or the damages won. In the context of the *Oubre* decision, with its overriding prohibition of tender back requirements, permitting any restitution beyond the lesser of the amount the plaintiff wins in court, or the amount of consideration given, would operate constructively as a tender back penalty for bringing suit. Such a tender back penalty would interfere with the plaintiff's exercise of ADEA rights, impose significant hardship, and be contrary to public policy. Additionally, *Oubre* dictates that general contract principles are not applicable to ADEA cases if their application would deter protected individuals from vindicating their statutory rights or encourage employers to evade their statutory responsibilities. *See generally Daley* v. *United Technologies Corp.*, Civil No. 3:97 CV 00439 (AVC) (D.Conn. March 23, 1998); *Pace* v. *United Technologies Corp.*, Civil No. 3:97 CV 00481(AVC) (D.Conn. March 23, 1998) (post-*Oubre* cases stating that the employer would be entitled to a setoff consisting of all or part of the severance benefits paid if the plaintiffs should prevail on their ADEA claims); *Rangel* v *El Paso Natural Gas Co.*, 996 F. Supp. 1093, 1099 (D.N.M. 1998) (post-*Oubre* Title VII waiver case concluding that setoff against damages would be the proper way to handle reimbursement); 50 C.J.S. Judgment § 674 (stating that set-off ''is not demandable as of course, but rests in the discretion of the court'').

This limit also ensures that employees would not be penalized for a challenge to a waiver agreement when the amount of damages awarded is low (for example, when the employee has mitigated damages by finding new employment). Moreover, as stated in section b., above, covenants not to sue or other similar arrangements are not permitted. Therefore, an employer is not entitled to restitution, recoupment, or setoff for any costs, attorneys' fees or other amounts claimed as damages attributable to an alleged breach of such a covenant or other arrangement.

Finally, in a case involving more than one plaintiff, the reduction must be awarded on a plaintiff-by-plaintiff basis. Thus, no individual's award can be reduced based on the consideration received by any other person.

The following is a nonexhaustive list of the factors that may be relevant in calculating the proper amount of reduction to avoid unjust enrichment. These factors reflect, in the ADEA context, equitable principles that a reduction should be allowed only if it would promote justice, and should not be allowed if it results in injustice. *See generally* 50 C.J.S. Judgment § 674. These factors also reflect the *Oubre* Court's recognition that determining the proper amount of reduction may be complex when the waiver encompasses claims other than those arising under the ADEA. *Oubre,* 522 U.S. at 428. The factors include:

(i) Whether the employer apportioned the amount paid for the waiver agreement among the rights waived, if the waiver purports to waive rights other than ADEA rights. If the employer did not apportion the consideration among the rights waived, the apportionment should be done on an equitable basis;

(ii) Whether the employer's noncompliance with the ADEA waiver requirements was inadvertent or was in bad faith or fraudulent;

(iii) The nature and severity of the underlying employment discrimination

under § 4(d) of the ADEA and intentional discrimination for purposes of liquidated damages under § 7 of the ADEA.

[3] The terms ''recoupment'' and ''setoff'' refer to the ability of a defendant to reduce the plaintiff's award of damages by amounts otherwise due to the defendant. Recoupment and setoff serve to limit the defendant's recovery to no more than the amount of plaintiff's damages. Black's Law Dictionary (6th ed. 1990), at 1275 and 1372. ''Restitution is a return or restoration of what the [employee] has gained in a transaction.'' 1 Dan B. Dobbs, Law of Remedies, Damages-Equity-Restitution § 4.1(1) at 551 (1993). Generally, restitution is required to avoid the ''unjust enrichment'' of the party who previously obtained the money or property. Dobbs § 4.1(2) at 557. There are several exceptions to the unjust enrichment doctrine that are relevant to ADEA waivers, including when restitution would: (1) interfere with the rights of, or otherwise be inequitable to, the party who received payment; (2) cause significant hardship because an individual changed position based upon the payment; or (3) be contrary to public policy considerations. *Id*. at 563.

in the case, including whether the employer willfully violated the ADEA. If a willful violation occurred, any deduction from the award should be made after the damages are doubled pursuant to § 7(b) of the ADEA;

(iv) The employee's financial condition;

(v) The employer's financial condition;

(vi) The effect of the reduction upon the purposes and enforcement of the ADEA and the deterrence of future violations by the employer.

d. No employer may unilaterally abrogate its duties under a waiver agreement to any signatory, even if one or more of the signatories to the agreement or EEOC successfully challenges the validity of that agreement under the ADEA.

In his concurrence in *Oubre,* Justice Breyer expressed concern that a successful challenge to a waiver agreement by one or more individuals not be construed to relieve an employer of its obligations to other individuals who did not challenge that agreement. *Oubre,* 522 U.S. at 431 (Breyer, J., concurring). Such an abrogation would penalize innocent employees for the employer's noncompliance with the ADEA, and would therefore be void as against public policy. *See generally* 17A Am. Jur. 2d Contracts § 327 (1991) (stating that an illegal contract will be enforced if refusal to enforce it ''would produce a harmful effect on the party for whose protection the law making the bargain illegal exists'').

e. The rules set out in this regulation apply to cases within the EEOC administrative process as well as to cases in court, and are fully consistent with the provisions of EEOC's regulation at 29 CFR 1625.22(i)(3).

Comments: As a convenience to commentors, the Executive Secretariat will accept public comments transmitted by facsimile (''FAX'') machine. The telephone number of the FAX receiver is 202–663–4114. (Telephone numbers published in this Notice are not toll-free). Only public comments of six or fewer pages will be accepted via FAX transmittal in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff on 202–663–4066.

Comments received will be available for public inspection in the EEOC Library, Room 6502, 1801 L Street, N.W., Washington, D.C. 20507, by appointment only, from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Notice are available in the following alternative formats: large print, braille, electronic file on computer disk, and audio tape. To schedule an appointment or receive a copy of the Notice in an alternative format, call 202–663–4630 (voice), 202–663–4399 (TDD).

Executive Order 12866, Regulatory Planning and Review

Pursuant to § 6(a)(3)(B) of Executive Order 12866, EEOC has coordinated this NPRM with the Office of Management and Budget. Under § 3(f)(1) of Executive Order 12866, EEOC has determined that the regulation will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State or local or tribal governments or communities. Therefore, a detailed cost-benefit assessment of the regulation is not required.

Paperwork Reduction Act

EEOC certifies that the rule as proposed does not require the collection of information by EEOC or any other agency of the United States Government. The rule as proposed does not require any employer or other person or entity to collect, report, or distribute any information.

Regulatory Flexibility Act

EEOC certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation will not result in a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis is not required. A copy of this proposed rule was furnished to the Small Business Administration.

In addition, in accordance with Executive Order 12067, EEOC has solicited the views of affected Federal agencies.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee Benefits, Equal Employment Opportunity, Retirement.

Signed at Washington, D.C. this 19th day of April, 1999.

Ida L. Castro,

Chairwoman.

It is proposed to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1625—AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for part 1625 continues to read as follows:

Authority: 81 Stat. 602; 29 U.S.C. 621; 5 U.S.C. 301; Secretary's Order No. 10–68; Secretary's Order No. 11–68; sec. 12, 29 U.S.C. 631; Pub. L. 99–592, 100 Stat. 3342; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. In part 1625, § 1625.23 would be added to Subpart B—Substantive Regulations, to read as follows:

§ 1625.23 Waiver of rights and claims: Tender back of consideration.

(a) An individual alleging that a waiver agreement was not knowing and voluntary under the ADEA is not required to tender back the consideration given for that agreement before filing either a lawsuit or a charge of discrimination with EEOC or any state or local fair employment practices agency. Retention of consideration does not foreclose a challenge to any waiver agreement; nor does the retention constitute the ratification of any waiver. A clause requiring tender back is invalid under the ADEA.

(b) A covenant not to challenge a waiver agreement, or any other arrangement that imposes any condition precedent, any penalty, or any other limitation adversely affecting any individual's right to challenge a waiver agreement, is invalid under the ADEA, whether the covenant or other arrangement is part of the agreement or is contained in a separate document. A provision allowing an employer to recover costs, attorneys' fees, and/or damages for the breach of any covenant or other arrangement is not permitted.

(c) *Restitution, recoupment, or setoff.* (1) Where an employee successfully challenges a waiver agreement and prevails on the merits of an ADEA claim, courts have the discretion to determine whether an employer is entitled to restitution, recoupment, or setoff (hereinafter, ''reduction'') against the employee's damages award. These amounts never can exceed the lesser of the consideration the employee received for signing the waiver agreement or the amount recovered by the employee. Consistent with paragraph (b) of this section, an employer is not entitled to restitution, recoupment, or setoff for any costs, attorneys' fees or other amounts claimed as damages attributable to an alleged breach of such a covenant or other arrangement.

(2) In a case involving more than one plaintiff, any reduction must be applied on a plaintiff-by-plaintiff basis. No individual's award can be reduced

based on the consideration received by any other person.

(3) A nonexhaustive list of the factors that may be relevant to determine whether, or in what amount, a reduction should be granted, includes:

(i) Whether the employer apportioned the amount paid for the waiver agreement among the rights waived, if the waiver purports to waive rights other than ADEA rights. If the employer did not apportion the consideration among the rights waived, the apportionment should be done on an equitable basis;

(ii) Whether the employer's noncompliance with the ADEA waiver requirements was inadvertent or was in bad faith or fraudulent;

(iii) The nature and severity of the underlying employment discrimination in the case, including whether the employer willfully violated the ADEA. If a willful violation occurred, any deduction from the award should be made after the damages are doubled pursuant to § 7(b) of the ADEA;

(iv) The employee's financial condition;

(v) The employer's financial condition;

(vi) The effect of the reduction upon the purposes and enforcement of the ADEA and the deterrence of future violations by the employer.

(d) No employer may unilaterally abrogate its duties under a waiver agreement to any signatory, even if one or more of the signatories to the agreement or EEOC successfully challenges the validity of that agreement under the ADEA.

[FR Doc. 99–10143 Filed 4–22–99; 8:45 am]
BILLING CODE 6570–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–84–1–7341b; FRL–6324–1]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas: Motor Vehicle Inspection and Maintenance (I/M) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes approval of the State of Texas supplemental I/M SIP submittals dated May 29, 1997, June 23, 1998, and December 22, 1998, which would thereby remove the conditions from the July 11, 1997, conditional interim approval. The May 29, 1997, submittal changes the definition of ''primarily operated,'' includes a Memorandum of Agreement between the Texas Natural Resource Conservation Commission and the Texas Department of Public Safety, and removes the test-on-resale requirement from the SIP. The June 23, 1998, submittal commits the State to implementing On-Board Diagnostic testing in January 2001. The December 22, 1998, submittal is the legislative authority needed to meet the requirements of the Clean Air Act and the Federal I/M regulations. In the Rules section of this **Federal Register**, EPA is issuing direct final approval of the above SIP submittals and removing the conditions from the July 11, 1997, conditional interim approval. The Agency views this rulemaking as noncontroversial and anticipates no adverse comment. A rationale for the approval is set forth in the direct final rule. If no adverse comments are received, no further action is contemplated with regard to this proposal. 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 action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 24, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Sandra Rennie, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title located in the Rules section of this **Federal Register**.

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

Dated: March 30, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–9461 Filed 4–22–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA126–0129b FRL–6233–2]

Approval and Promulgation of Implementation Plans for Arizona and California; General Conformity Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This action proposes to approve various revisions to State Implementation Plans (SIP) which contain regulations for implementing and enforcing the general conformity rules which the EPA promulgated on November 30, 1993. EPA is proposing to approve SIP revisions which contain general conformity rules for the Arizona SIP and the California SIP for the following California Air Pollution Control Districts (APCD) and Air Quality Management Districts (AQMD): El Dorado County APCD, Great Basin Unified APCD, Monterey Bay Unified APCD, San Joaquin Valley Unified APCD, Santa Barbara County APCD, South Coast AQMD, Feather River AQMD, Placer County APCD, Sacramento Metro AQMD, Imperial County APCD, Bay Area AQMD, San Diego County APCD, Butte County AQMD, Ventura County APCD, Mojave Desert AQMD and Yolo-Solano AQMD.

The approval of these general conformity rules into the SIP will result in the SIP criteria and procedures governing general conformity determinations instead of the Federal rules at 40 CFR Part 93, Subpart B. The Federal actions by the Federal Highway Administration and Federal Transit Administration (under Title 23 U.S.C. or the Federal Transit Act) are covered by the transportation conformity rules under 40 CFR Part 51, Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act (and 40 CFR Part 93, Subpart A) and are not affected by this action.

EPA proposes to approve these SIP revisions under sections 110(k) and 176(c) of the Clean Air Act (CAA or the Act). A more detailed discussion of

today's action is provided in the Final Rule Section of this **Federal Register**.

In the Final Rules Section of this **Federal Register**, the EPA is approving these General Conformity SIP revisions as a direct final rulemaking without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If 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 on this action. Any parties interested in providing comments on this action should do so at this time.

DATES: Comments must be received in writing and postmarked by May 24, 1999.

ADDRESSES: Written comments must be submitted to: Doris Lo, Planning Office [AIR2], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012
California Air Resources Board, 2020 L Street, P.O. Box 2815, Sacramento, California 95812
El Dorado County APCD, 2850 Fairlane Court, Placerville, California 95667
Great Basin Unified APCD, 157 Short Street, Suite #6, Bishop, California 93514
Monterey Bay Unified APCD, 24580 Silver Cloud Court, Monterey, California 93940
San Joaquin Valley Unified APCD, 1999 Tuolumne Street, Suite 200, Fresno, California 93721
Santa Barbara County APCD, 26 Castillian Drive, B–23, Goleta, California 93117
South Coast AQMD, 21865 E. Copley Drive, Diamond Bar, California 91765–4182
Feather River AQMD, 463 Palora Avenue, Yuba City, California 95991–4711
Placer County APCD, 11464 B Avenue, Auburn, California 95603
Sacramento Metro AQMD, 8411 Jackson Road, Sacramento, California 95826
Bay Area AQMD, 939 Ellis Street, San Francisco, California 94109
Imperial County APCD, 150 South Ninth Street, El Centro, California 92243–2850
San Diego County APCD, 9150 Chesapeake Drive, San Diego, California 92123–1096
Butte County AQMD, 9287 Midway, Suite 1A, Durham, California 95938
Ventura County APCD, 669 County Square Drive, Ventura, California 93003
Mojave Desert AQMD, 15428 Civic Drive, Suite 200, Victorville, California 92392–2383
Yolo-Solano AQMD, 1947 Galileo Court, Suite 103, Davis, California 95616

FOR FURTHER INFORMATION CONTACT: Doris Lo, Planning Office (AIR2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1287.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final rule which in located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, General conformity, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 29, 1999.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 99–9997 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD056–3022b; FRL–6330–6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Maryland; Control of Emissions From Large Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the municipal waste combustor (MWC) 111(d)/129 plan submitted by the Air and Radiation Management Administration, Maryland Department of the Environment, on December 4, 1997, and as amended on October 7, 1998. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no 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 24, 1999.

ADDRESSES: Comments may be mailed to Makeba A. Morris, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epamail.gov. While questions may be forwarded to EPA via e-mail, comments on this proposed rule must be submitted in writing in accordance with procedures outlined above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule, of the same title, which is located in the rules section of the **Federal Register**.

Dated: April 15, 1999.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–10230 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152, 174, and 180

[OPP–300369A; FRL–6077–6]

RIN 2070–AC02

Plant-Pesticides, Supplemental Notice of Availability of Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; supplemental notice.

SUMMARY: EPA is soliciting comment on a request to substitute an alternative name for the term ''plant-pesticide.'' This document also solicits suggestions for appropriate alternative names.

DATES: Comments and data must be received on or before May 24, 1999.

ADDRESSES: Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Units I.C. and D. of this document. To ensure proper receipt by EPA, your comments and data must identify the docket control number

OPP–300369A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Hutton, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Hwy., Arlington, VA 22202; telephone: (703) 308–8260; e-mail address: hutton.phil@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Document Apply To Me?

You may be potentially affected by this document, if you conduct large scale field tests during the process of developing plant-pesticides, or if you sell or distribute plant-pesticides. Potentially affected entities may include, but are not limited to:

Category	Examples of potentially affected entities
Field testing	Universities; domestic, foreign, or multinational biotechnology companies; chemical companies; or seed companies
Selling and distributing	Domestic, foreign, or multinational biotechnology companies; chemical companies; or seed companies

This table is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities potentially affected by this document. If you have any questions regarding the applicability of this document to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' at the beginning of this document.

B. How Can I Get Additional Information or Copies of This Document or Other Documents?

1. *Electronically*. You may obtain electronic copies of this document and other documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page, select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**— Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

2. *In person or by phone*. If you have any questions or need additional information about this document, you may contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section of this document. In addition, the official record for this document, including the public version, has been established under docket control number OPP–300369A, (including comments and data submitted electronically as described in Unit I.C. of this document). This record not only includes the documents that are physically located in the docket, but also includes all the documents that are referenced in those documents. A public version of this record, including printed, paper versions of any electronic comments and data, which does not include any information claimed as Confidential Business Information (CBI) is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

C. How and To Whom Do I Submit Comments?

You may submit comments and data through the mail, in person, or electronically. To ensure proper receipt by EPA, your comments and data must identify the docket control number OPP–300369A in the subject line on the first page of your response.

1. *By mail*. Submit written comments and data 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.

2. *In person or by courier*. Deliver written comments and data to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

3. *Electronically*. Submit your comments and data electronically by e-mail to: opp-docket@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit comments and data as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic comments and data must be identified by the docket control number OPP–300369A. Electronic comments on this document may be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to the document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment and data that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. History

Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136(u)) defines *pesticide* as: ''(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (3) any nitrogen stabilizer . . . .'' The substances plants produce for protection against pests are pesticides under the FIFRA definition of pesticide, if humans intend to use these substances for ''preventing, destroying, repelling, or mitigating any pest.''

EPA recognizes the unique use pattern of these pesticides, which are produced and used in the living plant. Thus, in a November 23, 1994, **Federal Register** document (59 FR 60496), EPA suggested giving these types of pesticides a unique name, ''plant-pesticides,'' in order to distinguish them from chemical, microbial, or biochemical pesticides. Since 1994, EPA has been using the term, ''plant-

pesticide,'' to refer to these unique pesticides. EPA believes a unique name for this category of pesticides benefits the public by providing the means to readily identify regulations specific to this type of pesticide in the Code of Federal Regulations (CFR). A ''plant-pesticide'' was described in the November 23, 1994, **Federal Register** document (59 FR 60496) as ''a pesticidal substance that is produced in a living plant and the genetic material necessary for production of the substance, where the substance is intended for use in the living plant.''

EPA received several letters during the official comment period for the November 23, 1994, **Federal Register** document (59 FR 60496) that expressed concern about the name, ''plant-pesticide.'' These comments expressed the opinion that the term ''pesticide'' has a negative connotation, and requested that EPA consider another name.

III. Request for Comment

EPA is requesting comment on the advisability of substituting another name for the term, ''plant-pesticide.'' EPA also requests suggestions for appropriate alternative names, as no alternative names were suggested during the official comment period. Alternative names may be names in common scientific use, e.g., ''plant defense compounds,'' or names created specifically to describe this type of pesticide, e.g., ''caedeflors'' or ''floragens.'' EPA, specifically, requests comment on whether the alternative name, ''plant-expressed protectants,'' would be an acceptable name for this category of pesticides. EPA is only seeking comments on the advisability of substituting another name for the term ''plant-pesticides'' and on appropriate alternative names. The Agency is not reopening the comment period on previously published **Federal Register** documents dealing with plant-pesticides as described in Unit IV. of this document.

If EPA changes the name describing the pesticides currently termed, ''plant-pesticides,'' the change will only affect the name. It will not affect the status of the pesticidal substance or the genetic material necessary to produce it. These will still be pesticides under FIFRA section 2(u). Similarly, a change of name will not affect any regulatory requirements.

IV. Sources of Additional Information

Commenters, who wish to obtain further information on plant-pesticides and on EPA's approach to them, should consult the documents listed in this unit, as well as the dockets for these documents. In the November 23, 1994, **Federal Register**, EPA published a package of five separate documents (59 FR 60496, 60519, 60535, 60542, and 60545) (FRL–4755–2, FRL–4755–3, FRL–4758–8, FRL–4755–5, and FRL–4755–4) which described EPA's policy and proposals for plant-pesticides. On July 22, 1996, EPA published a supplemental document in the **Federal Register** (61 FR 37891) (FRL–5387–4) on one aspect of its November 23, 1994, **Federal Register** documents; i.e., how the concept of inert ingredient related to plant-pesticides. On May 16, 1997, EPA published in the **Federal Register** three supplemental documents (62 FR 27132, 27142, and 27149) (FRL–5717–2, FRL–5716–7, and FRL–5715–6) to provide the public an opportunity to comment on EPA's analysis of how certain amendments to the Federal Food, Drug, and Cosmetic Act (FFDCA) and FIFRA by the Food Quality Protection Act (FQPA) apply to EPA's proposed exemptions under FFDCA section 408 for certain categories of residues of plant-pesticides and proposed exemptions under FIFRA for certain categories of plant-pesticides.

Included in the dockets cited in this unit are:

1. Relevant **Federal Register** documents, such as the June 26, 1986, policy statement issued by the Office of Science and Technology Policy, the ''Coordinated Framework for Regulation of Biotechnology'' (51 FR 23302).

2. All public comments received in response to all of the documents cited in this unit, including comments received after the close of the official public comment periods for the documents, such as the report from 11 professional scientific societies entitled ''Appropriate Oversight for Plants with Inherited Traits for Resistance to Pests.''

3. Reports of the scientific advisory committees on plant-pesticides, such as the January 21, 1994, joint meeting of a Subpanel of the FIFRA Scientific Advisory Panel and a Subcommittee of the EPA Biotechnology Science Advisory Committee.

4. All support documents and reports.

5. Published literature cited in the documents.

V. Regulatory Assessment Requirements

A. Certains and Executive Orders

This supplemental document only seeks comment on an alternative name for the term ''plant-pesticide.'' As such, this document does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104–4), or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

B. Executive Order 12875

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

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

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal

government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's supplemental document 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 supplemental document.

List of Subjects in Parts 152, 174, and 180

Environmental protection, Agricultural commodities, Pesticides and pests, Plants.

Dated: April 16, 1999.

Susan Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–10237 Filed 4–22–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP–300847; FRL–6076–4]

RIN 2070–AC18

Bentazon, Cyanazine, Dicrotophos, Diquat, Ethephon, Oryzalin, Oxadiazon, Picloram, Prometryn, and Trifluralin; Proposed Revocations and Changes in Terminology

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed Rule.

SUMMARY: This document proposes to revoke specific tolerances for residues of the herbicides bentazon, cyanazine, diquat, oxadiazon, picloram, prometryn, and trifluralin; the plant growth regulator ethephon; and the insecticide dicrotophos. EPA expects to determine whether any individuals or groups want to support these tolerances. In addition, EPA is also proposing to revise commodity terminology for oryzalin, bentazon, diquat, ethephon, picloram, and trifluralin to conform to current Agency practice. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA). By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 29 tolerances and/or exemptions, which would be counted among reassessments made toward the August, 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments must be received on or before June 22, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit IV of the SUPPLEMENTARY INFORMATION section of this notice. Be sure to identify the appropriate docket number [OPP–300847].

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Mall #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Is the Progress of Tolerance Reassessment?

By law, EPA is required to reassess 33% of the tolerances in existence on August 2, 1996, by August 1999, or about 3,200 tolerances. The regulatory actions proposed in this document pertain to the proposed revocation of 29 tolerances and/or exemptions, which would be counted among reassessments made toward the August, 1999 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

II. Does this Notice Apply to Me?

You may be affected by this notice if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Pesticide reregistration and other actions [see FIFRA section 4(g)(2)] include tolerance and exemption reassessment under FFDCA section 408. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of Potentially Affected Entities
Agricultural Stakeholders.	Growers/Agricultural Workers Contractors [Certified/ Commercial Applicators, Handlers, Advisors, etc.] Commercial Processors Pesticide Manufacturers User Groups Food Consumers
Food Distributors	Wholesale Contractors Retail Vendors Commercial Traders/Importers
Intergovernmental Stakeholders.	State, Local, and/or Tribal Government Agencies
Foreign Entities	Governments, Growers, Trade Groups

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. If you have any questions regarding the applicability of this action to a particular entity, you can consult with the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

III. How Can I Get Additional Information or Copies of this or Other Support Documents?

A. Electronically

You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''**Federal Register** - Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/homepage/fedrgstr/.

B. In Person or by Phone

If you have any questions or need additional information about this action, please contact the technical person

identified in the ''FOR FURTHER INFORMATION CONTACT'' section. In addition, the official record for this notice, including the public version, has been established under docket control number [OPP–300847], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is 703–305–5805.

IV. How Can I Respond to this Notice?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket number (i.e., ''[OPP–300847]'') in your correspondence.

1. *By mail.* Submit written comments, identified by the docket control number [OPP–300847], to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments, identified by the docket control number [OPP–300847], to: Public Information and Records Integrity Branch, Office of Pesticide Programs, U.S. Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically by E-mail to: oppt.ncic@epa.gov. Do not submit any information electronically that you consider to be CBI. Submit electronic comments in ASCII file format avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the appropriate docket control number [OPP–300847]. You may also file electronic comments and data online at many Federal Depository Libraries.

B. How Should I Handle CBI Information in My Comments?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

V. What Is a ''Tolerance''?

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 et seq., as amended by the FQPA of 1996, Pub. L. 104–170, authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. 21 U.S.C. 346(a). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be ''adulterated,'' you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under section 3, section 5, or section 18 of FIFRA (7 U.S.C. et seq.). Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

VI. Why Is EPA Proposing the Tolerance Actions Discussed below?

EPA is proposing a number of tolerance commodity terminology changes to conform to current Agency practice, as discussed below. EPA is also proposing specific tolerance revocations to address canceled pesticides and uses of pesticides.

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. EPA has historically expressed a concern that retention of tolerances that are not necessary to cover residues in or on legally treated foods has the potential to encourage misuse of pesticides within the United States. However, in accordance with FFDCA section 408, EPA will not revoke any tolerance or exemption proposed for revocation if any person demonstrates a need for the retention of the tolerance, and if retention of the tolerance will meet the tolerance standard established under FQPA. Generally, interested parties support the retention of such tolerances in order to permit treated commodities to be legally imported into the United States, since raw agricultural commodities or processed food or feed commodities containing pesticide residues not covered by a tolerance or exemption are considered to be adulterated.

Tolerances and exemptions established for pesticide chemicals with FIFRA registrations cover residues in or on both domestic and imported commodities. To retain these tolerances and exemptions, EPA must make a finding that the tolerances and exemptions are safe. To make this safety finding, EPA needs data and information indicating that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide residues covered by the tolerances and exemptions.

For tolerances without U.S. registrations, EPA requires the same toxicology and residue chemistry data needed to support U.S. food-use registrations. For import tolerances, EPA applies these data requirements on a case-by-case basis to account for specific growing conditions in foreign countries. (See 40 CFR part 158 for EPA's data requirements to support domestic use of a pesticide and the establishment and maintenance of a tolerance. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.) In most cases, EPA also requires residue chemistry data (crop field trials) that are representative of growing conditions in exporting countries in the same manner that EPA requires representative residue chemistry data from different U.S. regions to support domestic use of a pesticide and any resulting tolerance(s)

or exemption(s). Good Laboratory Practice (GLP) requirements for studies submitted in support of tolerances and exemptions for import purposes only are the same as those for domestic purposes; i.e., the studies are required to either fully meet GLP standards, or have sufficient justification presented to show that deviations from GLP standards do not significantly affect the results of the studies.

VII. Which Pesticides Are Covered by this Action?

Bentazon (trade name Basagran) is a selective, contact, early postemergent herbicide registered for use on such food and feed crops as alfalfa, beans, corn, peanuts, peas, pepper, peppermint, rice, sorghum, soybeans, and spearmint. Bentazon is also registered for use on ornamental lawns and turf. It is manufactured by BASF Corporation.

2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl]amino]-2-methylpropionitrile (Cyanazine; trade names Bladex, Cy-Pro, etc.) is a selective herbicide used to control annual broadleaf weeds, carpetweed, chickweed, corn spurry, mayweed, pigweed, and ragweed. It is manufactured by E.I. DuPont de Nemours and Company, Incorporated and Griffin Corporation.

Dimethyl phosphate of 3-hydroxy-*N*,*N*-dimethyl-cis-crotonamide (Dicrotophos; trade name Bidrin) is an insecticide used to control aphids, boll weevils, grasshoppers, gypsy moths, leafhoppers, and thrips. It is manufactured by Amvac Chemical Corporation.

Diquat (trade name Diquat Herbicide) is a non-selective contact herbicide, desiccant, and plant growth regulator for use as a general herbicide of broadleaf and grassy weeds in terrestrial non-crop and aquatic areas; as a desiccant in seed crops and potatoes; and for tassel control and spot weed control in sugarcane. Diquat is also used for aquatic, indoor, greenhouse, and terrestrial food crops; aquatic non-food industrial, outdoor, greenhouse, and residential; terrestrial feed crops, and outdoor residential uses. It is manufactured by Zeneca Ag Products.

Ethephon (trade name Ethrel) is a plant growth regulator registered for use on a number of terrestrial food, feed, and nonfood crops, greenhouse nonfood crops, and outdoor residential plants. It is manufactured by Rhone-Poulenc Ag Company and Cedar Chemical Corporation.

Oryzalin (trade name Surflan) is a herbicide used to control annual grasses and broadleaf weeds on berries, vine and orchard crops, Christmas tree plantations, commercial/industrial and recreation area lawns, golf course turf, residential lawns and turf, ornamental and/or shade trees, nonagricultural rights-of-way/fencerows, nonagricultural uncultivated and industrial areas, power stations, paths/patios and paved areas. Oryzalin is also used to control herbaceous plants, woody shrubs, and vines. It is manufactured by DowElanco.

Oxadiazon (trade name Ronstar) is a herbicide used to control annual broadleaf weeds, barnyardgrass, carpetgrass, carpetweed, crabgrass, goosegrass, and quackgrass. It is manufactured by Rhone-Poulenc Ag Company.

Picloram is a systemic herbicide used to control deeply rooted herbaceous weeds and woody plants in rights-of-ways, forestry, rangelands, pastures, and small grains. It is manufactured by DowElanco.

Prometryn (trade names Caparol, Prometryne, etc.) is a herbicide used to control annual broadleaf weeds, barnyardgrass, carpetweed, chickweed, cottonweed, crabgrass, foxtail, goosegrass, nutsedge, pigweed, and ragweed. It is manufactured by Novartis Crop Protection, Inc. and Verolit Chemical Manufacturers Limited.

Trifluralin (trade names Treflan, Triflurex, etc.) is a preemergent herbicide used to control annual grasses and broadleaf weeds on a variety of food crops and is also currently registered for nonfood uses, including residential use sites. It is manufactured by DowElanco, Makhteshim-Agan, Industria Prodotti Chimici S.P.A. (I.Pi.Ci.), Tri Corporation, and Albaugh Inc.

VIII. What Action Is Being Taken?

This notice proposes revocation of FFDCA tolerances for residues of the herbicides bentazon, 2-[[4-chloro-6-(ethylamino)-*s*-triazin-2-yl]amino]-2-methylpropionitrile (cyanazine), diquat, oxadiazon, picloram, prometryn, and trifluralin; the plant growth regulator ethephon, and the insecticide dimethyl phosphate of 3-hydroxy-*N*,*N*-dimethyl-cis-crotonamide (dicrotophos) in or on commodities listed in the regulatory text because these pesticides are not registered under FIFRA for uses on the commodities. The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person in comments on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Changes in the commodity terminology and definitions are proposed for the aforementioned active ingredients and oryzalin, which does not have tolerance revocations proposed in this document, to conform to current Agency practice. These proposed changes are in accordance with the revised Crop Group Regulation (40 CFR 180.41) and the updated Table I ''Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops'' (August, 1996) in the Residue Chemistry Test Guidelines: OPPTS 860.1000 (EPA 721–C–96–169). Table I contains data on both crops and livestock diets, and lists feed commodities considered significant in livestock diets. Significant feedstuffs account for more than 99 percent of the available annual tonnage (on-a dry-matter basis) of feedstuffs used in the domestic production of more than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs. EPA has devised criteria to include or exclude feedstuffs from Table I and sets tolerances for significant feedstuffs. Tolerances are not set for feedstuffs which are neither significant nor a human food. Pesticide residues on such feedstuffs are governed by tolerances on the commodity from which they are derived (62 FR 66020, December 17, 1997). These changes are technical in nature and have no effect on the scope of the tolerance.

1. *Bentazon.* EPA proposes to revoke the tolerance for beans, lima (succulent) in 40 CFR 180.355(a) because residues in/on lima beans are covered under the tolerance for (bean, succulent). EPA proposes to revoke tolerances for mint, spent hay and peanuts, forage because they are no longer considered to be significant livestock feed commodities. According to Table I, mint, spent hay and peanuts, forage are insignificant contributors to the livestock diet. Terminology changes for beans (except soybeans), dried to bean, dry, seed; beans (exc. soybeans), dried, vine hays to cowpea, hay; beans (exc. soybeans), forage to cowpea, forage; beans, succulent to bean, succulent; Bohemian chili peppers to pepper, nonbell; cattle, mbyp to cattle, meat byproducts; corn, fodder to corn, field, stover; corn, forage to corn, field, forage; corn, grain to corn, field, grain; and corn, pop, grain; corn, fresh (inc. sweet K+CWHR) to corn, sweet, kernel plus cob with husks removed; eggs to egg; peanuts to peanut; peanuts, hay to peanut, hay; peas (dried) to pea, dry, seed; peas (dried), vine hays to pea, field, hay; peas, forage to pea,

field, vines; peas, succulent to pea, succulent; poultry, mbyp to poultry, meat byproducts; and rice to rice, grain are proposed in the regulatory text.

2. *2-[[4-chloro-6-(ethylamino)-s-triazin-2-yl]amino]-2-methylpropionitrile; Cyanazine*. EPA initiated a Special Review of cyanazine in November, 1994, based on concerns that cyanazine may pose a risk of inducing cancer in humans from dietary, occupational, and residential exposure. On August 2, 1995, E. I. DuPont de Nemours Co., Inc. (DuPont) voluntarily proposed to amend its cyanazine registrations to incrementally reduce cyanazine maximum application rates in 1997, 1998, and 1999, and to terminate production for use in the United States by December 31, 1999. DuPont would modify the labels of cyanazine formulated end use products released for shipment by the registrant after July 25, 1996. Those modified labels would specify the maximum application rates during the phase-out, inform the public of the existing stocks provisions, and require the use of application equipment with enclosed cabs for applicators beginning in 1998. On November 8, 1995 (60 FR 56333) (FRL–4984–1), EPA announced receipt of a request from Ciba Geigy Corporation to voluntarily cancel its only product containing cyanazine effective February 6, 1996. After EPA initiated Special Review, Griffin Corporation had filed an application to register certain cyanazine end use products and subsequently agreed to the terms and conditions of registration that were proposed by DuPont. EPA granted Griffin's applications and issued conditional registrations subject to those same terms and conditions. On March 1, 1996 (61 FR 8186) (FRL–5352–6), EPA issued a notice of preliminary determination to terminate Special Review and a notice of receipt of requests for voluntary cancellation of cyanazine registrations from DuPont and from Griffin Corporation.

In the **Federal Register** of July 25, 1996 (61 FR 39023)(FRL–5385–7) , EPA announced a final determination to terminate the cyanazine Special Review. In the same notice, EPA accepted requests for the voluntary cancellation of cyanazine registrations effective December 31, 1999 and ordered the cancellations to take effect on January 1, 2000, authorized sale and distribution of such products in the channels of trade in accordance with their labels through September 30, 2002, and prohibited the use of cyanazine products after December 31, 2002. Therefore, EPA proposes to revoke the tolerances for cyanazine in 40 CFR 180.307 with an expiration/revocation date of April 1, 2003, to allow any treated commodities to pass through the channels of trade.

Terminology changes in 40 CFR 180.300(a) for corn, fodder to corn, field, stover; corn, forage to corn, field, forage; corn, fresh (including sweet K+CWHR) to corn, sweet, kernel plus cob with husks removed; corn, grain to corn, field, grain; and corn, pop, grain; cottonseed to cotton, undelinted seed; sorghum, fodder to sorghum, grain, stover; sorghum, forage to sorghum, forage, forage; sorghum, grain to sorghum, grain, grain; and wheat, forage (green) to wheat, forage are proposed in the regulatory text.

3. *Dimethyl phosphate of 3-hydroxy-N,N-dimethyl-cis-crotonamide; Dicrotophos*. EPA proposes to revoke the tolerance for pecans in 40 CFR 180.299. No active registration exists.

4. *Diquat*. EPA proposes to revoke the tolerance for sugarcane in 40 CFR 180.226(a) because no registered use exists. Also, since the Agency no longer requires tolerances for residues in potable water (47 FR 25746, December 15, 1982), the tolerance for diquat has been replaced with a designated maximum contaminant level (MCLG) at 0.02 mg/L for residues of diquat dibromide in potable water (57 FR 31776, July 17, 1992). Therefore, EPA proposes to revoke the tolerance for diquat in potable water in 40 CFR 185.2500(a) and the tolerance for diquat in potable water in § 185.2500(b). In § 180.226(a), the table commodity terminology is changed for potatoes to potato; and in § 180.226(b), the table commodity terminology is changed for avocados to avocado; cottonseed to cotton, undelinted seed; cucurbits to vegetable, cucurbit, group; fruits, citrus to fruit, citrus, group; fruits, pome to fruit, pome, group; fruits, stone to fruit, stone, group; grasses, forage to grass, forage; hops to hop, dried cones; legumes, forage to vegetable, foliage of legume, group; nuts to nut, tree, group; sugarcane to sugarcane, cane; vegetables, fruiting to vegetable, fruiting, group; and vegetables, root crop to vegetable, root and tuber, group. In § 185.2500, the terminology is changed for processed potatoes (includes potato chips) to potato, granules/flakes and potato, chips. These terminology changes are proposed in the regulatory text.

5. *Ethephon*. EPA proposes to revoke the tolerances for filberts, lemons, tangerines, and tangerine hybrids in 40 CFR 180.300(a) because no registered uses exist. EPA proposes to revoke the tolerances for pineapple fodder, and pineapple forage, because they are no longer considered raw agricultural commodities. Terminology changes in 40 CFR 180.300(a) for figs to fig; goats, fat to goat, fat; horses, meat to horse, meat; macadamia nuts to nut, macadamia; pineapples to pineapple; pumpkins to pumpkin; and tomatoes to tomato are given in the regulatory text. Also, terminology changes in 40 CFR 185.2700 for barley, milling fractions, except flour to barley, pearled barley and barley, bran; and wheat, milling fractions, except flour to wheat, bran; wheat, middlings; and wheat, shorts; and in § 186.2700(a) for wheat, milling fractions, except flour to wheat, milled byproducts are proposed in the regulatory text.

6. *Oryzalin*. The terminology revision in 40 CFR 180.304(a) for figs to fig; kiwifruits to kiwifruit; nuts to nut, tree, group; and olives to olive are proposed in the regulatory text.

7. *Oxadiazon*. The tolerance for rice straw in 40 CFR 180.346 is being proposed for revocation because no registered use exists.

8. *Picloram*. The tolerances for flax, seed and flax, straw in 40 CFR 180.292 are being proposed for revocation because no registered uses exist. Terminology changes for cattle, mbyp (exc. kidney and liver) to cattle, meat byproducts except kidney and liver; eggs to egg; goats, fat to goat, fat; goats, mbyp (exc. kidney and liver) to goat, meat byproducts except kidney and liver; goats, meat to goat, meat; grasses, forage to grass, forage; hogs, mbyp (exc. kidney and liver) to hog, meat byproducts except kidney and liver; horses, mbyp (exc. kidney and liver) to horse, meat byproducts except kidney and liver; oats, green forage to oat, forage; sheep, mbyp (exc. kidney and liver) to sheep, meat byproducts except kidney and liver; and wheat, green forage to wheat, forage are proposed in the regulatory text.

9. *Prometryn*. EPA is proposing to revise the terminology for cotton in 40 CFR 180.222(a) to cotton, forage and to revoke the tolerance because cotton, forage is no longer considered a significant livestock feed commodity according to Table I.

10. *Trifluralin*. In 40 CFR 180.207 EPA proposes to remove the ''(N)'' designation from all entries to conform to current Agency administrative practice (''N'' designation means negligible residues). EPA proposes to revoke the tolerance for barley, fodder because barley, fodder is no longer considered a raw agricultural commodity. Terminology changes for carrots to carrot, roots; citrus fruits to fruit, citrus, group; corn, grain (exc. popcorn) to corn, field, grain; corn, grain (exc. popcorn), forage to corn,

field, forage; corn, grain (exc. popcorn), fodder to corn, field, stover; cottonseed to cotton, undelinted seed; cucurbits to vegetable, cucurbit, group; grain, crops (except fresh corn and rice grain) to grain, crops, except corn, sweet and rice grain; mung bean sprouts to bean, mung, sprouts; nuts to nut, tree, group; peanuts to peanut; peppermint, hay to peppermint, tops; rape, seed to rapeseed, seed; spearmint, hay to spearmint, tops; stone fruits to fruit, stone, group; sugarcane to sugarcane, cane; sunflower seed to sunflower, seed; upland cress to cress, upland; and vegetables, fruiting to vegetable, fruiting, group are proposed in the regulatory text.

IX. When Do These Actions Become Effective?

With the exception of cyanazine, for which EPA proposes an expiration/revocation date of April 1, 2003, EPA proposes that these actions become effective 90 days following publication of a final rule in the **Federal Register**. EPA has proposed delaying the effectiveness of these revocations for 90 days following publication of a final rule to ensure that all affected parties receive notice of EPA's action. For this particular proposed rule, with the exception of cyanazine, the actions will affect uses which have been canceled for more than a year. This should ensure that commodities have cleared the channels of trade. Therefore, EPA believes revocation after a 90–day period following publication of a final rule should be reasonable. However, if EPA is presented with information that there are existing stocks still available for use, and that information is verifiable, then EPA will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks, please submit comments as described in Unit IV of the SUPPLEMENTARY INFORMATION section of this notice.

Any commodities listed in the regulatory text of this notice that are treated with the pesticides subject to this notice, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that, (1) the residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

X. What Can I Do If I Wish the Agency to Maintain a Tolerance That the Agency Proposes to Revoke?

In addition to submitting comments in response to this notice, you may also submit an objection after EPA issues a final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, the issues resolved in the final rule cannot be raised again in any subsequent proceedings.

This proposed rule provides a comment period of 60 days for any interested person to demonstrate a need for retaining a tolerance, if retention of the tolerance will meet the tolerance standard established under FQPA. If EPA receives within that 60–day period a comment to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the *Federal Register* under FFDCA section 408(f) if needed. The order would specify the data needed, the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FIFRA or FFDCA.

XI. How Do the Regulatory Assessment Requirements Apply to this Proposed Action?

A. Is this a ''Significant Regulatory Action''?

No. Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action''. The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are not ''significant'' unless the action involves the revocation of a tolerance that may result in a substantial adverse and material affect on the economy. In addition, this proposed action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this proposed action is not an economically significant regulatory action as defined by Executive Order 12866. Nonetheless, environmental health and safety risks to children are considered by the Agency when determining appropriate tolerances. Under FQPA, EPA is required to apply an additional 10–fold safety factor to risk assessments in order to ensure the protection of infants and children unless reliable data supports a different safety factor.

B. Does this Proposed Action Contain Any Reporting or Recordkeeping Requirements?

No. This proposed action does not impose any information collection requirements subject to OMB review or approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

C. Does this Proposed Action Involve Any ''Unfunded Mandates''?

No. This proposed action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

D. Do Executive Orders 12875 and 13084 Require EPA to Consult with States and Indian Tribal Governments Prior to Taking the Action Proposed in this Document?

No. Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the 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 proposed rule does not create an unfunded Federal mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

Under Executive Order 13084, entitled *Consultation and Coordination*

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

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

E. Does this Proposed Action Involve Any Environmental Justice Issues?

No. This proposed rule does not involve special considerations of environmental-justice related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

F. Does this Proposed Action Have a Potentially Significant Impact on a Substantial Number of Small Entities?

No. The Agency has certified that tolerance actions, including the tolerance proposed actions in this document, are not likely to result in a significant adverse economic impact on a substantial number of small entities. The factual basis for the Agency's determination, along with its generic certification under section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), appears at 63 FR 55565, October 16, 1998 (FRL–6035–7). This generic certification has been provided to the Chief Counsel for Advocacy of the Small Business Administration.

G. Does this Proposed Action Involve Technical Standards?

No. This tolerance proposed action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

H. Are There Any International Trade Issues Raised by this Proposed Action?

The proposed revocations in this document will not become final if comments are received which demonstrate the need to maintain the tolerance to cover residues in or on imported commodities. However, data must be submitted to support the continued tolerance. The U.S. EPA is developing a guidance concerning submissions for import tolerance support. This guidance will be made available to interested persons.

I. Is this Proposed Action Subject to Review under the Congressional Review Act?

No. This proposed action is not a final rule. Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), only final rules must be submitted to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**.

List of Subjects

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: April 12, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180, 185, and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.207 [Amended]

b. Section § 180.207 is amended as follows:

1. In the table to paragraph (a) remove the ''(N)'' designation from all entries and remove the entry for ''barley, fodder''. Also, remove the terms listed in the first column below and add in their place in alphabetical order the terms listed in the second column:

Remove	Add
Carrots	Carrot, roots
Citrus fruits	Fruit, citrus, group
Corn, grain (exc. popcorn).	Corn, field, grain
Corn, grain (exc. popcorn), fodder.	Corn, field, stover
Corn, grain (exc. popcorn) forage.	Corn, field, forage
Cottonseed	Cotton, undelinted seed
Cucurbits	Vegetable, cucurbit, group
Grain, crops (except fresh corn and rice grain).	Grain, crops, except corn, sweet and rice grain
Mung bean sprouts	Bean, mung, sprouts
Nuts	Nut, tree, group
Peanuts	Peanut
Peppermint, hay	Peppermint, tops
Rape, seed	Rapeseed, seed
Spearmint, hay	Spearmint, tops
Stone fruits	Fruit, stone, group
Sugarcane	Sugarcane, cane
Sunflower seed	Sunflower, seed
Upland cress	Cress, upland
Vegetables, fruiting	Vegetable, fruiting, group

§ 180.222 [Amended]

c. In § 180.222, in paragraph (a), the table is amended by removing the entry for ''cotton.''

180.226 [Amended]

d. Section 180.226 is amended as follows:

1. In paragraph (a), the table is amended by removing the entry for ''sugarcane'' and revising the term ''potatoes'' to read ''potato''.

2. In the table to paragraph (b) remove the terms listed in the first column below and add in their place in alphabetical order the terms listed in the second column below:

Remove	Add
Avocados	Avocado
Cottonseed	Cotton, undelinted seed
Cucurbits	Vegetable, cucurbit, group
Fruits, citrus	Fruit, citrus, group
Fruits, pome	Fruit, pome, group
Fruits, stone	fruit, stone, group
Grasses, forage	Grass, forage
Hops	Hop, dried cones
Legumes, forage	Vegetable, foliage of legume, group
Nuts	Nut, tree, group
Sugarcane	Sugarcane, cane
Vegetables, fruiting	Vegetable, fruiting, group
Vegetables, root crop	Vegetable, root and tuber, group.

§ 180.292 [Amended]

e. In § 180.292, in the table to paragraph (a)(1) remove the entries for ''flax, seed''; and ''flax, straw'' and remove the entries listed in the first column of the table below and add the entries listed in the second column in place thereof in alphabetical order.

Remove	Add
Cattle, mbyp (exc. kidney and liver).	Cattle, meat byproducts except kidney and liver
Eggs	Egg
Goats, fat	Goat, fat
Goats, mbyp (exc. kidney and liver).	Goat, meat byproducts except kidney and liver
Goats, meat	Goat, meat
Grasses, forage	Grass, forage
Hogs, mbyp (exc. kidney and liver).	Hog, meat byproducts except kidney and liver
Horses, mbyp (exc. kidney and liver).	Horse, meat byproducts except kidney and liver
Oats, green forage	Oat, forage
Sheep, mbyp (exc. kidney and liver).	Sheep, meat byproducts except kidney and liver
Wheat, green forage	Wheat, forage

§ 180.299 [Amended]

f. In § 180.299, remove the entry for ''pecans.''

180.300 [Amended]

g. In § 180.300(a) remove from the table the entries for filberts; lemons; pineapple fodder; pineapple forage; tangerines, and tangerine hybrids and remove the terms listed in the first column of the table below and add the term listed in the second column in place thereof in alphabetical order.

Remove	Add
Figs	Fig
Goats, fat	Goat, fat
Horses, meat	Horse, meat
Macadamia nuts	Nut, macadamia
Pineapples	Pineapple
Pumpkins	Pumpkin
Tomatoes	Tomato

h. Section 180.304 is amended as follows:

1. By revising paragraph (a) introductory text to read as follows:

§ 180.304 Oryzalin; tolerances for residues.

(a) Tolerances are established for residues of the herbicide oryzalin (3,5-dinitro-N^4,N^4-dipropylsulfanilamide) in or on the following raw agricultural commodities:

* * * * *

§ 180.304 [Amended]

2. In the table to § 180.304(a) remove the terms listed in the first column below and add in place thereof in alphabetical order the terms listed in the second column.

Remove	Add In place thereof
Figs	Fig
Kiwifruits	Kiwifruit
Nuts	Nut, tree, group
Olives	Olive

i. In § 180.307 the table is revised to read as follows:

§ 180.307 2-[[4-chloro-6-(ethylamino)-s-triazin-2-yl]amino]-2-methylpropionitrile; tolerances for residues.

* * * * *

Commodity	Parts per million	Expiration/ revocation date
Corn, field, forage	0.2	4/1/03
Corn, field, grain	0.05	4/1/03
Corn, field, stover	0.2	4/1/03
Corn, pop, grain	0.05	4/1/03
Corn, sweet, kernel plus cob with husks removed	0.05	4/1/03
Cotton, undelinted seed	0.05	4/1/03
Sorghum, forage, forage	0.05	4/1/03
Sorghum, grain, grain	0.05	4/1/03
Sorghum, grain, stover	0.05	4/1/03
Wheat, forage	0.1	4/1/03
Wheat, grain	0.1	4/1/03
Wheat, straw	0.1	4/1/03

§ 180.346 [Amended]

j. In § 180.346(a) by removing the entry for ''rice straw.''

§ 180.355 [Amended]

k. Section 180.355 is amended as follows:

1. In the table to paragraph (a), remove the entries for ''beans, lima (succulent)''; ''mint, spent hay'' and ''peanuts, forage''; and remove the terms listed in the first column below and add in place thereof in alphabetical order the terms listed in the second column.

Remove	Add
Beans (except soybeans), dried.	Bean, dry, seed
Beans (exc. soybeans), dried, vine hays.	Cowpea, hay
Beans (exc. soybeans), forage.	Cowpea, forage
Beans, succulent	Bean, succulent
Bohemian chili peppers.	Pepper, nonbell
Cattle, mbyp	Cattle, meat byproducts
Corn, fodder	Corn, field, stover
Corn, forage	Corn, field, forage
Corn, fresh (inc. sweet K+CWHR).	Corn, sweet, kernel plus cob with husks removed
Corn, grain	Corn, field, grain
Eggs	Egg
Peanuts	Peanut
Peanuts, hay	Peanut, hay
Peas (dried)	Pea, dry, seed
Peas (dried), vine hays.	Pea, field, hay
Peas, forage	Pea, field, vines
Peas, succulent	Pea, succulent
Poultry, mbyp	Poultry, meat byproducts
Rice	Rice, grain

2. Section 180.355 is further amended by adding alphabetically an entry to the table in paragraph (a) for corn, pop, grain to read as follows:

§ 180.355 Bentazon; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * *	*
Corn, pop, grain	0.05
* * * *	*

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 185.2500 to read as follows:

§ 185.2500 Diquat.

A food additive regulation of 0.5 part per million is established for residues of diquat in potato, granules/flakes and potato, chips.

§ 185.2700 [Amended]

c. In § 185.2700, the table is revised to read as follows:

§ 185.2700 Ethephon.

* * * * *

Food	Parts per million
Barley, pearled barley and barley, bran.	5.0
Sugarcane, molasses	1.5
Wheat, bran, wheat, middlings, and wheat, shorts.	5.0

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 186.2700 [Amended]

b. In § 186.2700(a) by revising the term, ''wheat, milling fractions, except flour'' to read ''wheat, milled byproducts''.

[FR Doc. 99–9725 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6330–8]

Wyoming: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of Public Comment Period on Proposed Rule.

SUMMARY: We are reopening the public comment period on the proposed rule for Wyoming: Final Authorization of State Hazardous Waste Management Program Revision published on February 25, 1999, which proposed to grant final authorization for the first revision to Wyoming's Hazardous Waste Rules. Due to adverse comment received and the passage of Senate File 147 (SF 147), we are reevaluating the State's program to ensure that it meets the requirements for authorization of a Resource Conservation and Recovery Act (RCRA) hazardous waste program.

DATES: Written comments on this proposed rule must be received on or before July 22, 1999. If there is sufficient public interest, a public hearing will be held no earlier than June 22, 1999. Requests to present testimony at a hearing must be received on or before June 7, 1999.

ADDRESSES: Send written comments and requests for public hearing to Kris Shurr (8P–HW), EPA, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can examine copies of the materials submitted by Wyoming at the following locations: EPA Region VIII, from 8:00 AM to 4:00 PM, at the above address, contact: Kris Shurr, phone number: (303) 312–6312; or Wyoming Department of Environmental Quality (WDEQ), from 8:00 AM to 5:00 PM, 122 W. 25th Street, Cheyenne, Wyoming 82002, contact: Marisa Latady, phone number: (307) 777–7541.

FOR FURTHER INFORMATION CONTACT: Kris Shurr at the above address and phone number.

SUPPLEMENTARY INFORMATION: We are reopening the public comment period for the proposed rule published at 46 FR 09295 on February 25, 1999, which proposed to grant final authorization for the first revision to Wyoming's Hazardous Waste Rules. The previous public comment period for this proposed rule closed on March 29, 1999.

Due to the adverse comment received and the passage of SF 147, we are asking for additional comments. SF 147 modifies the corrective action requirements and provides for ''innocent owner'' exemptions from environmental liability. We are inviting the public to provide comments. In addition, if there is sufficient interest, we will hold a public hearing to accept verbal and/or written comments. Anyone wishing to present testimony must send us a request using the information provided in the **DATES** and **ADDRESSES** sections of this notice. All comments and testimony will be addressed in a subsequent final action.

Dated: April 16, 1999.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 99–10232 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6329–8]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 28

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'' or ''the Act''), requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add 12 new sites to the NPL and reproposes one already proposed site. All sites are being proposed to the General Superfund section of the NPL.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before June 22, 1999.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, ''Public Review/Public Comment,'' of the Supplementary Information portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. What Are CERCLA and SARA?

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

B. What Is the NCP?

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

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

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

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

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The

HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

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

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on January 19, 1999 (64 FR 2941).

E. What Happens to Sites on the NPL?

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

F. How Are Site Boundaries Defined?

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

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

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

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

EPA regulations provide that the ''nature and extent of the threat presented by a release'' will be determined by a Remedial Investigation/Feasibility Study (''RI/FS'') as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

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

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

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of April 5, 1999, the Agency has deleted 184 sites from the NPL.

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

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while

portions of the site may have been cleaned up and available for productive use. As of April 5, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

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

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 184 sites that have been deleted from the NPL, 175 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 424 sites also on the NPL CCL. Thus, as of April 5, 1999, the CCL consists of 599 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule (including the reproposed site) are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Jim Kyed, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA Waste Management Records Center, HRC–CAN–7, J.F. Kennedy Federal Building, Boston, MA 02203–2211; 617/573–9656

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PMH52, Philadelphia, PA 19103; 215/814–5364.

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional Dockets?

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an ''as received'' basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Additions to the NPL

With today's proposed rule, EPA is proposing to add 12 new sites to the NPL, all to the General Superfund section of the NPL. The sites are being proposed based on HRS scores of 28.50 or above. The sites being proposed in this rule are presented in Table 1 which follows this preamble.

B. Reproposal of One Site

The Hanlin-Allied-Olin site in Moundsville, West Virginia is being reproposed in this proposed rule. New technical information became available following its original proposal on October 2, 1995 (60 FR 51390). Thus, EPA is reproposing the site with a new HRS scoring package and requesting comments as part of the comment period for this proposed rule.

C. Status of NPL

Currently the NPL consists of 1,202 final sites; 1,049 in the General Superfund section and 153 in the Federal Facilities section. With this proposal of 12 new sites, there are now 72 sites proposed and awaiting final agency action, 63 in the General Superfund section and 9 in the Federal Facilities section. Final and proposed sites now total 1,274.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

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

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

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

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

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

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

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

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

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

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

B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to this Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

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

B. Does Executive Order 13045 Apply to This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

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

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Order 12875

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

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, 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, any written communications from the governments, and a statement

supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

XII. Executive Order 13084

What is Executive Order 13084 and Is It Applicable to this Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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.''

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 28, GENERAL SUPERFUND SECTION

State	Site name	City/county
AR	Mountain Pine Pressure Treating	Plainview.
ME	Eastland Woolen Mill	Corinna.
NC	North Belmont PCE	North Belmont.
NJ	Emmell's Septic Landfill	Galloway Township.
NJ	Martin Aaron, Inc.	Camden.
NY	Peter Cooper Corporation (Markhams)	Dayton.
OK	Hudson Refinery	Cushing.
PR	Vega Baja Solid Waste Disposal	Rio Abajo Ward.
TX	Hart Creosoting Company	Jasper.
UT	International Smelting and Refining	Tooele.
VA	Kim-Stan Landfill	Selma.
WV	Hanlin-Allied-Olin*	Moundsville.
WV	Vienna Tetrachloroethene	Vienna.

*Site Reproposed to General Superfund Section: 1.

Number of Sites Proposed to General Superfund Section: 12.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

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

Dated: April 19, 1999.

Timothy Fields, Jr.,

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

[FR Doc. 99–10236 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 78
Friday, April 23, 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

Natural Resources Conservation Service

Okatoma Creek Watershed, Covington, County, MS

AGENCY: Natural Resources Conservation Service, DOA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Okatoma Creek Watershed, Covington County, MS.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capital Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for the project.

Okatoma Creek Watershed, Covington County, Mississippi; Notice of a Finding of No Significant Impact

The project concerns a watershed plan for the purpose of flood reduction and recreation enhancement. The planned works of improvement consists of selective debris removal on Okatoma Creek from Highway 590 at Seminary, Mississippi, upstream to the Covington and Simpson County Line at Mount Olive, Mississippi.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904 Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: April 12, 1999.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 99–10158 Filed 4–22–99; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed collection; comment request.

TITLE: Nonprofit Agency Responsibilities.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the record keeping requirements of nonprofit agencies serving people who are blind or severely disabled.

DATES: Comments must be submitted on or before June 22, 1999.

ADDRESSES: Written comments should be sent to: Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for information should be directed to: Beverly L. Milkman, Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, VA 22202–4302, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The Committee imposes record keeping requirements on nonprofit agencies serving people who are blind or severely disabled. The requirements are for records of direct labor hours performed for the nonprofit agency by each worker and are for files which document the disability and competitive employability of each worker. Such records and files are required to ensure that nonprofit agencies seeking to participate in the Committee's program meet the requirements of 41 U.S.C. 46–48c.

Dated: April 13, 1999.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–10272 Filed 4–22–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or

have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 24, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will result in authorizing small entities to furnish the commodity and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Towbar Assembly
3920–01–000–0559

NPA: Mississippi Industries for the Blind
Jackson, Mississippi at its facility in
Meridian, Mississippi

Services

Base Supply Center and Operation of Individual Equipment Element Store
Francis E. Warren Air Force Base, Wyoming

NPA: Envision, Inc. Wichita, Kansas

Carwash Service
USDI, Bureau of Land Management, 1661 South Fourth Street, El Centro, California

NPA: Association for Retarded Citizens—Imperial Valley, El Centro, California

Janitorial/Custodial
Naval and Marine Corps Reserve Center, 30 Woodward Avenue, New Haven, Connecticut

NPA: CW Resources, Inc., New Britain, Connecticut

Janitorial/Custodial
Three Child Care Centers, Headquarters III Corps and Fort Hood, Fort Hood, Texas

NPA: World Technical Services, Inc., San Antonio, Texas

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Fly Tent, Nylon, Polyurethane Coated
8340–00–102–6370
8340–01–185–5512

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–10273 Filed 4–22–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 24, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 30, 1998, January 15, February 26, and March 12, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 65746,64 FR 2623, 9470 and 12284) of proposed additions to the Procurement List.

The following comments pertain to Janitorial/Custodial, Federal Building #4, 4401 Suitland Road, Suitland, Maryland.

Comments were received from the current contractor for this service. The contractor claimed that losing this contract, together with a 1994 loss of another contract to the Committee's program (from which it says it has ''never recovered)'', would have a severe impact on the company.

The contractor has only an interim contract for the building in question, and that contract began within the past three months. Although the contractor believes it has an excellent chance of obtaining the next full contract for the service, the fact is that no contractor is guaranteed a contract under the competitive bidding system. Therefore, the Committee is using the value of the interim contract as the measure of loss for calculating impact of adding the service to the Procurement List on the contractor. This figure, considered as a percentage of the contractor's total sales, is well below the level which the Committee normally considers to constitute severe adverse impact on a contractor. In addition, the fact that the contractor has only held the contract for a few months eliminates the possibility that the firm has any long-term dependence on that contract's revenues.

The contractor stated that it has not recovered from the impact of a 1994 Procurement List addition where it had been the current contractor. However, the Committee's records reflect a statement by the President of the firm that it was losing money on the contract added to the Procurement List in 1994, and that it did not want the option to be exercised. To avoid having its option exercised and to protect another contract under consideration for addition to the Procurement List, the firm suggested that the Committee discontinue its consideration of another

contract and add the contract in question to the Procurement List. The Committee proceeded as suggested, and the 1994 addition actually benefitted rather than harmed the contractor. Consequently, the Committee does not believe the 1994 addition ever had a significant adverse impact on the contractor, nor does it believe the current and 1994 additions together constitute severe adverse impact on the contractor.

The following material pertains to all of the items being added to the Procurement List:

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center and Operation of Individual Equipment Element Store
Moody Air Force Base, Georgia

Duplicating Service
U.S. Army Corps of Engineers, Baltimore, Maryland

Janitorial/Custodial
Federal Building #4, 4401 Suitland Road, Suitland, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–10274 Filed 4–22–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on May 12, 1999, at the Doubletree Hotel Tallahassee, 101 South Adams Street, Tallahassee, Florida 32301. The purpose of the meeting is to review affirmative action efforts in Florida, discuss and review the report on immigration in Florida, and review civil rights developments in the State.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 16, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–10269 Filed 4–22–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 5:00 p.m. on June 14, 1999, at the West Virginia University College of Law, Lugar Courtroom, 100A Law Center, Morgantown, West Virginia 26506. The Committee will hold a community forum with government, community, and disability right leaders to discuss (1) challenges facing persons with disabilities in the areas of employment and public accommodation, and (2) civil rights issues unique to the north-central region of the State. In addition to invited panelists, an open session will allow members of the public to present their views on ongoing civil rights issues in the area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gregory T. Hinton, 304–367–4244, or Ranjit Majumder, Chair, Northern region subcommittee, 304–293–5313, extension 1872, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 19, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–10268 Filed 4–22–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1036]

Grant of Authority for Subzone Status; PFIZER Inc.(Pharmaceuticals); Brooklyn, New York

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment* * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the City of New York, grantee of Foreign-Trade Zone 1, has made application to the Board for authority to establish special-purpose subzone status at the pharmaceutical manufacturing plant of Pfizer Inc., located in Brooklyn, New York (FTZ Docket 49–98, filed 11/3/98, amended 1/12/99);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 63451, 11/13/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the pharmaceutical manufacturing plant of Pfizer Inc., located in Brooklyn, New York (Subzone 1A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 7th day of April 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–10130 Filed 4–22–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1035]

Expansion of Foreign-Trade Zone 183 and Expansion of Scope of Manufacturing Authority (Computer Products) Within FTZ 183, Austin, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zone of Central Texas, Inc., grantee of Foreign-Trade Zone 183, submitted an application to the Board for authority to expand FTZ 183-Site 3 at the High-Tech Corridor site and to expand scope of FTZ manufacturing authority (computer products) for Dell Computer Corporation within FTZ 183, Austin Texas, within the Austin Customs port of entry (FTZ Docket 30–98; filed 6/11/98);

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 34145, 6/33/98) and the application has been processed pursuant to the FTZ Act and the Boards's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 183-Site 3 and to expand the scope of FTZ manufacturing authority with respect to computer products is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 7th day of April 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 99–10129 Filed 4–22–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Estuarine Research Reserve System

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of approval and availability of revision to the final revised management plan for the Apalachicola National Estuaries Research Reserve, 1999–2004.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, has approved the revised Management Plan for the Apalachiocola National Estuarine Research Reserve (ANERR). The ANERR was designated in 1979 and has been operating under a Management Plan approved on August 27, 1993. Pursuant to section 315 of the Coastal Zone Management Act, 16 U.S.C. 1461, and 921.33(c) of the implementing regulations, a state must revise its management plan at least every five years, or more often if necessary. This revision is Florida's effort to comply with this requirement.

The revisions to the ANERR Management Plan include:

1. The revised management plan expands the Reserve boundaries from 193,758 acres to a total of 246,766 acres. The newly incorporated lands were previously described in the 1993 ANERR. Management Plan Revision as proposed areas for boundary expansion. The Florida Game and Fresh Water Fish Commission (GFC) amended an existing Memorandum Of Understanding with the Florida Department of Environmental Protection (DEP) which adds 17,521 acres to Reserve boundaries. This addition extends the floodplain portion of the Reserve to the east and west. The expansion also includes 34,487 of Northwest Florida Water Management District (NWFWMD) floodplain lands bordering the Reserve's northern boundary. The inclusion of these lands expands the Reserve to Mile Marker 52 on the Apalachicola River. The lands and waters of the Reserve are all contiguous and the boundary expansion affords the Reserve considerably more influence in river basin issues.

The management plan revision places seven small but important tracts totaling 419 acres under ANERR's management. As a result, the Reserve now has lead-role management on 21,480 of the 246,766 acres. The remainder is managed under Cooperative Agreements with GFC and NWFWMD.

2. The revised management plan includes the addition of three permanent state positions to the ANERR staff; one each in research, education and resource management. There has also been an increase in state support for temporary employees.

3. Under a NOAA matching grant, the ANERR has constructed a new Administrative/Research facility. The 8,000 square foot building has 4,000 square feet of office space, a 1,000 square foot laboratory and 3,000 square feet of maintenance shop.

4. The revised management plan demonstrates continued strong support from the Florida DEP and NOAA for research, monitoring and education programs. The Resource Management section of the management plan describes the Reserve's expanded role in the management of upland resources. ANERR staff will now be involved with prescribed burning, dump-site cleanup, opening lands to the public and exotic plant control.

Copies of the document can be obtained from the Apalachicola National Estuarine Research Reserve, 350 Carroll Street, Eastpoint, Florida 32368. (850) 670–4783.

FOR FURTHER INFORMATION CONTACT: Nathalie Peter, OCRM, Estuarine Reserves Division, 1305 East-West Highway, 11th Floor (N/ORM5), Silver Spring, Maryland 20910. (301) 713–3132, Extension 119.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: April 14, 1999.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–10248 Filed 4–22–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Designation of the Jacques Cousteau National Estuarine Research Reserve at Mullica River and Great Bay, New Jersey; and the Kachemak Bay National Estuarine Research Reserve, Alaska

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA), U. S. Department of Commerce, has designated certain lands and waters of the Mullica River-Great Bay estuary in New Jersey as the Jacques Cousteau National Estuarine Research Reserve at Mullica River and Great Bay, and has designated certain lands and waters of Kachemak Bay in Alaska as the Kachemak Bay National Estuarine Research Reserve.

On April 3, 1998, Under Secretary of Commerce for Oceans and Atmosphere D. James Baker, signed findings of designation for the Jacques Cousteau National Estuarine Research Reserve in New Jersey pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461, and its implementing regulations at 15 CFR Part 921. The Reserve duly received certification from the State of New Jersey Coastal Zone Management Program that Reserve designation is consistent to the maximum extent practicable with its program. A copy of the official Record of Decision is available for public review from NOAA's Office of Ocean and Coastal Resource Management at the address below.

On February 12, 1999, Under Secretary of Commerce for Oceans and Atmosphere D. James Baker, signed findings of designation for the Kachemak Bay National Estuarine Research Reserve in Alaska pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461, and its implementing regulations at 15 CFR Part 921. The Reserve duly received certification from the State of Alaska Coastal Zone Management Program that Reserve designation is consistent to the maximum extent practicable with its program. A copy of the official Record of Decision is available for public review from NOAA's Office of Ocean and Coastal Resource Management at the address below.

FOR FURTHER INFORMATION CONTACT: Laurie McGilvray (301) 713–3155, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM5, Silver Spring, MD 20910. A copy of the Record of Decision for each Reserve is available upon request.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: April 16, 1999.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–10282 Filed 4–22–99; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for Pacific Missile Range Facility Enhanced Capability

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice of record of decision.

SUMMARY: The Department of the Navy, after carefully weighing the operational and environmental consequences, announces its decision to enhance the Pacific Missile Range Facility's (PMRF) capability to permit accommodation of the Department of the Navy Theater Ballistic Missile Defense (TBMD) and Department of Defense (DOD) Theater Missile Defense (TMD) testing, evaluation, and training.

FOR FURTHER INFORMATION CONTACT: Ms. Vida Mossman, Pacific Missile Range Facility, P.O. Box 128, Kekaha, Kauai, Hawaii, 96752–0128, telephone number (808) 335–4740.

SUPPLEMENTARY INFORMATION: The text of the entire Record of Decision (ROD) is provided as follows:

The Department of the Navy, pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969; the Council on Environmental Quality regulations implementing NEPA procedures, 40 CFR parts 1500–1508; SECNAVINST 5090.6; OPNAV Instruction 5090.1B; and Executive Order 12114, announces its decision to enhance the Pacific Missile Range Facility's (PMRF) capability to accommodate the Department of the Navy Theater Ballistic Missile Defense (TBMD) and Department of Defense (DOD) Theater Missile Defense (TMD) testing, evaluation, and training. These enhancements of PMRF capabilities were described in the preferred alternatives in the Pacific Missile Range Facility Enhanced Capability Final Environmental Impact Statement (EIS) of December 18, 1998.

This decision adopts both the continuation of current PMRF functions and the development of new sites and implementation of new activities. Existing PMRF functions include range and land-based training and operations, research, development, test, and evaluation (RDT&E), and ongoing base operations and maintenance activities. The new sites and activities adopted include construction and modification of target and interceptor launch facilities, launches of target and interceptor missiles by air, land and/or sea, construction and modification of instrumentation facilities, construction of support facilities, and transportation of missile propellant. Locations that will be affected by this decision are PMRF (PMRF/Main Base, Restrictive Easement; Makaha Ridge; Kokee; Kamokala Magazines; and Port Allen, Kauai) PMRF support sites (Niihau; Kaula; Maui Space Surveillance System, Maui; Kaena Point, Oahu; Wheeler Network Segment Control/PMRF Communications Sites, Oahu; Department of Energy Communication Sites, Kauai and Oahu; and the Ocean Area inside and outside of U.S. territory. Tern Island and Johnston Atoll were eliminated as sites in the Final EIS.

Related State of Hawaii decisions will permit the use of State lands in proximity to PMRF to support missile launch and storage requirements. These State decisions will allow the U.S. Government to: (1) Continue to exclude non-participants from the ground hazard area during missile launches at PMRF, (2) permit the Navy to construct additional ordnance storage facilities to accommodate missile storage requirements, and (3) establish and maintain safety zones around the ordnance storage facilities.

Process

The Navy has complied with all applicable Executive Orders including consideration of the environmental effects of its actions outside the United States or its territories under the provisions of Executive Order 12114

(*Environmental Effects Abroad of Major Federal Actions*) and the requirements of Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations).

The Notice of Intent and the State of Hawaii EIS Preparation Notice were published in both the **Federal Register** (62 FR 28451) and The Environmental Notice, a semi-monthly bulletin of the State of Hawaii Office of Environmental Quality Control, on May 23, 1997. Notification of public scoping was also made through local media, as well as through letters to Federal, State, and local agencies and officials, and interested groups and individuals. Four public scoping meetings were held in Hawaii from June 17–23, 1997. In addition a similar but modified meeting was held for the residents of Niihau.

The notice of Availability of the Draft EIS was published in The Environmental Notice on April 8, 1998 and in the **Federal Register** (63 FR 17857) on April 10, 1998. Public hearings were conducted at Waimea, Kauai, and Honolulu, Oahu, Hawaii, on April 25 and 28, 1998, respectively. A meeting was held on Niihau for the residents on April 23, 1998. Approximately 210 individuals, agencies, and organizations submitted comments on the Draft EIS. The Final EIS addressed all oral and written comments. The Notice of Availability for the Final EIS was published in the **Federal Register** on December 18, 1998 and in The Environmental Notice on December 23, 1998. Articles also appeared in the Kauai and Oahu newspapers announcing the release and summarizing the results of the Final EIS. Copies of the Final EIS were mailed to all those agencies, organizations and individuals who had provided comments and had requested a copy of the Final EIS.

Alternatives Considered

The alternatives considered were based upon Navy testing requirements and included sites within a 1200-kilometer radius of PMRF that were accessible and could be safely used for testing. These alternatives were the no-action alternative and the preferred alternative adopted in this decision.

No-Action Alternative

The no-action alternative was the continuation of all components of existing range and land-based operations, existing RDT&E activities and training, ongoing base operations maintenance of technical and logistical facilities, and those mitigation measures and standard operating procedures which are in place to protect the environment without any of the enhancements included within the proposed action. The no-action alternatives was not selected because it fails to build capability sufficient to meet the Navy TBMD and other DOD TMD mission requirements. The no-action alternative is the environmentally preferred alternative.

Action Selected

The selected action was presented as the Preferred Alternative in the EIS. It includes continued testing and training activities as currently conducted with the addition of facilities enhancements. The enhancements are described more particularly below. As noted above, the decision also includes pursuit of modification of existing restrictive easements with the State of Hawaii to support missile launches and acquisition, either through lease or purchase, of State lands located in proximity to PMRF to support missile storage requirements.

Actions Associated With the Decision

Support Facilities

The Navy will construct, renovate, and modify support facilities at PMRF, Kamokala Magazines, Makaha Ridge, Kokee, and Niihau. Enhancements at PMRF will be construction of temporary storage areas for liquid propellant and a new missile assembly building. Enhancements at Kamokala Magazines will be construction of two new missile storage buildings, with security fencing and associated road improvements on land acquired, through lease or purchase, from the State of Hawaii. Makaha Ridge and Kokee enhancements consist of improvements to radar and associated instrumentation support facilities. Enhancements at Niihau will be construction of target launch facilities at sites A and/or K, along with reinforced operations shelters, associated road improvements, and construction of an airstrip at site M on Niihau. These enhancements will be initiated when program requirements for PMRF are identified.

Instrumentation

This decision includes installation of new and upgraded radars, telemetry, and instrumentation at PMRF, Makaha Ridge, and Kokee. On Niihau, the Navy will install additional instrumentation and telemetry as well as operate an Aerostat from site C and one of four other sites (F, G, H, or I) when program requirements are identified. This decision also includes operation of an Aerostat from a mobile sea platform.

Target Missile Launches

The preferred methods of delivering target missiles are from aircraft and from land areas at PMRF/Kauai Test Facility. Target launches from a mobile sea platform or barge will also be used if required to satisfy mission requirements. Target launch facilities, consisting of launch pads and supporting facilities, will be built at PMRF and/or Niihau as and when program requirements are identified.

Interceptor Launches

The Navy will launch interceptor missiles in the open ocean from existing ships. Missile launch capabilities will also be established on PMRF for other land based DOD interceptor systems when required, and will include the use of the existing Strategic Target System (STARS) launch site. If program requirements are identified, interceptor launch facilities on Niihau will be developed at sites A and/or K in addition to the target launch facilities at those sites.

Real Property

The U.S. Navy will request the State of Hawaii to extend the existing Restrictive Easement at PMRF to December 31, 2030 and to revise the easement to include launches of additional target missiles. Current limitations on closures per year or length of closures will not change. The Navy will also acquire, through lease or purchase, State of Hawaii property adjacent to the Kamokala Magazines on which to build two missile storage magazines and establish an associated safety area.

Propellant Transport

The Navy will transport liquid missile propellants to PMRF by air if the appropriate transportation waivers can be obtained. If waivers cannot be obtained, the Navy will transport the liquid propellants by sea directly to PMRF. At this time transportation of liquid propellants to PMRF by road is not anticipated. if, in the future, transport of liquid propellants on public roads should become necessary, the Navy will consult with the Hawaii Department of Transportation and the Governor's staff prior to any shipments on the public roads.

Environmental Impacts

The Navy analyzed the potential impacts of the selected action in 14 resources areas: air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials and hazardous waste, health and safety, land use, noise, socioeconomics,

transportation, utilities, visual and aesthetic resources, and water resources. The Navy also considered the action's potential for cumulative effects and ensured consistency with federal policies addressing environmental justice and federal actions in areas outside the territorial limits of the U.S.

This decision when implemented will have significant impacts on airspace above Niihau and biological resources at Niihau. Ongoing Navy activities will continue to have significant impacts on geology and soils at Kaula and on the non-potable water supplies at Makaha Ridge and Kokee Park. Impacts on all other resources or functions analyzed will be less than significant.

Geology and Soils

Ongoing air-to-surface weapons delivery training being conducted at the southeast end of Kaula has caused permanent adverse soil and geologic effects associated with rock shattering explosions and the presence of both live and inert ordnance.

Non-Potable Water

Ongoing test activities at Makaha Ridge and Kokee Park will continue to have an adverse impact on the non-potable water supply system.

Airspace

Activation of new operating areas over Aerostat sites or missile launch sites on Niihau have the potential to impact the V–16 low altitude airway that crosses the middle of the island. When program requirements are identified, the Navy will request that a new Restricted Area be established by the Federal Aviation Administration. The Restricted Area will surround the proposed sites that lie within the boundaries of the airway. Whenever an operation is scheduled, the new Restricted Area will be activated, and air traffic using the V–16 airway will be required to use an alternate flight course. This represents a potentially significant adverse impact, as defined by the Federal Aviation Administration, on other regional airways.

Biological Resources

Additional traffic at the existing logistics landing sites and other landing craft landing areas on Niihau may disturb monk seals that haul out to bask, or possibly pup, on the sandy beach areas. Disturbance of green sea turtle nesting sites at the existing logistics landing sites and other sandy beach areas could also occur. The monk seal is a federally listed endangered species and the green sea turtle is a federally listed threatened species.

Mitigation

With regard to the significant impacts described above, the Navy will ensure that the following mitigation measures described below are implemented.

Geology and Soils

To minimize impacts to geology and soil at Kaula, the Navy will limit targeting for air-to-surface weapons delivery to the southeast tip of the island. This area constitutes approximately eight percent of the landmass of the island. The Navy is planning no new activities for Kaula.

Non-Potable Water

To minimize impact on the water supply at Makaha Ridge and Kokee, the Navy will continue existing water conservation measures in coordination with the State of Hawaii. The State Parks Department has drilled a new water well at Kokee Park that will be online within one to two years, and significant impacts associated with water supply will be reduced.

Airspace

Use of Notice of Airmen notification will minimize the impact to aircraft transiting Niihau.

Biological Resources

To protect biological resources at Niihau during construction, PMRF will use the measures discussed below, developed through consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service under the requirements of Section 7 of the Endangered Species Act.

The National Marine Fisheries Service, in a decision letter issued on October 21, 1998, concluded that the proposed actions would ''not likely adversely affect listed species''. The U.S. Fish and Wildlife Service, in a decision letter issued on October 22, 1998, concurred with the findings of the Navy's Biological Assessment and stated that the proposed action is ''not likely to adversely affect endangered or threatened species.''

During operations PMRF will ensure beaches are monitored for the presence of monk seals and green sea turtles, and either wait for their departure or conduct landings elsewhere. PMRF will provide fire suppression equipment at launch sites and will restrict project personnel to the facilities where their responsibilities will be carried out. PMRF will obtain prior approval from the landowner for all site alterations. Prior to construction of an airstrip, PMRF will develop a bird aircraft strike hazard plan to avoid bird impacts to aircraft. PMRF will also take measures to eliminate the import of exotic wildlife species, and will conduct checks of equipment and personnel to minimize the risk of inadvertent pest transportation to the island.

In addition to implementing the above mitigation measures for significant impacts, the Navy will ensure the following mitigation measures are implemented to avoid potential significant impacts:

Air Quality

To protect the air quality during any construction activities, standard construction practices will be followed to control fugitive dust emissions. These practices may include periodic wetting of disturbed soils.

Airspace

To prevent indirect impacts to airspace use in the Ocean Area, PMRF will keep the public and pilots informed of activity that affects airspace use. PMRF will annually evaluate flight activities, including missile launch activities, and review mission changes with respect to supersonic operations, to ensure that every effort is being made to reduce any adverse indirect impacts.

Biological Resources

To protect biological resources at PMRF/Main Base, the following existing mitigation measures will be continued: (1) Discourage albatross from nesting on base, (2) reduce impacts on the Newell shearwater by the use of protective light shields, (3) monitor the beaches to identify and avoid turtle nesting before amphibious landings, and (4) monitor beaches to identify and avoid monk seals prior to test activities. To protect biological resources at Makaha Ridge and Kokee, protective shielding will be used for any new outdoor lighting. To protect biological resources at the Kamokala Magazines, PMRF will install light shields (if any site is lighted at night) to reduce effects on the Newell shearwater. To protect biological resources at Kaula, PMRF will use the area seasonally, when marine mammals are not present, and will survey waters off the island, delaying or moving operations if marine mammals are found. The impact area will continue to be on the south end of the island only.

To protect biological resources in Open Ocean areas, PMRF will use standard range warning and checking procedures to check for concentrations of marine mammals in hazard areas. If marine mammals are present, the Flight Safety Officer will determine whether to continue, delay, or move the test, as and if necessary for protection of the animals.

The Navy plans to continue periodic monitoring of bird populations on Kaula with assistance from the State of Hawaii Department of Land and Natural Resources and the U.S. Fish & Wildlife Service.

Cultural Resources

To protect cultural resources, PMRF will implement the mitigation measures contained in the March 18, 1999 Memorandum of Agreement (MOA) with the Hawaii State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation. Concerning Niihau, the MOA requires the involvement of the island's proprietors, the residents of Niihau, and the SHPO in determining the nature and scope of surveys to identify potential impacts to historic properties, including traditional cultural properties. The MOA also requires appropriate mitigation measures in the event that there are potentially adverse impacts to such properties from PMRF's actions on Niihau.

Geology and Soils

To protect geological and soil resources at PMRF/Main Base and Niihau, the following mitigation measures will be implemented: (1) PMRF will not launch solid propellant missiles when it is raining, (2) A water deluge system for cooling or noise suppression will not be employed, (3) Excavated material will be watered frequently, and (4) Soil additivities will be used to bond exposed surface soils when necessary.

To protect geological and soil resources at PMRF/Mail Base, Makaha Ridge, Kokee, Kamokala Magazines, and Niihau from erosion, PMRF will: (1) Minimize areas exposed during digging, (2) use soil stabilizers and sandbags, (3) add covering to slopes, and (4) revegetate slopes as necessary.

Hazardous Materials and Waste

PMRF will extend main base waste management procedures to include Niihau. Hazardous materials will not be permanently stored at Niihau, and hazardous wastes generated by Navy and other DOD activities will be shipped from Niihau for proper disposal. PMRF will construct all launch pads and storage devices with containment or sump systems to contain any potential spills and will conduct any required remediation.

Health and Safety

In the Restrictive Easement, PMRF will continue to clear the easement area during missile launches, in accordance with the provisions of the lease with the State of Hawaii.

Land Use

To protect land resources on Niihau, PMRF will work with the landowner or Niihau residents to minimize operations that might exclude residents from traditional fishing areas during the best times of day or seasons.

Socioeconomics

To prevent potential negative socioeconomic impacts on Niihau, PMRF will periodically review and strengthen the protection protocol to help reduce construction and operational impacts, and provide cultural sensitivity training to off-island personnel who may come into contact with Niihau residents. To benefit the residents, the maximum feasible number of Niihau residents will be employed.

Transportation

To prevent minor ongoing transportation impacts (access to Polihale Park) expected as a result of implementation of the action within the Restrictive Easement, PMRF will: (1) Issue advance warnings of closures to citizens, (2) minimize closure times, and (3) reopen road access as soon as possible. Such actions shall be taken in accordance with the provisions of the state lease.

Visual and Aesthetic Resources

To protect visual resources at PMRF/Main Base and Niihau, PMRF will maintain as much natural vegetation around existing launch pads and newly constructed facilities as safety will allow. Emphasis will be placed along the ocean side of the launch pads and newly constructed facilities. To minimize impacts to visual resources at the Kamokala Magazines, the storage magazines will be covered with earth material except for entrance doors that will face the cliffs outside of public view. Grass and other limited height vegetation will be allowed to grow on the storage magazines to help reduce erosion. To minimize aesthetic effects on Niihau, PMRF will use earth-toned paint on all structures.

Response to Comments Received Regarding the Final EIS

The Department of Navy received three comment letters on the Final EIS, The U.S. Environmental Protection Agency (EPA) withdrew environmental objections raised during comments on the Draft EIS upon the removal of Term Island and Johnston Atoll from the sites under consideration. The EPA further suggested that the Navy document, in the Record of Decision, any mitigation measures it intends to implement. This Record of Decision provides that documentation. Two comment letters were received from individuals who disagreed with the conclusions of the Final EIS. The subject of one of the letters was outside the scope of the EIS. The other letter renewed comments that had been made on the Draft EIS. The comments questioned analysis techniques used in the Final EIS and expressed concerns about risk of brush fires and U.S. treaty implications. Responses have been provided in the Final EIS, and some are reflected in this Record of Decision.

Conclusions

On behalf of the Department of the Navy, I have selected the Preferred Alternative of the PMRF EIS for implementation as set out in this Record of Decision. In determining whether and how to enhance the capabilities of the PMRF, I considered the following: existing assets and capabilities of PMRF; the Navy and DOD operational, testing, and training requirements; range improvements necessary to support PMRF as a TBMD test site; environmental impacts; costs associated with construction of facilities, the operation and maintenance of ships and aircrafts, and training of personnel; and comments received during the EIS process.

After carefully weighing all of these factors and analyzing the data presented in the Final EIS, I have determined that the Preferred Alternative best meets the requirements for the enhancement of the capabilities at PMRF.

Dated: April 14, 1999.

Duncan Holaday,

Deputy Assistant Secretary of the Navy, Installations and Facilities.

[FR Doc. 99–10241 Filed 4–22–99; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 24, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__*Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: April 20, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.
Title: TRIO Dissemination Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 50.
Burden Hours: 2,250.
Abstract: The TRIO Dissemination Program provides grants to enable TRIO projects to work with other institutions and agencies that serve first-generation, low-income persons in replicating or adapting successful TRIO program components and practices.

The application package is available on the Department's web site: *http://www.ed.gov/offices/OPE/OHEP/hepss/dissem/*

Comments regarding this package may be submitted to the following electronic mailbox: TRIO@ED.gov.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

[FR Doc. 99–10240 Filed 4–22–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Availability: Revised Draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land-Use Plan

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the Revised Draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land-Use Plan (HRA–EIS), DOE/EIS–0222D, for public review. The proposed action is to establish a comprehensive land use plan for the next 50 years for the Hanford Site near Richland, Washington. This EIS identifies alternative future land uses for the Hanford Site and discusses the potential associated environmental impacts. Because DOE has significantly revised the scope of the HRA–EIS and alternatives considered in response to comments received on the draft EIS published in August 1996, it is appropriate to issue this revised draft HRA–EIS. Since land use was an objective of the previous draft EIS, no further scoping meetings are required. The 1996 Draft HRA–EIS focused on developing an overall strategy for remediating the Hanford Site and included a proposed land use plan as an appendix; the revised Draft HRA–EIS focuses only on land use planning. To reflect this reduction in scope, DOE is soliciting comments on changing the name of this EIS to the Hanford Comprehensive Land-Use EIS as well as on the contents of the Revised Draft HRA–EIS. The draft HRA–EIS evaluates five ''action alternatives,'' each of which represents a Federal, State, local agency, or Tribe's preferred land-use alternative, and also evaluates a ''no-action alternative'' of continuing current land use practices. DOE's preferred alternative for future uses of the Hanford Site includes consolidating waste management operations in the Central Plateau; allowing industrial development in the eastern and southern portions of the site; increasing recreational access to the Columbia River; and expanding the Saddle Mountain National Wildlife Refuge to include all of the Wahluke Slope.

DATES: The public comment period begins today and concludes on June 7, 1999. DOE invites Federal agencies, Native American Tribes, State and local governments, and the public to comment on the Revised Draft HRA–EIS. DOE will consider all timely comments in preparing the Final EIS, and will consider comments provided after the close of the comment period to the extent practicable.

Public information meetings and hearings will be held during the comment period.

May 18, 1999: State Office Building, 800 NE Oregon Street, Portland, Oregon. DOE will conduct informal information session from 6 to 7 p.m., followed by a public hearing beginning at 7 p.m.

May 20, 1999: Shilo Inn, 50 Comstock Road, Richland, Washington. DOE will conduct informal information session from 3 to 5 p.m. and from 6 to 7 p.m., followed by a public hearing beginning at 7 p.m.

June 3, 1999: Ridpath Hotel, West 515 Sprague Avenue, Spokane, Washington. DOE will conduct informal information session from 6 to 7 p.m., followed by a public hearing beginning at 7 p.m.

In addition, during the comment period DOE will participate in public involvement activities sponsored by the other cooperating agencies, at times and locations to be determined.

ADDRESSES: Written comments on the Revised Draft HRA–EIS may be mailed to Mr. Thomas W. Ferns, DOE National Environmental Policy Act Document Manager, U.S. Department of Energy, Richland Operations Office, PO Box 550, MSIN HO–12, Richland, Washington 99352–0550. Comments also may be transmitted by fax to 509–376–4360 or by electronic mail to Thomas__W__Ferns@rl.gov.

FOR FURTHER INFORMATION CONTACT: To request information about the HRA–EIS and the public meetings and hearings, or to request copies of the document, use any of the methods listed in **ADDRESSES** above. (The Revised Draft HRA–EIS will also be made available on the DOE NEPA Web at http://tis.eh.doe.gov/nepa/ under DOE NEPA Analyses and at http://www.hanford.gov/eis/hraeis/hraeis.htm on the DOE Hanford Web Site.) When requesting copies of the document, please specify whether you wish to receive only the summary (about 100 pages), or the entire document including appendices. For general information about the DOE National Environmental Policy Act (NEPA) process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119. Phone: 202–586–4600, or leave a message at: 800–472–2756. Fax: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background

DOE published a notice of intent to prepare the HRA–EIS in 1992 (57 FR 37959; August 21, 1992). The U.S. Environmental Protection Agency (EPA), Washington Department of Ecology (Ecology), and DOE, in cooperation with other interested parties, initiated a process to involve stakeholders in the development of a vision for the future of the Hanford Site. A committee consisting of representatives of labor, environmental, governmental, agricultural, economic development, citizen-interest groups, and Tribal governments was established and became known as the Hanford Future Site Uses Working Group (Working Group). The result of the Working Group's efforts, a report titled The Future for Hanford: Uses and Cleanup; The Final Report of the Hanford Future Site Uses Working Group was issued in December 1992, and was submitted to DOE as a formal scoping comment for the HRA–EIS.

DOE issued the Draft HRA–EIS in August 1996. DOE received more than 2,000 comments from approximately 230 commenters on the August 1996 Draft HRA–EIS. These comments, as well as transcripts from the public hearing, are included in the Comment and Response Volume of the Revised Draft HRA–EIS. A summary of the Comment-Response Volume is provided as Appendix F of the Revised Draft HRA-EIS, and the entire Comment-Response Volume is being provided for public review in local and regional information repositories. Several commenters, including the U.S. Environmental Protection Agency, urged DOE to change the scope of the EIS to eliminate consideration of remedial action alternatives. DOE revised the 1996 draft EIS in accordance with this recommendation.

Revised Draft HRA–EIS

During the public comment period on the August 1996 Draft HRA–EIS, several Federal, State, and local agencies and American Indian Tribes expressed an interest in working with DOE to establish alternative visions for future land uses. In response, DOE invited representatives of other Federal Agencies, American Indian Tribes, and State and local governments to participate in ongoing planning efforts. These groups became cooperating agencies and consulting Tribal governments in the preparation of a Revised Draft HRA–EIS.

Cooperating Agencies and Consulting Tribal Governments

The cooperating agencies and consulting Tribal governments helping to prepare the Revised Draft HRA–EIS are: Benton, Franklin, and Grant counties; the City of Richland; and the U.S. Department of Interior (Bureau of Land Management, Bureau of Reclamation, and the U.S. Fish and Wildlife Service). Consulting Tribal governments are the Confederated Tribes of the Umatilla Indian Reservation and the Nez Perce Tribe, Department of Environmental Restoration and Waste Management.

Since March 1997, DOE has worked with these cooperating agencies and consulting Tribal governments to establish a framework for the environmental analyses presented in this Revised Draft HRA–EIS. Substantial agreement was reached among the cooperating agencies and consulting Tribal governments on the development of nine land-use designations and definitions, and on the format for determining the potential environmental impacts associated with the land uses carried forward in this EIS. The nine land-use designations are: Industrial-Exclusive, Industrial, Agricultural, Research and Development, High-Intensity Recreation, Low-Intensity Recreation, Conservation (Mining and Grazing), Conservation (Mining), and Preservation.

The cooperating agencies and consulting Tribal governments also worked together to develop the proposed policies and procedures in Chapter 6 if the revised draft HRA-EIS for implementing the Comprehensive Land-Use Plan. These policies would manage competing land use and resource use goals and objectives; provide for amendments to the comprehensive land-use plan where necessary; and identify area- and resource-management plans to be developed as part of the land-use plan implementation.

Revised Draft HRA–EIS Alternatives

The Revised Draft HRA–EIS presents a set of land-use policies and procedures specific to the Hanford Site. It evaluates six alternatives, including a no-action alternative of continuing current land use practices, DOE's preferred alternative, and four other alternatives, each of which represents a Federal, State, Tribal, or local agency's preferred set of land uses. DOE's preferred alternative for future uses of the Hanford Site includes consolidating waste management operations in the Central Plateau; allowing industrial development in the eastern and southern portions of the site; increasing recreational access to the Columbia River; and expanding the Saddle Mountain National Wildlife Refuge to include all of the Wahluke Slope.

Public Involvement Opportunities

DOE has scheduled information meetings and public hearings [see **DATES**] during the comment period that ends on June 7, 1999. Persons interested in speaking at the hearings may register at the hearings and will be called on to speak on a first-come, first-served basis. Written comments will also be accepted at the hearings, and speakers are encouraged to provide written versions of their oral comments for the record. Oral and written comments will be considered equally in preparing the Final EIS. DOE intends to complete the Final HRA–EIS and issue a Record of Decision in November 1999.

DOE Public Reading Rooms and Information Repositories

The Revised Draft HRA–EIS and associated reference materials can be found in the following DOE Public Reading Rooms and Information Repositories:

- Suzzallo Library, University of Washington, Government Publications Room, Mail Stop FM–25, Seattle, Washington 98195–2900, phone 206–543–4664;
- Foley Center, Gonzaga University, E 502 Boone Avenue, Spokane, Washington 99258, phone 509–328–4220, ext. 3844;
- U.S. Department of Energy Public Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130 West, Richland, Washington 99352, (509) 376–8583;
- Branford Price Millar Library, Science and Engineering Floor, Portland State University, SW Harrison and Park, Portland, Oregon 97207, phone 503–725–3690;
- U.S. Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, phone 202–586–5000.

Issued this 19th day of April 1999.

James J. Fiore,

Acting Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 99–10193 Filed 4–22–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11659–000]

Gustavus Electric Company of Gustavus, Alaska; Notice of Scoping Meetings, Site Visit, and Soliciting Additional Comments on the Request to Use Alternative Licensing Procedures

April 19, 1999.

The Federal Energy Regulatory Commission's (FERC or Commission) Regulations provide applicants with the option of preparing their own Environmental Assessment (EA) for hydropower projects, and filing this applicant prepared environmental assessment (APEA) with their application as part of an alternative licensing procedure (ALP).[1] On February 17, 1999, the Commission received a request from Gustavus Electric Company (GEC) to use the ALP in the preparation of a license application for the proposed Kahtaheena River (Falls Creek) Project, No. 11659. On March 9, 1999, the Commission issued a notice requesting comments on the applicant's use of this process. A Commission decision regarding the use of this process is still pending; however, contingent on subsequent Commission approval of the use of this process, we are proceeding with scoping, pursuant to the National Environmental Policy Act (NEPA) of 1969, at this time.

The alternative procedures include provisions for the distribution of an initial information package, and for the cooperative scoping of environmental issues and needed studies. On December 1, 1998, GEC distributed their initial information document (ICD). On January 19 and 20, 1999, GEC held two public meetings to discuss the ICD and conducted a visit of the proposed project site. On April 5, 1999, GEC distributed their Scoping Document 1 (SD1).[2] As part of scoping, GEC has scheduled two public meetings to discuss the information presented in SD1, primarily the alternatives and issues to be evaluated in any APEA which may be prepared by GEC if it is subsequently approved to use the ALP in preparation of a license application. In addition to participating in the scoping meetings and site visit, Commission staff will use this opportunity to answer questions and take comments about the use of the ALP. Participation in these meetings will not prejudice any rights or future participation by the Department of the Interior or any of its subsidiary agencies.

Scoping Meetings

GEC will hold public scoping meetings on May 6 and 7, 1999, pursuant to NEPA. At the scoping meetings, GEC will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

GEC has requested to use the ALP and prepare an APEA for inclusion in its application; however, there is the possibility that an Environmental Impact Statement (EIS) would be required. If the Commission subsequently approves the applicant's request to use the ALP, these meetings would serve to satisfy the NEPA scoping requirements, regardless of whether an EA or EIS is issued by the Commission and/or any other participating federal agencies.[3]

The times and locations of the scoping meeting are:

Evening scoping meeting	Morning scoping meeting
May 6, 1999, 7:00 p.m. Multipurpose Room, Gustavus School, Gustavus, Alaska.	May 7, 1999, 1:00 p.m., King Conference Room, Alaska Dept. of Fish & Game, 802 Third Street, Douglas Alaska.

All interested individuals, organizations, and agencies are invited and encouraged to attend any or all of the meetings to assist in identifying and clarifying the scope of environmental issued that should be analyzed in the EA.

Scoping Meeting Procedures

These scoping meetings will be conducted consistent with the procedures used at Commission scoping meetings. Commission staff will attend the meetings on May 6 and 7, 1999. These meetings would serve to address the Commission's scoping requirements under NEPA if the applicant is subsequently approved to use the ALP. Regardless of whether the applicant's request to use the ALP is approved, the Commission may reconvene scoping during the post-filing period if it is needed.

Commenting Deadline

Both scoping meetings will be recorded and the transcripts will become part of the formal record of the proceedings for this project. Those who choose not to speak during the scoping meetings may instead submit written comments on the project. written comments should be mailed to: Mr. Richard Levitt, Gustavus Electric Company, P.O. Box 102, Gustavus, AK 99826.

All correspondence should be postmarked no later than July 7, 1999. Comments should show the following caption on the first page: Scoping Comments, Kahtaheena River (Falls Creek) Project, Project No. 11659.

Site Visit

GEC has scheduled a tour of the proposed project site on Thursday, May 6, 1999. This site visit will require

[1] 81 FERC ¶ 61,103 (1997).

[2] Copies of the ICD and SDI can be obtained by calling Lani Joslin at 907–697–2299.

[3] The Glacier Bay National Park Boundary Adjustment Act of 1998 designates the National Park Service (NPS) ad a joint lead agency with the Federal Energy Regulatory Commission (FERC) in the preparation of any environmental document under NEPA for this project. FERC and NPS have initiated discussions to address how this joint lead designation would be coordinated.

hiking approximately 5 to 6 miles over rugged terrain and it is expected to take approximately 6 hours to complete. Those wishing to attend the site visit must notify Richard Levitt of GEC at (907) 697–2299 by April 30, 1999. Site visit participants should meet at Gustavus Dray Gas Station in Gustavus at 8:30 a.m. or at the end of Rink Creek Road at 9:00 a.m.

For further information please contact Richard Levitt of GEC at (907) 697–2299 or Bob Easton of the Commission at (202) 219–2782.

David P. Boergers,

Secretary.

[FR Doc. 99–10220 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–302–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

April 19, 1999.

Take notice that on April 13, 1998, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed under Sections 157.205 and 157.211(a) of the Commission's Regulations under the Natural Gas Act to construct, own and operate a 16-inch tap, ultrasonic meter station and regulation equipment [1] to enable Koch to transport gas on a firm basis for Southern Company Service, Inc. (SCS), to Mississippi Power Company's Jack Watson Power Plant. Construction of these facilities will allow Koch to make average day deliveries under its Rate Schedule FTS to the Jack Watson Power Plant, totaling 20,000 MMBtu. Koch will transport these volumes under its blanket certificate issued in Docket No. CP88–6–000. This docket is on file with the Commission and open to public inspection. The application may also be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Any person or the Commission's staff may, within 45 days after insurance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authroization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–10219 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–M

[1] Facilities for this project also include 5,200 feet of 16-inch line, which Koch plans to construct under Section 157.208(a) of the Commission's Regulations.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–312–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

April 19, 1999.

Take notice that on April 14, 1999, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–312–000 a request pursuant to sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate facilities at an existing delivery point used to render service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution) in Erie County, New York, under National Fuel's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

National Fuel proposes to construct and operate facilities at the Vicksburg Station, which is a delivery point used to serve Distribution. National Fuel states that the new facilities include two 12-inch meters, two 8-inch regulator and monitor sets, one 4-inch regulator and monitor set, and upstream and downstream piping, valves, fittings, controllers, etc. National Fuel estimates the cost of construction to be $750,000. National Fuel declares the peak day capacity of this station is 120 MMcf and 6,200 MMcf per year. It is further indicated that the proposed construction will not increase Distribution's authorized level of service or the capacity of the station.

National Fuel states that in connection with this project, it will also be purchasing certain facilities at the Vicksburg Station from Distribution, including approximately 200 feet of 20-inch inlet piping, a three valve tee (valve numebrs TN3104, TN3105 and TN3106), which consists of two 16-inch valves and one 20-inch valve, a gas heater and a path of the outlet piping and some additional miscellaneous downstream piping. National Fuel states that these facilities will be purchased from Distribution at its net book value, which will be approximately $166,800.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–10222 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–317–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

April 19, 1999.

Take notice that on April 15, 1999, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–317–000 a request pursuant to Sections 157.205 and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon in place by sale to ONEOK, Inc. D.b.a. Kansas Gas Service Company (KGS) facilities and related services in Shawnee County, Kansas, under the

blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://ww.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Williams states that it will abandon by sale approximately 2.3 miles of 16-inch lateral pipeline, related service and facilities. Williams states that the sales price of the line is $10.00 and associated reclaim costs is estimated to be $0.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–10221 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–114–000, et al.]

Dearborn Generation Operating L.L.C., et al.; Electric Rate and Corporate Regulation Filings

April 16, 1999.

Take notice that the following filings have been made with the Commission:

1. Dearborn Generation Operating, L.L.C.

[Docket No. EG99–114–000]

Take notice that on April 13, 1999, Dearborn Generation Operating, L.L.C., 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126–2712, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Dearborn Generation Operating, L.L.C. is a wholly-owned indirect subsidiary of CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation. Dearborn Generation Operating, L.L.C. will operate, under an operations and maintenance agreement with the owner, a facility under construction located in Dearborn, Michigan with a net electrical generating capacity of approximately 710 MW.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

2. MEG Marketing, LLC, Sempra Energy Trading Corp.

[Docket Nos. EC99–28–000, ER98–2284–003 and ER94–1691–023]

Take notice that on April 14, 1999, MEG Marketing, LLC (MEG) and Sempra Energy Trading Corp. (SET) filed a report on disposition, informing the Commission that SET acquired a 40 percent interest in MEG on April 1, 1999, as authorized by the Commission's order of March 12, 1999 in Docket No. EC99–28–000. This report also served as a notice of change in status for MEG and SET.

Comment date: May 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Dearborn Industrial Generation, L.L.C.

[Docket No. EG99–115–000]

Take notice that on April 13, 1999, Dearborn Industrial Generation, L.L.C., Fairlane Plaza South, 330 Town Center Drive, Suite 1000, Dearborn, Michigan 48126–2712, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Dearborn Industrial Generation L.L.C. is a limited liability company formed under the laws of the State of Michigan. It is owned one hundred (100%) by CMS Generation Co., a Michigan corporation, which is a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation (''CMS Energy''). Dearborn Industrial Generation L.L.C. is constructing a combined cycle combustion turbine, natural gas-fired power plant located in Dearborn, Michigan with a net electrical generating capacity of approximately 710 MW.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Rojana Power Company Limited

[Docket No. EG99–116–000]

Take notice that on April 14, 1999, Rojana Power Company Limited (Rojana) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Rojana is developing a 122 MW eligible facility located in Ayuthaya, Thailand. Rojana states that, upon commercial operation of the facility, it will be engaged directly and exclusively in the business of owning and/or operating all or part of an eligible facility (as defined in Section 32(a)(1) of the Public Utility Holding Company Act); selling electricity at wholesale to the Electricity Generating Authority of Thailand, a government corporation operating under the laws of the Thailand; and at retail to 12 industrial and commercial consumers in an industrial park in which the Facility is situated. All retail sales made by Rojana will be to customers located within Thailand.

Comment date: May 7, 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.

5. Bridger Valley Electric

[Docket No. EL99–59–000]

Take notice that on April 13, 1999, 1999, Bridger Valley Electric Association (Bridger Valley) submitted for filing an Application for Waiver of the Requirements of Order Nos. 888 and 889, in accordance with Section 35.28(d) of the Rules of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.28(d).

Bridger Valley states that it owns, operates, or controls only limited and discrete transmission facilities that do not constitute an integrated grid. Bridger Valley also states that it provides transmission service to the U.S. Department of Energy's Western Area Power Administration which is more akin to distribution service than transmission service. Bridger Valley states that it thus qualifies for a waiver of application of the requirements of Order Nos. 888 and 889 to it, as more

fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Flowell Electric Association

[Docket No. EL99–60–000]

Take notice that on April 13, 1999, Flowell Electric Association (Flowell) submitted for filing an Application for Waiver of the Requirements of Order Nos. 888 and 889, in accordance with Section 35.28(d) of the Rules of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.28(d).

Flowell states that it owns, operates, or controls only limited and discrete transmission facilities that do not constitute an integrated grid. Flowell also states that it provides transmission service to the Towns of Kanosh and Meadow, Utah, and PacifiCorp (formerly Utah Power and Light Company) which is more akin to distribution service than transmission service. Flowell states that it thus qualifies for a waiver of application of the requirements of Order Nos. 888 and 889 to it, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Russell Energy Services Company, Energetix, Inc., Nicole Energy Services

[Docket Nos. ER96–2882–010, ER97–3556–007 and ER98–2683–003]

Take notice that on April 15, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Boston Edison Company

[Docket No. ER98–4332–000]

Take notice that on April 13, 1999, Boston Edison Company (Edison), tendered for filing a Transmission Facilities Support Agreement between Boston Edison Company and Millennium Power Partners, L.P., dated July 25, 1998 (Support Agreement).

Boston Edison requests that the Commission accept the Support Agreement as amended by the Amendment and allow it to become effective 60 days following the date of this filing.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Energy Atlantic, LLC

[Docket No. ER98–4381–002]

Take notice that on April 14, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

10. Ameren Services Company

[Docket No. ER99–2467–000]

Take notice that on April 13, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and New Energy Ventures, Inc., and PP&L, Inc., (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Company of New Mexico

[Docket No. ER99–2468–000]

Take notice that on April 13, 1999, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/settlement agreement between PNM and PacifiCorp Power Marketing Inc.

PNM requested waiver of the Commission's notice requirement so that service under the PNM/PacifiCorp netting agreement may be effective as of April 1, 1999.

Copies of the filing were served on PacifiCorp and the New Mexico Public Regulation Commission.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Newport Electric Corporation

[Docket No. ER99–2469–000]

Take notice that on April 13, 1999 Newport Electric Corporation (Newport), tendered for filing an Agreement that provides for the rental by Montaup Electric Company (Montaup), an affiliate of Newport, of all of Newport's transmission facilities. The Agreement supersedes a prior agreement between Newport and Montaup.

Newport requests an effective date for the rental agreement of May 1, 1999

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER99–2470–000]

Take notice that on April 13, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations the Service Agreement for Long Term Firm Transmission Service on Direct Assignment Facilities between PacifiCorp's Transmission Function and PacifiCorp's Merchant Function dated March 29, 1999.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Ameren Services Company

[Docket No. ER99–2471–000]

Take notice that on April 13, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and PECO Energy—Power Team (PECO). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PECO pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Mid-Continent Area Power Pool

[Docket No. ER99–2474–000]

Take notice that on April 12, 1999, Mid-Continent Area Power Pool (MAPP) tendered for filing with the Federal Energy Regulatory Commission an informational filing listing MAPP Members, with all the rights and obligations of membership including transmission service pursuant to MAPP Service Schedule F, effective on the dates indicated.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Dixie-Escalante Rural Electric Association

[Docket No. ER99–2475–000]

Take notice that on April 13, 1999, Dixie-Escalante Rural Electric Association (Dixie Escalante), tendered an Application for Acceptance of Initial Rate Filing and Waiver of Notice

Requirement for transmission agreement with the City of Enterprise, Utah. Dixie-Escalante is a non-profit distribution cooperative that retired its outstanding Rural Utilities Service debt on October 16, 1996.

Dixie-Escalante seeks Commission acceptance of its transmission agreements, effective October 16, 1996. Dixie-Escalante seeks no changes in the rates, charges, terms or conditions of the transmission agreements. Accordingly, Dixie-Escalante seeks a waiver pursuant to 18 CFR 35.11 of the 60-day prior notice requirement of 18 CFR 35.3.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Bridger Valley Electric Association

[Docket No. ER99–2476–000]

Take notice that on April 13, 1999, Bridger Valley Electric Association (Bridger Valley), tendered an Application for Acceptance of Initial Rate Filing and Waiver of Notice Requirement for transmission agreement with the United States Department of Interior's Bureau of Reclamation (Bureau, the Department of Energy's Western Area Power Administration has assumed the Bureau's responsibility under the agreement). Bridger Valley is a non-profit distribution cooperative that retired its outstanding Rural Utilities Service debt on January 31, 1997.

Bridger Valley seeks Commission acceptance of its transmission agreement, as amended, effective January 31, 1997. Bridger Valley seeks no changes in the rates, charges, terms or conditions of the transmission agreements. Accordingly, Bridger Valley seeks a waiver pursuant to 18 CFR 35.11 of the 60-day prior notice requirement of 18 CFR 35.3.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER99–2477–000]

Take notice that on April 13, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed umbrella service agreements for firm point-to-point transmission service and two executed service agreements for non-firm point-to-point transmission service with Avista Energy, Inc.; and American Municipal Power-Ohio, Inc., under the PJM Open Access Transmission Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–2480–000]

Take notice that on April 13, 1999, Ameren Services Company (ASC), tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and New Energy Ventures, Inc. and PP&L, Inc., (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Flowell Electric Association

[Docket No. ER99–2481–000]

Take notice that on April 13, 1999, Flowell Electric Association (Flowell), tendered an Application for Acceptance of Initial Rate Filing and Waiver of Notice Requirement for transmission agreements with the Town of Kanosh, Utah; the Town of Meadow, Utah; and Utah Power & Light (currently PacifiCorp). Flowell is a non-profit distribution cooperative that retired its outstanding Rural Utilities Service debt on October 16, 1996.

Flowell seeks Commission acceptance of its transmission agreements, effective October 16, 1996. Flowell seeks no changes in the rates, charges, terms or conditions of the transmission agreements. Accordingly Flowell seeks a waiver pursuant to 18 CFR 35.11 of the 60-day prior notice requirement of 18 CFR 35.3.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Bridgeport Energy, LLC

[Docket No. ER99–2482–000]

Take notice that on April 13, 1999, Bridgeport Energy, LLC tendered for filing an Application for an Order Accepting for Filing Revised Rate Schedule for Sales of Ancillary Services at Market-Based Rates and Reassignment of Transmission Capacity and Waiver of Regulations.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Oregon Trail Electric Consumers Cooperative, Inc.

[Docket No. ES99–38–000]

Take notice that on April 14, 1999, Oregon Trail Electric Consumers Cooperative (Oregon Trail) submitted an application, under Section 204 of the Federal Power Act, for authorization to issue (1) up to $23 million of notes with maturities of up to 35 years and (2) to borrow funds under a two-year $5 million line of credit agreement.

Oregon Trail also requested exemption from compliance with the Commission's competitive bidding or negotiated placement requirements at 18 CFR 34.2.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Public Service Company of New Mexico

[Docket Nos. OA97–433–003 and OA97–720–003]

Take notice that on April 6, 1999, Public Service Company of New Mexico made a filing with the Commission stating that it had revised the organizational charts and job descriptions posted on OASIS in response to the Commission's February 11, 1999 order on standards of conduct.* The filing contains a copy of the organizational charts, a narrative description of the charts, and an inventory of job descriptions.

Comment date: May 3, 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. 99–10224 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–P

**Carolina Power & Light Company et al.*, 86 FERC ¶ 61,146 (1999).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–610–008, et al.]

Murphy Oil USA, Inc., et al.; Electric Rate and Corporate Regulation Filings

April 15, 1999.

Take notice that the following filings have been made with the Commission:

1. Murphy Oil USA, Inc.

[Docket No. ER97–610–008]

Take notice that on April 13, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

2. Maine Public Service Company

[Docket Nos. ER95–836–004 and ER99–2472–000]

Take notice that on April 12, 1999, Maine Public Service Company (MPS), tendered for filing revised sheets reflecting changes to its transmission rate formula in compliance with the Federal Energy Regulatory Commission's December 22, 1998, order in Docket No. ER95–836. In addition, MPS filed a settlement agreement designed to resolve certain issues between it and Houlton Water Company, Van Buren Light and Power District, and Eastern Maine Electric Cooperative.

Copies of this filing were served upon all parties on the Commission's official service lists for these proceedings, affected state commissions and all customers taking service under MPS's open access transmission tariff.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket Nos. ER97–3189–022 and ER97–2343–001]

Take notice that on April 12, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a compliance refund report for the City of Easton, Maryland (Easton) required by the Commission's letter order approving the settlement in Docket No. ER97–3189–003, 85 FERC ¶ 61,349 (December 16, 1998) and by the Interconnection Agreement between Easton and Delmarva as modified in Docket No. ER97–2343–000.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Delmarva Power & Light Company

[Docket Nos. ER97–3189–023 and OA97–586–002]

Take notice that on April 12, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a compliance refund report for the City of Dover, Delaware (Dover), required by the Commission's order in Atlantic City Electric Company, et al., 85 FERC ¶ 61,445 (December 24, 1998) and letter order approving the settlement in Docket No. ER97–3189–003, 85 FERC ¶ 61,349 (December 16, 1998).

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Bollinger Energy Corporation Rainbow Energy Marketing Corporation

[Docket Nos. ER98–1821–003 and ER94–1061–020]

Take notice that on April 14, 1999, the above-mentioned power marketers filed a quarterly report with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. New England Power Pool

[Docket No. ER99–1142–004]

Take notice that on April 12, 1999, the New England Power Pool (NEPOOL) Executive Committee tendered for filing certain amendments to the NEPOOL Tariff (Amendments), which serve to include the Financial Assurance Policy for NEPOOL Members and the Financial Assurance Policy for NEPOOL Non-Participant Transmission Customers (collectively, the Financial Assurance Policies) as attachments to the Restated NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff) in compliance with the Commission's order in New England Power Pool 86 FERC ¶ 61,262 (1999), to include the NEPOOL Billing Policy (the Billing Policy) as an attachment to the NEPOOL Tariff, and to make other changes to the NEPOOL Tariff in order to reflect the addition of the Financial Assurance Policies and the Billing Policy as attachments thereto.

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service lists in the captioned dockets, to the participants in NEPOOL, and to the six New England state governors and regulatory commissions.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. The United Illuminating Company

[Docket No. ER99–2441–000]

Take notice that on April 12, 1999, The United Illuminating Company (UI), tendered for filing changes to the rate set forth in UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended (Tariff No. 4). The changes are limited to modifications to the Network Operating Agreement contained in Attachment G of Tariff No. 4.

UI requests that the proposed changes be made effective as of April 1, 1999.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. California Independent System Operator Corporation

[Docket No. ER99–2442–000]

Take notice that on April 12, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Duke Energy South Bay LLC (South Bay) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on South Bay and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of March 25, 1999.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. California Independent System Operator Corporation

[Docket No. ER99–2443–000]

Take notice that on April 12, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Duke Energy South Bay LLC (South Bay) for acceptance by the Commission.

The ISO states that this filing has been served on South Bay and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of March 25, 1999.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket No. ER99–2444–000]

Take notice that on April 12, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and El Paso Power Services Company for acceptance by the Commission.

The ISO is requesting a waiver of 60-day prior notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of March 4, 1999.

The ISO states that this filing has been served on El Paso Power Services Company and the California Public Utilities Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Company AllEnergy Marketing Company, L.L.C.

[Docket No. ER99–2446–000]

Take notice that on April 12, 1999, the above-referenced public utility filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. EME Homer City Generation, L.P.

[Docket No. ER99–2447–000]

Take notice that on April 9, 1999, EME Homer City Generation, L.P. (EMEHCG) tendered for filing with the Federal Energy Regulatory Commission, a Notice of Succession that on March 18, 1999, Mission Energy Westside, Inc. (MEW) transferred to EMEHCG the FERC rate schedules accepted in Docket No. ER99–4600–000, pertaining to interconnections with, and the sale of power from, the Homer City Generating Station. Both MEW and EMEHCG are wholly-owned subsidiaries of Edison Mission Energy. EMEHCG is also selling power at market-based rates under its FERC Electric Rate Schedule No. 1, accepted by the Commission on January 13, 1999, in Docket No. ER99–666–000.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Madison Gas and Electric Company

[Docket No. ER99–2448–000]

Take notice that on April 12, 1999, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Power Sales Tariff with DukeSolutions, Inc.

MGE requests an effective date of March 15, 1999, which is the date the agreement was signed.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Delmarva Power & Light Company

[Docket No. ER99–2449–000]

Take notice that on April 12, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Long Island Lighting Company d/b/a/ LIPA, under Delmarva's market rate sales tariff.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Metropolitan Edison Company

[Docket No. ER99–2450–000]

Take notice that on April 12, 1999, Metropolitan Edison Company (doing business as and referred to as GPU Energy), tendered for filing a Generation Facility Interconnection Agreement between GPU Energy and AES Ironwood, L.L.C.

GPU Energy requests an effective date of April 13, 1999, for the agreement.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER99–2451–000]

Take notice that on April 12, 1999, Public Service Company of New Mexico (PNM), tendered for filing two executed service agreements with Mieco, Inc., for Non firm and Short-Term Firm point-to-point transmission service under PNM's Open Access Transmission Service Tariff dated March 30, 1999.

PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER99–2452–000]

Take notice that on April 12, 1999, Wisconsin Electric Power Company tendered for filing notice that effective sixty days from the date of filing, Service Agreement No. 32 under Wisconsin Electric Power Company's Coordination Sales Tariff, FERC Electric Tariff Original Volume No. 2, is to be canceled as a result of KN Services, Inc. (KN), f/k/a KN Marketing, Inc., recent FERC filings stating they are no longer functioning as a power marketer.

Copies of the filing have been served on KN Michigan Public Service Commission and the Public Service Commission of Wisconsin.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Company

[Docket No. ER99–2453–000]

Take notice that on April 12, 1999, New England Power Company (NEP), tendered for filing a Firm Local Generation Delivery Service Agreement with ANP Bellingham Energy Company.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER99–2454–000]

Take notice that on April 12, 1999, Florida Keys Electric Cooperative Association, Inc. (FPA), tendered for filing pursuant to Section 205 of the Federal Power Act, an agreement to provide capacity and energy to Florida Power & Light Company at market-based rates under an agreement dated April 7, 1999.

Florida Keys Electric Cooperative seeks an effective date from the Commission of June 11, 1999, 60 days after the filing of this agreement.

A copy of this filing has been served upon Florida Power & Light Company.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. California Independent System Operator Corporation

[Docket No. ER99–2455–000]

Take notice that on April 12, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Mieco, Inc., for acceptance by the Commission.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow the Meter Service Agreement to be made effective as of March 18, 1999.

The ISO states that this filing has been served on Mieco, Inc., and the California Public Utilities Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER99–2456–000]

Take notice that on April 12, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Mieco, Inc., for acceptance by the Commission.

The ISO is requesting a waiver of the 60-day prior notice requirement to allow

the Scheduling Coordinator Agreement between the ISO and Mieco, Inc.

The ISO states that this filing has been served on Mieco, Inc., and the California Public Utilities Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Western Resources, Inc.

[Docket No. ER99–2457–000]

Take notice that on April 12, 1999, Western Resources, Inc., tendered for filing two long-term firm transmission agreements between Western Resources and the city of Mulvane, Kansas, and the city of Winfield, Kansas. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission.

The agreements are proposed to become effective May 1, 1999 and June 1, 1999.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Arizona Public Service Company

[Docket No. ER99–2458–000]

Take notice that on April 12, 1999, Arizona Public Service Company (APS), tendered for filing a revised Contract Demand Exhibit for Southern California Edison applicable under the APS–FERC Rate Schedule No. 120.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of New Mexico

[Docket No. ER99–2459–000]

Take notice that on April 12, 1999, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and Aquila Energy Marketing Corporation.

PNM requested waiver of the Commission's notice requirement so that service under the PNM/Aquila netting agreement may be effective as of March 31, 1999.

Copies of the filing were served on Aquila and the New Mexico Public Regulation Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Ameren Services Company

[Docket No. ER99–2460–000]

Take notice that on April 12, 1999, Ameren Services Company (Ameren), tendered for filing Service Agreements for Market Based Rate Power Sales between Ameren and Delmarva Power & Light Company and DukeSolutions, Inc., (the parties). Ameren asserts that the purpose of the Agreements is to permit Ameren to make sales of capacity and energy at market based rates to the parties pursuant to Ameren's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Orange and Rockland Utilities, Inc.

[Docket No. ER99–2461–000]

Take notice that on April 12, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and Cargill-Alliant, LLC (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of March 25, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Ohio Valley Electric Corporation

[Docket No. ER99–2462–000]

Take notice that on April 12, 1999, Ohio Valley Electric Corporation (OVEC), tendered for filing Modification No. 11, dated as of April 1, 1999, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utility companies named within that agreement as ''Sponsoring Companies'' (the Inter-Company Power Agreement). The Inter-Company Power Agreement bears the designation ''Ohio Valley Electric Corporation Rate Schedule FPC No. 1–B.''

Mod. No. 11 is part of an arrangement intended to make additional electricity available to OVEC's Sponsoring Companies during the summer of 1999 and to provide DOE with billing credits in exchange for its release of a portion of its entitlement to such electricity.

OVEC has requested that the changes to the Inter-Company Power Agreement become effective as of April 1, 1999.

Copies of the filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, the Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, Tennessee Regulatory Authority, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Central Hudson Gas & Electric Corporation

[Docket No. ER99–2473–000]

Take notice that on April 12, 1999, Central Hudson Gas and Electric Corporation (Central Hudson), tendered for filing its development of actual costs for 1998 related to substation service provided to Consolidated Edison Company of New York, Inc. (Con Edison) in accordance with the provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual costs amounted to $275,827 for 1998 and will be the basis on which estimated charges for 1999 will be billed.

Central Hudson requests waiver of the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1999 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and

the State of New York Public Service Commission.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Central Vermont Public Service Corporation

[Docket No. ER99–2478–000]

Take notice that on April 12, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with PP&L EnergyPlus Co., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on April 14, 1999.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Central Vermont Public Service Corporation

[Docket No. ER99–2479–000]

Take notice that on April 12, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with DukeSolutions, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on April 14, 1999.

Comment date: April 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Wisconsin Public Service Corporation, Lowell Cogeneration Company, Limited Partnership

[Docket Nos. ER99–2491–000 and ER99–2494–000]

Take notice that on April 14, 1999 the above-referenced public utilities filed their quarterly transaction reports for the first quarter ending March 31, 1999.

Comment date: May 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Dayton Power and Light Company, Idaho Power Company, Minnesota Power & Light Company, Northern States Power Company (Minnesota) and Northern States Power Company, (Wisconsin), PP&L, Inc., Pacific Gas & Electric Company, Southwestern Public Service Company

[Docket Nos. OA97–418–004, OA97–455–004, OA97–590–003, OA97–130–003, OA97–406–004, OA97–423–003, OA97–594–003, OA97–515–003, and OA97–400–003]

Take notice that on March 29, 1999, Dayton Power & Light Company submitted revised standards of conduct in Docket No. OA97–418–004 in response to the Commission's February 25, 1999 order on standards of conduct.[1]

Also on March 29, 1999, PP&L, Inc. submitted a letter in OA97–423–003 and OA97–594–003 to notify the Commission that it has posted revised organizational charts and job descriptions on its OASIS to comply with the Commission's February 25, 1999 order.

On April 2, 1999, Pacific Gas & Electric Company submitted a letter in Docket No. OA97–515–003 to notify the Commission that it has posted its revised organizational charts and job descriptions on its website and that this information is posted on the California Independent System Operator's website to comply with the Commission's February 25, 1999 order.

The February 25, 1999 order required Idaho Power Company, Minnesota Power & Light Company, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin), and Southwestern Public Service Company to revise their organizational charts and job descriptions posted on OASIS within 30 days. These companies did not make any filings with the Commission (nor were they required to). However, by this notice, the public is invited to intervene, protest or comment regarding their revised organizational charts and job descriptions.

Comment date: April 30, 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).

[1] Alliant Services, Inc., *et al.*, 86 FERC ¶ 61,185 (1999).

David P. Boergers,

Secretary.

[FR Doc. 99–10223 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–111–000, et al.]

Southern Energy Potrero, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

April 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Southern Energy Potrero, L.L.C.

[Docket No. EG99–111–000]

Take notice that on April 9, 1999, Southern Energy Potrero, L.L.C. (Southern Potrero), 50 California Street, Suite 3220, San Francisco, California 94111, tendered for filing with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern Potrero is a Delaware limited liability company that intends to acquire a direct 100 percent ownership interest in the 363 MW Potrero Power Plant located at Potrero Point, San Francisco, California. Southern Potrero is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: May 5, 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.

2. Equitable Power Services Company and Northeast Energy Services, Inc.

[Docket No. EC99–63–000]

Take notice that on April 9, 1999, the above-captioned parties (Applicants) filed an application under Section 203 of the Federal Power Act requesting authorization for the transfer of power sales agreements from Equitable Power Services Company to Northeast Energy Services, Inc.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Southern Energy Delta, L.L.C.

[Docket No. EG99–112–000]

Take notice that on April 9, 1999, Southern Energy Delta, L.L.C. (Southern Delta), 50 California Street, Suite 3220, San Francisco, California 94111, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern Delta is a Delaware limited liability company that intends to acquire a direct 100 percent ownership interest in the Pittsburg Power Plant and the Contra Costa Power Plant located in Pittsburg and Antioch, California (collectively, the Delta Facilities). The Delta Facilities have an aggregate generating capacity of approximately 2702 MW. Southern Delta is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: May 5, 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. Southern Energy California, L.L.C.

[Docket No. EG99–113–000]

Take notice that on April 9, 1999, Southern Energy California, L.L.C. (Southern California), 50 California Street, Suite 3220, San Francisco, California 94111, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern California is a Delaware limited liability company that intends to acquire: (a) an indirect 100 percent ownership interest in the 363 MW Potrero Power Plant located at Potrero Point, San Francisco, California, (b) an indirect 100 percent ownership interest the Pittsburg Power Plant located in Pittsburg, California, and (c) an indirect 100 percent ownership interest in the Contra Costa Power Plant located in Antioch, California. The Pittsburg Power Plant and the Contra Costa Power Plant have an aggregate generating capacity of approximately 2702 MW. Southern California is engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: May 5, 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.

5. Village of Freeport, New York Complainant v. Consolidated Edison Company of New York, Inc. Respondent.

[Docket No. EL99–58–000]

Take notice that on April 9, 1999, the Village of Freeport, New York (Freeport) tendered for filing a Complaint against Consolidated Edison Electric Company of New York, Inc. (Con Edison) pursuant to Section 206 of the Federal Power Act, 16 U.S.C. §§ 824e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. Freeport's Complaint requests that the Commission investigate and remedy the unreliable, discontinuous and unduly discriminatory firm wholesale electric transmission services provided to Freeport by Con Edison under Con Edison's Open Access Transmission Tariff.

Freeport states that a copy of the Complaint has been served by mail upon Con Edison, the New York State Public Service Commission, and the Long Island Power Authority.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be due on or before May 10, 1999.

6. Southwestern Public Service Company

[Docket No. ER85–477–018]

Take notice that on April 9, 1999, Southwestern Public Service Company tendered for filing in accordance with the January 22, 1999, Federal Energy Regulatory Commission acceptance of the Joint Offer of Settlements (between Southwestern Public Service Company (Southwestern) and Golden Spread Electric Cooperative, Inc. (Golden Spread) and between Southwestern and Lyntegar Electric Cooperative, Inc.) and the acceptance of the clarification (between Southwestern and Golden Spread) issued on March 11, 1999 in Docket No. ER85–477–010, a compliance filing with the Federal Energy Regulatory Commission by Southwestern Public Service Company.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. United American Energy Corp., CHI Power Marketing, Inc., Griffin Energy Marketing, L.L.C., AC Power Corporation, Kamps Propane, Inc., AMVEST Power, Inc., Symmetry Device Research, Inc., Golden Valley Power Company, PowerTec International, LLC, Agway Energy Services, Inc., Total Gas & Electric, Inc., Superior Electric Power, Corporation, and Central Hudson Enterprises Corporation.

[Docket Nos. ER96–3092–011, ER96–2640–010, ER97–4168–006, ER97–2867–007, ER98–1148–003, ER97–2045–008, ER96–2524–005, ER98–4334–002, ER96–1–014, ER97–4186–006, ER97–4202–007, ER95–1747–014, and ER97–2872–002]

Take notice that on April 12, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. EME Homer City Generation, L.P.

[Docket No. ER99–2433–000]

Take notice that on April 9, 1999, EME Homer City Generation, L.P., petitioned the Commission for acceptance of a market-based rate schedule for the sale of certain ancillary services in the markets administered by the New York and Pennsylvania-New Jersey-Maryland independent system operators.

The company also requested waiver of the 60-day notice requirement, and waiver of certain requirements under Subparts B and C of Part 35 of the Commission's regulations. The company is an indirect subsidiary of Edison International.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Edison Mission Marketing & Trading, Inc.

[Docket No. ER99–2434–000]

Take notice that on April 9, 1999, Edison Mission Marketing & Trading, Inc. (EMMT), a power marketer incorporated under the laws of California, petitioned the Commission for acceptance of a market-based rate schedule for the sale of ancillary services at market-based rates. EMMT is an indirect subsidiary of Edison International.

EMMT also requested waiver of the 60-day notice requirement and waiver of certain requirements under Subparts B and C of Part 35 of the Commission's Regulations.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Automated Power Exchange, Inc.

[Docket No. ER99–2435–000]

Take notice that on April 9, 1999, Automated Power Exchange, Inc., tendered for filing a rate schedule under which APX will offer power exchange services in the APX-Ohio Hub Market.

APX requests that this new APX Rate Schedule be accepted to become effective as of June 1, 1999.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER99–2436–000]

Take notice that on April 9, 1999, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing a Service Agreement for Market Rate Sales under Rate Schedule MR, FERC Electric Tariff First Revised Volume No. 3 (the MRSAs), between Duke and Public Service Electric and Gas Company.

Duke requests that the MRSA submitted for filing in this docket be made effective as a rate schedule as of March 10, 1999.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. UtiliCorp United Inc.

[Docket No. ER99–2437–000]

Take notice that on April 9, 1999, UtiliCorp United Inc., tendered for filing a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Midwest Energy, Inc. The Service Agreement provides for the sale of capacity and energy by UtiliCorp United Inc., to Midwest Energy, Inc., pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Southern Indiana Gas and Electric Company

[Docket No. ER99–2438–000]

Take notice that on April 9, 1999, the above-referenced public utility filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER99–2439–000]

Take notice that on April 9, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a First Amendment to Network Integration Transmission Service Agreement by and between the Board of Trustees of the Municipal Electric Utility of Waverly, Iowa and MidAmerican, dated March 12, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of March 12, 1999, for the Amendment, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on the Iowa Utilities Board, the Illinois Commerce Commission, South Dakota Public Utilities Commission and Waverly Municipal Electric Utility.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER99–2440–000]

Take notice that on April 9, 1999, Cinergy Services, Inc. (Cinergy Services), on behalf of its Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.), tendered for filing unexecuted Service Agreements for service under the Cinergy Operating Companies FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 6–CB applicable to customers which Cinergy Services has individual negotiated agreements for the sale of electric energy by the Cinergy Operating Companies.

Cinergy Services requests an effective date of May 1, 1999. Said date coincides with the effective date of the Notices of Cancellation for sales by the Cinergy Operating Companies under individual negotiated agreements with these counter parties.

Copies of the filing were served upon all parties listed in Attachment B of the filing.

Comment date: April 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Edgar Electric Cooperative, Riverside Canal Power Company, Mountainview Power Company, and Jersey Central Power & Light Company

[Docket Nos. ER99–2463–000, ER99–2465–000, ER99–2464–000, amd ER99–2445–000]

Take notice that on April 12, 1999, the above-referenced public utilities filed their quarterly transaction reports for the first quarter ending March 31, 1999.

Comment date: May 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Energy Marketing, Inc.

[Docket No. ER99–2466–000]

Take notice that on April 13, 1999 the above-referenced public utilities filed their quarterly transaction reports for the first quarter ending March 31, 1999.

Comment date: May 3, 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. 99–10225 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 16, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11713–000.

c. *Date Filed:* March 26, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* La Grange L&D.

f. *Location:* On the Illinois River, near the town of Meredosia, Cass County,

Illinois, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Charles T. Raabe, E-mail address, Charles.Raabe@ferc.fed.us, or telephone (202) 219–2811.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' La Grange Lock and Dam and would consist of: (1) five new 50-foot-long, 84-inch-diameter steel penstocks; (2) a new 80-foot-long, 30-foot-wide, 30-foot-high submersible powerhouse containing five generating units have a total installed capacity of 9,100-kW; (3) a new exhaust apron; (4) a new 100-foot-long, 14.7-kV transmission line; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 56 GWh and that the cost of the studies to be performed under the terms of the permit would be $1,750,000. Project energy would be sold to utility companies, corporations, municipalities, aggregators, or similar entities.

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, Washington, DC 20426, or by calling (202) 208–1371. This filing 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 a the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

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 385.10, .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'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION'', ''PROTEST'', ''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. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal state, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10144 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

April 19, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2367–033.

c. *Date Filed:* March 23, 1999.

d. *Applicants:* Maine Public Service Company.

e. *Name of Project:* Caribou.

f. *Location:* On the Aroostook River and Millinocket Stream, in Piscataquis and Aroostock Counties, Maine. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Calvin Deschene, Maine Public Service Company, P.O. Box 1209, Presque Isle, ME 04769, (207) 768–5811.

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e–mail address: Thomas.Papsidero@fed.us.

j. *Deadline for filing comments and/or motions:* May 6, 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 number (2367–033) on any comments or motions filed.

k. *Description of Transfer:* Maine Public Service Company requests to transfer the license to PDI New England, Inc. as part of its divestiture of assets mandated by the State of Maine.

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, DC 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 list should so indicate by writing to the Secretary of the Commission.*

B. *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.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representatives of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–10217 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

April 19, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2554–006.

c. *Date Filed:* March 29, 1999.

d. *Applicants:* Moreau Manufacturing Corporation (MMC) and Niagara Mohawk Power Corporation (NMPC).

e. *Name of Project:* Feeder Dam Hydroelectric Project.

f. *Location:* On the Hudson River in Saratoga and Washington Counties, New York. The project does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 8.

h. *Applicant Contacts:* For MMC: Mr. Michael W. Murphy, Moreau Manufacturing Corporation, c/o Niagara Mohawk Power Corp., 300 Erie Boulevard West, Syracuse, NY 13202 (315) 428–6941. For NMPC: Mr. Stephen C. Palmer, Swidler Berlin Shereff Friedman, LLP, 3000 K Street, N.W., Suite 300, Washington, DC 20007 (202) 424–7500.

i. *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.

j. *Deadline for filing comments and or motions:* May 27, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

Please include the project number (P–2554–006) on any comments or motions filed.

k. *Description of Proposals:* Transfer of the license for this project from MMC, a wholly-owned subsidiary of NMPC, to NMPC is a corporate formality that will enable NMPC to proceed with the sale of all of NMPC's non-nuclear generating facilities.

The transfer application was filed following the expiration of the license for Project No. 2554, which is the subject of a pending relicense application.[1] In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 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. 2554.

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. The application may be viewed on the web at 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 list should so indicate by writing to the Secretary of the Commission.*

B. *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, 19 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.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'',

[1] The Commission has authorized continued project operation. *See* Table of Notices of Authorization for Continued Project Operation, 66 FERC ¶ 61,145 (1994).

''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–10218 Filed 4–22–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Announcement of Final Deadline to Request Supplemental Crude Oil Overcharge Refunds

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of final deadline for crude oil overcharge refund recipients to request the $.0008 per gallon supplemental refund first announced in 1995 in the crude oil overcharge refund proceeding (RF272 Case Nos.).

SUMMARY: The Office of Hearings and Appeals of the Department of Energy has set a January 31, 2000 deadline for requesting the $.0008 per gallon supplemental refund first announced in 1995 in the crude oil overcharge refund proceeding. The deadline applies to all refund recipients eligible for a supplemental refund of $50 or more. Those refund recipients that do not request a supplemental refund by the deadline will forfeit the supplemental refund and any further payment from crude oil overcharge funds. Small refund recipients, i.e., those eligible for a supplemental refund less than $50, continue to have the option of requesting a supplemental refund until the conclusion of the crude oil overcharge refund proceeding.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, or Janet N. Freimuth, Deputy Assistant Director, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0107, telephone number 202–426–1527, FAX 202–426–1415.

SUPPLEMENTARY INFORMATION: The Department of Energy's crude oil overcharge refund proceeding began over twelve years ago. In August 1986, the DOE announced its policy concerning the administration of a proceeding to refund crude oil overcharge funds to injured purchasers of refined petroleum products. See 51 FR 27,899 (August 4, 1986) (Modified Statement of Restitutionary Policy in Crude Oil Cases (MSRP)). That same month, the first crude oil refund application was filed. Pursuant to the MSRP, the OHA announced, in April 1987, that it would use the refund procedures at 10 CFR part 205, Subpart V, to process crude oil refund applications. 52 FR 11,737 (1987). The OHA accepted crude oil refund applications until the June 1995 deadline.

As the OHA has conducted the crude oil overcharge refund proceeding, the DOE has continued to collect additional overcharge funds. Under the MSRP, up to 20 percent of crude oil overcharge funds are reserved for direct refunds to claimants through the OHA pursuant to Subpart V. The remaining 80 percent is divided equally between the federal government (40 percent) and the states (40 percent) for indirect restitution. Because of the potential availability of additional funds, the OHA decisions approving refund applications advise the refund recipient to inform the OHA of any change of address.

The amount of a refund is based on the refund recipient's volume of refined petroleum product purchases, multiplied by a per gallon refund amount, referred to as the ''volumetric refund amount'' or simply the ''volumetric.'' The larger a firm's or individual's purchases, the greater the injury from crude oil overcharges and therefore the greater the refund. As the DOE has collected additional crude oil overcharge funds, the OHA has raised the volumetric. The OHA originally paid crude oil overcharge refund recipients at a rate of $.0002 per gallon. The OHA has raised the volumetric twice. First, in 1989, the OHA raised the volumetric to $.0008 per gallon; the OHA sent a supplemental payment of $.0006 per gallon to those refund recipients that had been paid at the $.0002 rate. See Crude Oil Supplemental Refund Distribution, 18 DOE ¶ 85,878 (1989). Second, in 1995, the OHA raised the volumetric to $.0016 per gallon; the OHA notified refund recipients that had been paid at the $.0008 per gallon volumetric of the availability of a $.0008 supplemental payment. See 60 FR. 15562 (March 24, 1995).

The OHA's 1995 notice advised refund recipients that if they wished to receive a supplemental payment at that time, they should verify to the OHA that certain information was still correct, such as their address. The 1995 notice stated that refund recipients could wait until the end of the proceeding to receive their supplemental payment, as well as any final payment that might be made.

The OHA mailed the 1995 notice to over 56,000 refund recipients that had filed directly with the OHA for their original refund, i.e., refund recipients that did not file through a representative. The mailing went to each such recipient whose supplemental refund would be $50 or more, i.e., refund recipients with approved purchases of 62,500 gallons or more. Although the OHA did not mail to small refund recipients, i.e., those entitled to less than $50, the OHA stated that those refund recipients could request a supplemental refund. In addition to the mailing to the over 56,000 recipients that did not file through a representative, the OHA mailed a notice to the representatives of an additional 12,000 refund recipients.

Since 1995, the OHA has granted supplemental refunds totaling $268 million to 56,000 recipients. At the same time, the OHA has almost completed its consideration of the original crude oil overcharge refund applications. The OHA has granted a total of $597 million to 91,500 recipients. Of the total 100,000 applications filed, only 1,000 remain pending.

The OHA has now determined that a January 31, 2000 deadline for requesting the $.0008 per gallon supplemental refund announced in 1995 should be set for refund recipients whose supplemental refund would be $50 or more, i.e., refund recipients with approved purchases of 62,500 gallons or more. Both administrative efficiency and the goal of achieving finality in the crude oil overcharge refund proceeding warrant establishing the deadline. Over the last four years, the OHA has granted supplemental refunds to 56,000 applicants, representing 335 million

gallons of approved purchases. A deadline for requesting a supplemental refund is a necessary, interim step to the completion of the crude oil overcharge refund proceeding, which has been pending over 12 years. In order to make any final payment in the proceeding, we need to determine the number of eligible recipients and the total amount available after current supplemental payments are made. When we issued original refund decisions, we advised refund recipients to keep us informed of address changes, but some refund recipients failed to do so. We are concerned that the addresses and other information for the refund recipients that did not request a supplemental payment may not be current. For example, the recipient may have a new address or the recipient may no longer exist—an individual applicant may have died or a business entity may have ceased operations. Setting a deadline for all supplemental payments will allow us to identify those recipients that are either unreachable or that are not interested in receiving a supplemental refund. Those recipients will forfeit any further refund, which will then allow us to calculate a final payment for all remaining recipients, provided sufficient crude oil overcharge funds are left over.

Based on the foregoing, we intend to mail notice of a January 31, 2000 deadline to the 10,000 refund recipients with approved purchases of 62,500 gallons or more that have not yet requested a supplemental refund. As stated above, a refund recipient with approved purchases of 62,500 gallons or more that does not request a supplemental refund by January 31, 2000 will not be eligible for any further payment from crude oil overcharge funds. The deadline does not apply to small refund recipients, i.e., those with approved purchases of less than 62,500 gallons. We have concluded that mailing notice to such refund recipients is not appropriate, given the small size of the refund (less than $50) and the age of the addresses in our data base. Small refund recipients continue to have the option of requesting a supplemental refund until the conclusion of the crude oil overcharge refund proceeding.

Dated: April 15, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals, Department of Energy, Washington, DC.

[FR Doc. 99–10192 Filed 4–22–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6241–9]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed April 12, 1999 Through April 16, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990121, Draft EIS, COE, FL, Alligator Chain of Lakes and Lake Gentry Extreme Drawdown and Habitat Enhancement Project, Implement Aquatic Habitat Enhancement, Osceola County, FL, Due: June 10, 1999, Contact: Christine Bauer (904) 232–3271.

EIS No. 990122, Draft EIS, GSA, TN, Volunteer Army Ammunition Plant, Disposal and Transfer Ownership of Property to Other Federal Agencies and Private Entities, City of Chattanooga's, Hamilton County, TN, Due: June 08, 1999, Contact: Phil Youngberg (404) 331–1831.

EIS No. 990123, Draft EIS, COE, IL, Hunter Lake New Supplemental Water Supply Reservoir, Construction, City of Springfield Application for Permit, Sangamon County, IL, Due: June 07, 1999, Contact: Charlene Carmack (309) 794–5570.

EIS No. 990124, Final EIS, DOE, TN, NY, IL, NM, Spallation Neutron Source (SNS) Facility Construction and Operation, Implementation and Site Selection, Oak Ridge National Laboratory, Oak Ridge, TN; Argonne National Laboratory, Argonne, IL; Brookhaven National Laboratory, Upton, NY; and Los Alamos National Laboratory, Los Alamos, NM, Due: May 24, 1999, Contact: David Wilfert (800) 927–9964.

EIS No. 990125, Final EIS, FHW, WA, WA–167 Corridor Adoption, WA–167 Freeway Extension from WA–167/ Meridian Street North in the City of Puyallup to the proposed WA–509 Freeway/East-West Alignment in the City of Tacoma, Funding and COE Section 404 Permit, Pierce County, WA, Due: May 24, 1999, Contact: Jeff Sawyer (360) 357–2713.

EIS No. 990126, Draft EIS, AFS, MT, North Belts Travel Plan/Maypie Confederate Vegetation Restoration Project, Improvements, Helena National Forest, Townsend and Helena Ranger District, Broadwater, Lewis and Clark and Meagher County, MT, Due: June 07, 1999, Contact: Carol Nunn (406) 266–3425.

The US Department of Agriculture, Forest Service and the US Department of the Interior, Bureau of Land Management are Joint Lead Agencies on the above project.

EIS No. 990127, Final EIS, DOE, CA, Sutter Power Plant Project, Operation and Maintenance of a High-Voltage Electric Transmission, 500 megawatt (MW) Gas Fueled, Sutter County, CA, Due: May 24, 1999, contact Loreen McMahon (916) 353–4460.

EIS No. 990128, Draft EIS, FRC, PA, NJ, NY, Millennium Pipeline Project, Construct and Operate an Interstate Natural Gas Pipeline from United States to Canada, including PA, NY and NJ, Due: June 07, 1999, Contact: Paul McKee (202) 208–1611.

EIS No. 990129, Draft EIS, FRC, MA, Holyoke Hydroeletric Relicensing Project, (FERC Nos. 2004–073 and 11607–000), Construction, Operation and Maintenance, Located on the Connecticut River, Hampshire, Hampden and Franklin Counties, MA, Due: June 07, 1999, Contact: Allan E. Creamer (202) 219–0365.

EIS No. 990130, Revised Draft EIS, DOE, WA, Hanford Remedial Action, Revised and New Alternatives, Comprehensive Land-Use Plan, Hanford Site lies within the Pasco Basin of the Columbia Plateau, WA, Due: June 07, 1999, Contact: Thomas W. Ferns (509) 372–0649.

EIS No. 990131, Final EIS, NCP, MD, National Harbor Project, Construction and Operation along the Potomac River on a 534 acre site adjacent to the Capital Beltway and Oxon Hill Manor, COE Section 10 and 404 Permits, Prince George's County, MD, Due: May 24, 1999, Contact: Eugene Keller (202) 482–7251.

EIS No. 990132, Final EIS, DOE, KY, TN, OH, TN, Programmatic EIS—Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride, Paducah Site, McCracken County, KY; Portsmouth Site, Pike County, OH; and K–25 Site on the Oak Ridge Reservation, Anderson and Roane Counties, TN, Due: May 24, 1999, Contact: Scott E. Harlow (301) 903–3352.

EIS No. 990133, Draft EIS, FRC, IL, MI, PA, IN, OH, NJ, Independence Pipeline and Market Link Expansion Projects, Construction and Operation, Interstate National Gas Pipeline, (Docket Nos. CP97–315–001, CP97–319–000, CP98–200–000 and CP98–540–000), NPDES and COE Section 404 Permits, IL, IN, MI, OH, PA and NJ, Due: June 07, 1999, Contact: Paul McKee (202) 208–1611.

Amended Notices

EIS No. 990107, Final EIS, FRC, MI, IN, IL, IN, Vector Pipeline Project, Natural Gas Pipeline and Associated above ground Facilities Construction and Operation, Approval, Joliet, IL to Vector Canada at the International Border near St. Clair, MI, several counties, MI, IN, and IL , Due: May 10, 1999, Contact: Paul McKee (202) 208–1611.
Published FR 04–09–99 Correction to Telephone Number.

Dated: April 20, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–10284 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6242–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 29, 1999 through April 02, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–NPS–K65209–00 Rating LO, Death Valley National Park General Management Plan, Implementation, Mojave Desert, Inyo and San Bernardino Counties, CA and Nye and Esmeralda Counties, NV.

Summary: EPA expressed lack of objections, however, EPA made specific comments regarding groundwater extraction outside the park, grazing within park boundaries, and military overflights.

ERP No. D–UMC–K11096–AZ Rating EC2, Yuma Marine Corps Air Station (MCAS), To Improve Ordnance Handling and Storage, Construct a new Combat Aircraft Loading Area (CALA); New Station Ordnance Area and Relocation of MCAS Yuma, AZ.

Summary: EPA expressed environmental concerns regarding the lack of information on compliance with Executive Order 12902, Energy Efficiency and Water Conservation. EPA requested that information on this issue be included in the final document.

Final EISs

ERP No. F–BIA–K02010–AZ, Southpoint Power Plant, Fort Mojave Indian Reservation Approval of a Lease for Development Project, Construction and Operation of a 500 Megawatt Natural Gas Fired Power Plant, NPDES Permit and COE Section 404 Permit, Mohave County, AZ.

Summary: EPA had no objection to the proposed action.

ERP No. F–BLM–J01009–WY, Carbon Basin Coal Project Area, Coal Lease Application for Elk Mountain/ Saddleback Hills, Carbon County, WY.

Summary: Final EIS adequately addressed most of EPA's concerns.

ERP No. F–DOA–G36149–OK, Double Creek Watershed Plan, Implementation, Watershed Protection and Flood Prevention, National Economic Development (NED), Town of Ramona, Washington and Osage Counties, OK.

Summary: EPA had no objection to the selection of the lead agency's preferred alternative as described in the DEIS.

ERP No. F–DOE–L09813–ID, Advanced Mixed Waste Treatment Project, Construction and Operation, Site Selection, Idaho National Engineering and Environmental Laboratory (INEEL), Eastern Snake River Plain, ID.

Summary: Review of the Final EIS has resulted in no objection to project as proposed.

ERP No. F–DOI–K39053–CA, San Joaquin River Agreement Project, Implementation of the Meeting Flow Objectives for 1999–2010, Vernalis Adaptive Management Plan, San Joaquin, Stanislaus, Madera, Merced, Fresno and Tuolume Counties, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–K40142–CA, CA–4 ''GAP'' Closure Project, Improvements between I–80 and Cunnings Skyway, Funding, NPDES Permit and COE Section 404 Permit, City of Hercules, Contra Costa County, CA.

Summary: Review of the FEIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–NOA–E39044–FL, Guana, Tolomato, Matanizas, Site Designation, National Estuarine Research Reserve, Management Plan, City of Jacksonville, St. Johns and Flagler Counties, FL.

Summary: EPA expressed no objection to the action as proposed.

ERP No. F–USA–E11043–GA, U.S. Army/Fort Benning and The Consolidated Government of Columbus Proposed Land Exchange, Muscogee and Chattahoochee Counties, GA.

Summary: EPA raised concerns about the gopher tortoises have been adequately resolved; however, the actual long-term impacts of land use changes attendant to the exchanges remained to be determined.

ERP No. F–USA–G11027–NM, White Sands Missile Range (WSMR), Implementation, Range-Wide, Las Cruces, NM.

Summary: Review of the Final EIS has resulted in no objection to the project as proposed.

ERP No. F–USN–K11089–HI, Pacific Missile Range Facility Enhanced Capabilities, To Accommodate Theater Ballistic Missile Defense (TBMD) Training & Testing and Theate Missile Defense (TMD) Testing, NPDES Permit, several counties, HI.

Summary: EPA expressed environmental concerns regarding the lack of commitment to proposed mitigation. EPA requested that the Record of Decision clearly document the mitigation measures that will be implemented.

ERP No. F–USN–K11093–HI, Barbers Point Naval Air Station, Disposal and Reuse of Land Facilities, HI.

Summary: Review of the Final EIS has been completed and no environmental objection were identified.

Other

ERP No. LF–USN–K11091–NV, Fallon Naval Air Station, Renewal of the B–20 Land Withdrawal, City of Fallon, Churchill County, NV.

Summary: Review of the Final EIS has been completed and no environmental objection were identified .

Dated: April 20, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–10285 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6330–4]

Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby

given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held on May 4–6, 1999, at the Ramada Plaza Hotel Pentagon in Alexandria, VA at Seminary Road and I–395. The CHPAC was created to advise the Environmental Protection Agency in the development of regulations, guidance and policies to address children's environmental health.

DATES: Tuesday, May 4, 1999, Work Group meetings only; plenary sessions Wednesday, May 5 and Thursday, May 6, 1999.

ADDRESSES: Ramada Plaza Hotel Pentagon, Alexandria, VA at Seminary Road and I–395.

AGENDA ITEMS: The meetings of the CHPAC are open to the public. The Outreach and Communications Work Group, the Science and Research Work Group, and the Regulatory Process Work Group will meet from 10:00 a.m. to 5:00 p.m. on Tuesday, May 4, 1999. The Economics Work Group will meet from 8:30 a.m. to 4:30 p.m. on Tuesday, May 4.

The plenary session will begin on Wednesday, May 5 from 8:30 a.m. to 5:15 p.m. and Thursday, May 6, from 8:45 a.m. to 12:00 p.m. The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Some tentative agenda items include reports from the Work Groups, a presentation on key economics issues and a two panel discussions on EPA's proposed cancer guidelines. There will be a public comment period on Wednesday, May 5, 1999, from 4:45–5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Contact Paula R. Goode, Office of Children's Health Protection, USEPA, MC 1107, 401 M Street, SW, Washington, D.C. 20460, (202) 260–7778, goode.paula@epa.gov.

Dated: April 9, 1999.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 99–10234 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6330–5]

Proposed Administrative Cashout De Minimis Settlement Under Section 122(g) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of Tri-County/Elgin Landfill Site, Kane County, IL

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Tri-County/Elgin Landfill site in Kane County, Illinois, with the settling parties listed in the Supplementary Information portion of this document. The settlement requires the 125 settling parties to pay $2,072,421.00 to the Hazardous Substance Superfund.

The total cost of the cleanup (without adjustments, such as the premium and the use of only a percentage of the cost of the groundwater component) is $25,649,139.43. This number is the sum of EPA's past costs of $2,536,732.00, plus past costs incurred by certain potentially responsible parties of $2,039,318.43, plus capital costs of $16,650,000.00 for the landfill cap and the gas extraction remedy components, plus the capital cost for the groundwater component of $3,623,089.00, plus EPA's estimated future oversight cost of $800,000.00. For purposes of the *de minimis* offer, the groundwater component costs were adjusted downward, and total future site costs were assigned a premium of 30%. These cost adjustments were for reasons of fairness. The *de minimis* generator class' share of responsibility, as reflected in the total site costs, was further adjusted by taking into consideration other parties, besides generators, who may be liable at the site. The generator class' allocated responsibility is 50%, and is reflected through a downward adjustment to the Total Site Cost. Thus, the generator site cost is 50% of the total site cost (because the transporters and the owner/operator also are potentially responsible for response costs). The owner/operator and transporter classes are assigned responsibility for the portion of the costs not assigned to the generator class. Payment amounts for each *de minimis* generator were calculated by multiplying the generator site cost by each *de minimis* generator's percentage share of volume contributed to the site.

Under the terms of the settlement, the *de minimis* generators who sign the Consent Order agree to pay their respective settlement amounts. In exchange for those payments, the United States covenants not to sue or take administrative action pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site. In addition, participating *de minimis* generators will be entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f) and 9622(g)(5), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604 and at the Gail Borden Public Library in Elgin.

DATES: Comments must be submitted on or before May 24, 1999.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670. Comments should reference the Tri-County/Elgin Landfill site, Kane County, Illinois, and EPA Docket No. V–W–99–C–507, and should be addressed to Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670.

SUPPLEMENTARY INFORMATION: The following is a list of the settling *de minimis* generators:

ACME Eyelet Stamping Company
ACME Screw Company

Advance Sheet Metal
Alumax Extrusions, Inc.
Americana Nursing Center
George J. Ball Company
Barker Lumber Co.
Barnharts Standard
Boehringer Mannheim Corp.
Bonnie Dundee Golf Club
Brady Ready Mix
Brunswick Bowling Division
Burren Transfer
Capsonic Group
Carefree Garden Products
Carlith Printers
Central Ink and Chemical
Checker Oil Co.
Chicago Northwestern Railroad
Chicago Title Insurance
City of West Chicago
Clark Oil & Refining Corp.
Clark Outdoor Spraying
Commercial Printing
Commonwealth Edison
Continental Envelope Corp.
Countryside Graphics
Crane Co.
Crest Motel
Crest Photo Lab
Days Gas Station
Dempsey Tool-Engineering
Ditchwitch of Illinois
Dominick's Finer Foods
Dukane Corp.
Dundee Animal Hospital
Dunkin Donut
Dupage County Airport
Dupage County Building Administration
Eaton Corp. Controls Division
Elgin Business Forms
Elgin Corrugated Box
Elgin Country Club
Elgin Courier News
Elgin Die Mold
Elgin Federal Savings
Elgin Key and Lock Co. Inc.
Elgin Realty
Elgin Sanitary District
Elgin State Bank
Elgin Sweeper Co.
Ferdon Plastics
Flex-Weld Inc.
Fox Electric Supply Co.
Fox Valley Marketing System
Glen Oak County Club
Globe Glass
Goodyear
Harbrace Publications
Haumiller Engineering Co.
Hawthorn Realty Group
Head Inc.& Screw Product
SA Healy Co.
Herbs Glass & Mirror
Inlaid Wood Craft
Inland Real Estate
International Harvester
IVCO Inc.
Jel-Sert
Jones Electric Co.
Jurs Auto Service
K Mart Auto
Katy Industries
Kearneys TV and Appliance
Kerr-McGee Chemical Corp.
Lake Cook Farm Supply
Lakeview Screw Machine Products
Lions Photo
Liquid Container
Ludwig Dairy Corp.
Majestic Distributors
Malcor Roofing Co.
Maremont Corp.
McWhorter Tech.
Metropolitan Sanitary Dist.
Municipal Ins. Co. of America
National Tea Co.
Nichols Homeshield
Northern Illinois Gas Co.
Northwestern Chemical Co.
Olsen Electronics
Olympic Controls Corp.
Orkin Exterminating
Otto Engineering
JH Patterson Lbr.
Pierce & Stevens Chemical
Quilt Master Inc.
Radio Shack
Renberg Garage
Rep Corp.
Revere Electric
Rollins Leasing Corp.
Safety Kleen Corp.
Saint Andrews Country Club
Schaumberg Dodge
Seven-Eleven
Seven-Up Bottling Co.
Shaped Wire, Inc.
Shell Oil Co.
So-Fro Fabrics
Spiegel Mail Order
Standard Oil Co.
Star Displays, Inc.
Steves Equipment
Stewart Warner
Suburban Plastics
Taco Bell
Tessendorf Mechanical Ind.
U.S. Life Service
W.J. Dennis Co.
W.R. Meadows
Walgreens Co.
West Chicago State Bank
Woolco Dept. Stores
Zurich-American Ins. Co.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

William E. Muno,

Director, Superfund Division.

[FR Doc. 99–10233 Filed 4–22–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Sunshine Act Meeting

Pursuant to the provisions of subsection (e)(2) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(e) (2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Tuesday, April 20, 1999, the Corporation's Board of Directors determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum re: Proposed revision to Memorandum of Understanding between the FDIC and FICO Regarding the Collection of Assessments.

The Board further determined, by the same majority vote, that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: April 20, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–10340 Filed 4–21–99; 10:39 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:20 a.m. on Tuesday, April 20, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) Matters relating to the Corporation's corporate, supervisory, and resolution activities, and (2) matters relating to an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than April 16, 1999, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: April 20, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–10341 Filed 4–21–99; 10:39 am]

BILLING CODE 6714–01–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 17, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Heartland Bancshares, Inc., Lake Placid, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Heartland National Bank, Lake Placid, Florida (in organization).

2. South Alabama Bancorporation, Inc., Mobile, Alabama; to acquire 100 percent of the voting shares of Sweet Water State Bancshares, Inc., Sweet Water, Alabama, and thereby indirectly acquire Sweet Water State Bank, Sweet Water, Alabama.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Simmons First National Corporation, Pine Bluff, Arkansas; to merge with NBC Bank Corp., El Dorado, Arkansas, and thereby indirectly acquire National Bank of Commerce of El Dorado, El Dorado, Arkansas.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Amoret Bancshares, Butler, Missouri; to acquire 100 percent of the voting shares of C.J. Bancshares, Inc., Harrisonville, Missouri.

2. FirstBank Holding Company of Colorado ESOP, and FirstBank Holding Company of Colorado, both of Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of El Paso County, Colorado Springs, Colorado (in organization).

Board of Governors of the Federal Reserve System, April 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–10133 Filed 4–22–99; 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 20, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The Banc Corporation, Birmingham, Alabama; to merge with C&L Banking Corporation, Bristol, Florida, and thereby indirectly acquire C&L Bank of Bristol, Bristol, Florida.

2. The Banc Corporation, Birmingham, Alabama; to acquire 100 percent of the voting shares of C&L Bank of Blountstown, Blountstown, Florida.

Board of Governors of the Federal Reserve System, April 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–10270 Filed 4–22–99; 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 May 20, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Fifth Third Bancorp, Cincinnati, Ohio; to acquire Emerald Financial Corp., Strongville, Ohio, and thereby indirectly acquire Strongville Savings Bank, Strongville, Ohio, and thereby engage in savings and loan activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, April 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–10271 Filed 4–22–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, April 28, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 21, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–10339 Filed 4–21–99; 10:03 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0803]

Agency Information Collection Activities: Proposed Collection; Comment Request; Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents

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 proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information concerning restrictions on the sale and distribution of cigarettes and smokeless tobacco in order to protect children and adolescents under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written comments on the collection of information by June 22, 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: Heather M. Rubino, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 15–74, Rockville, MD 20857, 301–827–3322.

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.

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents—OMB No. 0910–0312—Extension

Part 897 (21 CFR part 897) reflects requirements in sections 502(e)(2) and 520(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(e)(2) and 360j(e)).

Section 897.24 is intended to implement section 502(e)(2) of the act. Under section 502(e)(2) of the act, a device is misbranded unless its label bears the product's established name. Section 502(e)(4) of the act, in turn, explains that the ''established name'' with respect to a device means: (1) The applicable official name of the device designated under section 508 of the act (21 U.S.C. 358), (2) if there is no such name and the device is recognized in an official compendium, then the official title in such compendium, or (3) if neither (1) nor (2) apply, then ''any common or usual name of such device.'' Here, no official names have been designated under section 508 of the act, and these products are not recognized in an official compendium. Consequently, FDA developed established names for these products under section 502(e)(4) of the act. Section 897.24 requires that each cigarette or smokeless tobacco product package, carton, box, or container of any kind that is offered for sale, sold, or otherwise distributed bear

whichever of the following established names is appropriate: ''Cigarettes,'' ''Cigarette Tobacco,'' ''Loose Leaf Chewing Tobacco,'' ''Plug Chewing Tobacco,'' ''Twist Chewing Tobacco,'' ''Moist Snuff,'' or ''Dry Snuff.''

Section 520(e) of the act authorizes the agency to, by regulation, require that a device be restricted to sale, distribution, or use ''upon such other conditions as the [agency] may prescribe in such regulation, if, because of its potentiality for harmful effect or the collateral measures necessary to its use, the [agency] determines that there cannot otherwise be reasonable assurance of its safety and effectiveness.'' In the **Federal Register** of August 28, 1996 (21 CFR 44396), the agency issued regulations restricting the sale and distribution of cigarettes and smokeless tobacco under this authority (hereinafter referred to as the August 1996 final rule).

Sections 897.30 and 897.32 are intended to help protect children and adolescents by reducing the appeal of cigarettes and smokeless tobacco to them. Section 897.30, in part, contains a comprehensive list of permissible forms of advertising and labeling; in the unlikely event that a person wishes to use a form of advertising or labeling that is not described in § 897.30, the rule directs persons to notify FDA. The rule's concept of permitted advertising is sufficiently broad to encompass almost all known forms of advertising, but the agency has provided a reporting estimate of 1 hour in the remote chance that a firm will provide such notice to FDA.

Section 897.32 would reduce the appeal of cigarettes and smokeless tobacco to children and adolescents by requiring most advertisements to use black text on white backgrounds, without any colors or pictures. It would also require advertising to include the product's established name and a statement of its intended use. In the August 1996 final rule, FDA estimated that approximately 25,000 pieces of labeling or advertising will be submitted to the agency under this provision. The agency arrived at this estimate by comparing the advertising expenditures by the cigarette and smokeless tobacco industries and by the pharmaceutical industry and the number of pieces of advertising that the agency receives from the pharmaceutical industry, and projecting that printed advertisements may increase due to the rule's effect on promotional activities (see 61 FR 44396 at 44597). FDA also estimated that the time required for such advertising is 1 hour based on the highest estimated time reported in industry comments on the proposed rule.

The text-only requirement of § 897.32 does not apply to advertisements in ''adult'' publications, as defined in § 897.32(a)(2). Under that definition, firms wishing to advertise in ''adult'' publications may need to retain records to demonstrate that the publication is an ''adult'' publication within the meaning of § 897.32. In the August 1996 final rule, FDA estimated that 31 respondents may be affected and that a total of 100,000 hours would be needed for such surveys (see 61 FR 44396 at 44612). The 31 respondents reflects the number of manufacturers as reported in a 1992 U.S. census of tobacco product manufacturers, and the estimated total time for these surveys would be 100,000 hours, assuming 100 surveys (for the approximately 100 magazines in which tobacco manufacturers advertise) at 1,000 hours per survey or approximately 3,226 hours per respondent.

The medical device reporting requirements (21 CFR 803.19 and 804.25) were addressed in a separate rulemaking that published in the **Federal Register** of May 12, 1998 (63 FR 26069 and 26129).

Description of Respondents: Cigarette and smokeless tobacco manufacturers, distributors, and retailers.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs
897.24	2,000	1	2,000	40	80,000	$17 million
897.30	1	1	1	1	1	0
897.32	25,000	1	25,000	1	25,000	0
Total					105,001	$17 million

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Record-keepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Capital Costs	Total Operating & Maintenance Costs
97.32	31	1	31	3,226	100,000	$2 million	$1 million
Total					100,000	$2 million	$1 million

It should be noted that some information requested from respondents is already provided or possessed by the respondents. For example, § 897.24 makes ''cigarettes'' the established name for cigarettes, and cigarette packages already use that name. Therefore, there should not be any significant burden on respondents to comply with § 897.24.

FDA also notes that, due to ongoing litigation concerning FDA's authority to issue regulations pertaining to cigarettes and smokeless tobacco, §§ 897.24, 897.30, and 897.32 have not become effective. Nevertheless, FDA intends to submit the proposed collection of information to OMB for its review and clearance under the PRA so that it will continue to be able to collect the information once these provisions become effective.

Dated: April 15, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–10227 Filed 4–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Registration and Listing Grassroots Meeting for Medical Device Manufacturers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following meeting: Registration and Listing Grassroots Meeting for Medical Device Manufacturers. The topic to be discussed is FDA's intention to propose changes to the current medical device registration and listing process. This meeting is being conducted to provide a forum in which FDA can obtain industry views on changes to the device registration and listing system that FDA is currently considering. The changes being considered are aimed at streamlining the collection of registration and listing data, improving the accuracy and quality of the data in the system, and decreasing the time it takes manufacturers to register their establishments and list their devices, while ultimately reducing FDA's cost of maintaining the registration and listing system.

DATES: The meeting will be held on May 25, 1999, 8:30 a.m. to 12 noon; registration will begin at 7:30 a.m.

ADDRESSES: The meeting will be held at 9200 Corporate Blvd., rm. 20B, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Bryan H. Benesch, Food and Drug Administration, Center for Devices and Radiological Health, Office of Health and Industry Programs (HFZ–220), 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 ext. 131, (FAX) 301–443–8810, (e-mail) ''BHB@CDRH.FDA.GOV''.

Those persons interested in attending the meeting should fax or e-mail their registration including name, title, firm name, address, telephone, and fax number. There is no charge to attend this meeting, but advance registration is requested due to limited seating. If you need special accommodations due to a disability, please contact Bryan H. Benesch at least 7 days in advance.

SUPPLEMENTARY INFORMATION: Over the past one and a half years, FDA has reviewed the entire registration and listing process to determine if the process can be made more efficient and accurate. This was one of many reengineering efforts conducted by the Center for Devices and Radiological Health (CDRH). This reengineering effort has resulted in a number of suggestions aimed at improving the registration and listing process for both FDA and industry. This meeting will help FDA obtain the medical device industry perspective on the changes under consideration and suggestions for additional changes. FDA has announced two meetings on the same subject to be held April 20, 1999, in California (64 FR 12813, March 15, 1999).

Some of the changes that FDA is currently considering include the following:

(1) Require industry submission of registration and listing information through the World Wide Web (WEB). What are the advantages and disadvantages to industry, and how would industry be affected if WEB submissions were mandated?

(2) Require that owners and parent companies register, list, and take responsibility for the registration and listing of their establishments. What is the highest level in a company that should be responsible for registration and listing, and how should this level be defined/described?

(3) Require that additional data elements be submitted to FDA, e.g., premarket submission numbers for those devices that have gone through the premarket notification (510(k)), premarket approval, or product development protocol process.

(4) Because of the ease of submission through the WEB, require that firms register and list within 5 days (current requirement is 30 days) of entering into an operation that requires registration and listing.

A summary report of the meeting will be available on CDRH's website approximately 15 working days after the meeting. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

Dated: April 19, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–10140 Filed 4–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0693]

''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test.'' The guidance document is intended to provide guidance to applicants on the content and format of the chemistry, manufacturing and controls (CMC) and establishment description sections of the ''Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use'' (revised Form FDA 356h) for an allergenic extract or allergen patch test. This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiatives and the FDA Modernization Act of 1997, and is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at

1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test.'' The guidance document is intended to provide guidance to applicants in completing the CMC section and the establishment description information of revised Form FDA 356h. The guidance document announced in this notice finalizes the draft guidance document entitled ''Guidance for Industry: On the Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for an Allergenic Extract or Allergen Patch Test'' published in the **Federal Register** of August 27, 1998 (63 FR 45826).

In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of a revised Form FDA 356h that will be used as a single harmonized application form for all drug and licensed biological products. Manufacturers may voluntarily begin using this form for an allergenic extract or allergen patch test. FDA will announce in the future when manufacturers are required to use this form for all products. Use of the new harmonized Form FDA 356h will allow a biologic product manufacturer to submit one biologics license application instead of two separate applications (product license application and establishment license application).

This guidance document represents the agency's current thinking with regard to the content and format of the CMC and establishment description sections of a license application for an allergenic extract or allergen patch test. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The guidance document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: April 16, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–10228 Filed 4–22–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–278]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection;

Title of Information Collection: National Hospital Malpractice Insurance Survey;

Form No.: HCFA–R–278 (OMB# 0938–NEW);

Use: The Data collected from this survey will be used to collect two years of malpractice insurance costs data from a nationally representative sample of 800 hospitals. Along with the survey of hospitals, we will collect rate schedules from the commercial insurers and the offices of state insurance commissioners. As compared to the survey of hospitals which is a statistical sampling survey, the survey of the offices of state insurance commissioners and commercial insurance companies will not be a statistical sampling survey. We will match collected data in the rate schedules to the data from sampled hospitals in order to convert malpractice insurance costs of different level of coverage into costs of a constant level of coverage. The primary statistics will be used to rebase the input price index through weight adjustment and the annual percent change to update the operating prospective payment rates. Therefore, the NHMIS must allow estimates of the primary statistics for each hospital be adjusted by their rating basis, coverage elements, and types of coverage. The survey results will be used to estimate the weight of malpractice insurance costs in relation to goods and services hospitals purchase in order to furnish inpatient care and to calculate the malpractice insurance cost to change over time at the national level. The analytic results will be used to adjust Medicare operating reimbursement rates to Medicare participating hospitals and to prepare statistical summaries.;

Frequency: Annually;

Affected Public: Not-for-profit institutions, business or other for-profit, and State, Local, or Tribal Govt.;

Number of Respondents: 600;

Total Annual Responses: 600;

Total Annual Hours: 300.

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: April 14, 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. 99–10280 Filed 4–22–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0416]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic, and Treatment Services (EPSDT) Participation Report and Supporting Regulations in 42 CFR 441.60; *Form No.:* HCFA–416 (OMB# 0938–0354); *Use:* States are required to submit an annual report on the provision of EPSDT services to HCFA pursuant to section 1902(a)(43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs. It is also helpful in developing trend patterns, national projections, responding to inquiries, and determining a State's results in achieving its participation goal.; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,568.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 15, 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. 99–10155 Filed 4–22–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration; Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Proposed Project: Feasibility Study To Evaluate the Positive Activities Campaign (PAC) (OMB No. 0930–0188 Revision)

The Center for Substance Abuse Prevention is conducting a feasibility study of the Positive Activities Campaign (PAC), an initiative aimed at the general public to encourage adults to become more involved in positive, skill-building activities with youth. The ultimate goal of the initiative is to reduce substance abuse among young people.

To determine the likely effectiveness of the campaign, CSAP's feasibility study consists of a process evaluation and an outcomes evaluation. The evaluation is assessing change in communities exposed to PAC, including change in adults' involvement with youth. Two treatment and two comparison communities have been selected for study. Data for the process evaluation are primarily from on-site interviews with key personnel in local youth-serving organizations (e.g, Boy Scouts, Boys and Girls Clubs); data for the outcomes evaluation are from baseline and 6-month followup telephone surveys of adults.

This revision to the currently approved information collection activities involves: (1) a third, 12-month followup telephone interview with the random sample of adults; and (2) because PAC is being expanded to serve civic membership organizations (e.g., Rotary Clubs, Lions Clubs, Kiwanis) application of the process evaluation activities with these groups, plus three telephone interviews with random samples of members of the civic organizations.

The table that follows shows the total response burden associated with this project. All of the currently approved burden will have been experienced by the time of OMB approval of the revision.

	Number of respondents	Responses/ respondent	Burden/response	Total burden hrs.
Currently approved: (1,350)				
Additional 12-month telephone interview	1,600	1	0.10	160
Additional 12-month interview with local staff for process evaluation	150	1	1.0	150
Interviews with local-level staff for process evaluation	20	3	1.0	60
Telephone interviews with members of civic organizations	1,800	baseline 1	.14	252
	1,650	follow-up 2	.10	330
Total revised: 952*				

*Annualized over an 18-month approval period, the annual burden is 715 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 18, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–10188 Filed 4–22–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Minority Fellowship Program

AGENCY: Center for Mental Health Services (CMHS), Center for Substance Abuse Prevention (CSAP), and the Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Notice of planned award for renewal of clinical training grants under the Minority Fellowship Program (MFP) to the American Nurses Association (ANA), the American Psychiatric Association (APA) and the Council on Social Work Education (CSWE).

SUMMARY: SAMHSA plans to award renewal MFP grants to the ANA, APA, and CSWE to help facilitate the entry of ethnic minority students into mental health and/or substance abuse careers and increase the number of nurses, psychiatrists, and social workers trained to teach, administer, and provide direct mental health and substance abuse services to ethnic minority groups. The project period is anticipated to be 3 years. The first year will be funded for up to $400,000 for each award.

This is not a general request for applications. The renewal clinical training grants will only be made to the ANA, APA, and the CSWE based on the receipt of satisfactory applications that are considered to have sufficient merit by an Initial Review Group and the National Advisory Council.

Authority/Justification

The awards will made under the authority of Section 303 of the Public Health Service Act (PHS). The authority to administer this program has been delegated to the Director, CMHS. The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.244.

Background

Section 303 of the Public Health Service Act assigns to the Secretary, acting through the SAMHSA, certain responsibility for the clinical training of mental health professionals. SAMHSA is concerned with the treatment of underserved priority populations; i.e., adults with serious mental illness; children with serious emotional disturbance; elderly, ethnic minority and/or rural populations with mental and substance abuse disorders. SAMHSA also considers the lack of suitably trained professionals to be a major cause of the lack of access for ethnic minority communities to appropriate mental health and substance abuse services. Accordingly, SAMHSA has the responsibility for providing support to facilitate the entry of ethnic minority students into mental health careers and increase the number of professionals trained at the doctoral-level to teach, administer, and provide direct mental health and substance abuse services to ethnic minority communities.

Over the past several decades, the Federal mental health clinical training program at SAMHSA (and previously at the National Institute of Mental Health [NIMH]) has addressed this gap primarily by attempting to increase the numbers of professionals who wish to dedicate themselves to serving ethnic minority populations with mental and addictive disorders.

Renewal applications may be submitted only by the ANA, APA, and CSWE. These professional organizations have unique access to those students entering their respective profession. The fields of nursing, psychiatry, and social work have been nationally recognized for decades as part of the four core behavioral health disciplines included in the MFP (along with psychology). Nursing, psychiatry, and social work provide part of an essential core of services for individuals with serious mental illness and also less severe mental disorders. The ANA and APA are the largest national professional organizations in the country for nursing and psychiatry, respectively. The ANA and APA and their affiliates have activities in all major areas of national policies affecting nursing and psychiatry as professions, including education and training. In the field of social work, the CSWE is the leading national organization which is focused just on the education and training of social workers. All three organizations, the ANA, APA, and CSWE, along with their affiliates, have direct involvement in curriculum development, school accreditation, and pre-/post-doctoral training. The ANA, APA, and CSWE have had decades of experience in working directly with university training programs. Because of the above unique characteristics and long experience, the ANA, APA, and CSWE were chosen more than 20 years ago as the exclusive representatives for the field of nursing, psychiatry, and social work. During that time, the ANA, APA, and CSWE have administered their MFP programs exceptionally well. In addition, the ANA, APA, and CSWE have recruited excellent students, assured that all program requirements were satisfied, and effectively monitored the progress of fellows during and after the fellowship period. These MFP grantees continue in their unique position to represent these core mental health and substance abuse disciplines exceptionally well, and eligibility has been restricted to the ANA, APA, and CSWE, accordingly.

Therefore, because the APA's, ANA's and CSWE's grant support will end in FY 1999, SAMHSA is providing additional support for up to 3 years via renewal grant awards.

FOR FURTHER INFORMATION CONTACT: Questions concerning the MFP may be directed to Mr. James Blair, Division of State and Community Systems Development, CMHS/SAMHSA, Room 15C–26, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443–5850.

Dated: April 18, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–10141 Filed 4–22–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless.

Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 15, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–9858 Filed 4–22–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–79, ''General Personnel Records.'' The revisions will update the name and number of the system and the address of the system locations and system managers.

EFFECTIVE DATE: These actions will be effective on April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–79, ''General Personnel Records,'' to update the name and number of the system to more accurately reflect its Department-wide scope, and to update the address of the system locations and system managers to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the ''General Personnel Records,'' OS–79, system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/DOI–79

SYSTEM NAME:

Interior Personnel Records—Interior, DOI—79.

Note: This system complements OPM/GOVT–1, the Government wide system for general personnel records maintained by the Office of Personnel Management. This notice incorporates by reference but does not repeat all of the information contained in OPM/GOVT–1.

SYSTEM LOCATION:

Official personnel files, in paper and micro format, of current and recently separated employees are located at the personnel offices of the bureaus which currently employ (or employed) the individuals. Automated personnel records are maintained in the Federal Personnel Payroll System (FPPS) managed by the National Business Center in Denver, Colorado.

(1) Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) FPPS Program Management Division, National Business Center, U.S. Department of the Interior, 7301 West Mansfield Avenue, MS D–2400, Denver, CO 80235.

(3) Bureau personnel offices:

(a) Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue NW, Washington, DC 20245.

(b) U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(c) U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(d) Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(e) Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(f) National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(g) Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(h) Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and recently separated employees of the Department of the Interior.

CATEGORIES OF RECORDS IN THE SYSTEM:

Current and historical personnel data for each employee of the Department.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2951, 5 U.S.C. 2954.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The official personnel records (in paper or micro format) maintained by the servicing personnel offices on all Departmental employees provide basic data for preparation and verification of personnel reports and documents. They also provide a comprehensive and continuing record of each employee's service, status, skills, and personnel history, for use in the merit promotion program, reduction in force program, and to effect other personnel actions. Automated records are used to generate reports and listings, produce standard

personnel management documents, establish and verify entitlements to pay and benefits, and provide historical data.

Routine use disclosures outside the Department are the same as those listed in, and can be found in, the system notice for OPM/GOVT–1, the Government wide system for general personnel records maintained by the Office of Personnel Management.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on lists and forms, on microfilm or microfiche, and in computer-processible storage media.

RETRIEVABILITY:

Records are retrieved by a variety of personal identifiers, including name of individual, birth date, Social Security number, and/or other identification number.

SAFEGUARDS:

Access to all records in the system is limited to authorized personnel whose official duties require such access. Bureau officials generally have access only to records pertaining to employees of their bureaus. Paper or micro format records are maintained in locked metal file cabinets in secured rooms. Electronic records are maintained with safeguards meeting the security requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are maintained in accordance with approved retention and disposal schedules. Some records may be retained indefinitely as a basis for longitudinal work history statistical studies.

SYSTEM MANAGER(S) AND ADDRESSES:

(1) Director, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Chief, FPPS Program Management Division, National Business Center, U.S. Department of the Interior, 7301 West Mansfield Avenue, MS D–2400, Denver, CO 80235.

(3) Bureau personnel officers:

(a) Director of Administration, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue NW, Washington, DC 20245.

(b) Personnel Officer, U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(c) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(d) Labor Relations Officer, Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(e) Personnel Officer, Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(f) Personnel Officer, National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(g) Personnel Officer, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(h) Personnel Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Departmental employees and agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–10212 Filed 4–22–99; 8:45 am]
BILLING CODE 4310–RJ–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, USGS–04, ''Employee Assistance Program Records.'' The revisions will update the name and number of the system, the system storage and safeguards statements, and the address of the system managers.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this revised system of records may do so by submitting comments in writing to the Office of the Secretary Privacy Act Officer, U.S. Department of the Interior, National Business Center, MS–1414 MIB, 1849 C Street NW, Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination.

FOR FURTHER INFORMATION CONTACT: Director, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for USGS–04, ''Employee Assistance Program Records,'' to expand the scope of the system notice from bureau-wide to Department-wide coverage. In the process, it will update the name and number of the system to more accurately reflect its new Department-wide scope, update the storage and safeguards statements to account for those records that are maintained in automated format, and add the addresses of the system managers for the Departmental office and the remainder of the bureaus. Accordingly, the Department of the Interior proposes to amend the ''Employee Assistance Program

Records,'' USGS–04, system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary, Privacy Act Officer, National Business Center.

INTERIOR/DOI–04

SYSTEM NAME:

Employee Assistance Program Records—Interior, DOI–04.

SYSTEM LOCATION:

Records are located with the contractors providing counseling services under the Employee Assistance Program (EAP).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Department of the Interior and their families who seek, are referred to, and/or receive assistance through the Employee Assistance Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, State, local government, or private), the problem assessment, the recommended plan of action to correct the major issue, referral to community or private resource for assistance with personal problems, referral to community or private resource for rehabilitation or treatment, results of referral, and other notes or records of discussions held with the employee made by the Employee Assistance Program counselor. Additionally, records in this system may include documentation of treatment by a therapist or at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 290dd–1; 42 U.S.C. 290ee–1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used by an Employee Assistance Program Counselor to document the nature of an individual's problem and progress made to solve the problem. The primary uses of these records are:

(1) For the Employee Assistance Program counselor to document the nature of an individual's problem and progress made to solve the problem.

(2) To record an individual's participation in and the results of community or private referrals for solution of problems, rehabilitation, or treatment programs. These records and the information in them information may be used to disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner. (When such records are provided to qualified researchers employed by the Department of the Interior, all patient identifying information will be removed). Note: Disclosure of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restrictions of the confidentiality of Alcohol and Drug Abuse Patient Records Regulations, 42 CFR part 2. Disclosure of records pertaining to the physical and mental fitness of employees are, as a matter of Department policy, afforded the same degree of confidentiality.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records maintained in paper format are stored in file folders. Records maintained in electronic format are stored on disk and on other appropriate media.

RETRIEVABILITY:

Records are retrieved by the name of the individual receiving assistance.

SAFEGUARDS:

Access to records is strictly limited to those persons employed by the contractors who are directly involved in the alcohol and drug abuse prevention function of the Department as that term is defined in 42 CFR, part 2. Paper format records are maintained in locked metal file cabinets in secured rooms. Electronic records are maintained with safeguards meeting the security requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with approved agency schedules. (These include the U.S. Geological Survey's Bureau Records Disposition Schedule, RCS/Item 405–04 a and b.)

SYSTEM MANAGER(S) AND ADDRESS:

(1) Departmental office: Team Leader, Employee and Labor Relations Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Bureau offices:

(a) Director of Administration, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue NW, Washington, DC 20245.

(b) Chief, Branch of Employee/Labor Management Relations, Office of Personnel, U.S. Geological Survey, 601 National Center, Reston, Virginia 20192.

—Atlanta Personnel Officer, U.S. Geological Survey, 3850 Holcomb Bridge Rd, Norcross, Georgia 30092.

—Rolla Personnel Officer, U.S. Geological Survey, 1400 Independence Road, Rolla, Missouri 65401.

—Chief, Employee Relations Section, Central Region Personnel Branch, U.S. Geological Survey, Denver Federal Center, Denver, Colorado 80225.

—Western Region EAP Administrator, Employee Relations and Development Section, Western Region Personnel Branch, 345 Middlefield Road, Menlo Park, California 94025.

(c) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(d) Labor Relations Officer, Bureau of Reclamation, PO Box 25001, Denver, CO 80225.

(e) Personnel Officer, Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(f) Personnel Officer, National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(g) Personnel Officer, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(h) Personnel Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the appropriate System Manager. The request must be in writing, contain the individual's name and date of birth, and be signed by the requestor, as required by 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, be signed by the requestor, and comply with the Department's Privacy Act Regulations regarding verification of identity and access to records as required by 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, be signed by the requestor, and comply with the Department's Privacy Act Regulations regarding verification of identity and amendment of records as required by 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by a supervisor, the Employer Assistance Program staff member who records the counseling session, and the therapists or institutions used as referrals or providing treatment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–10214 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–20, ''Secretarial Controlled Correspondence File.'' The revisions will update the record source categories statement and the address of the system location and system manager.

EFFECTIVE DATE: These actions will be effective on April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Executive Secretariat, U.S. Department of the Interior, 1849 C Street NW, MS–7229 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–20, ''Secretarial Controlled Correspondence File,'' to update the record source categories statement and the address of the system location and system manager to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the ''Secretarial Controlled Correspondence File,'' OS–20, system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OS–20

SYSTEM NAME:

Secretarial Controlled Correspondence File—Interior, OS—20.

SYSTEM LOCATION:

Office of Executive Secretariat, U.S. Department of the Interior, 1849 C Street NW, MS–7229 MIB, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have written to the Secretary of the Interior on official business.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information identifying the author(s) of correspondence received, date and subject of the correspondence, disposition of the correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 43 U.S.C. 1457; 44 U.S.C. 3101; Reorganization Plan 3 of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to ascertain the status of official correspondence sent to the Secretary of the Interior.

Disclosures outside the Department of the Interior may be made:

(1) To another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) To the Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (1) The Department or any component of the Department; (2) Any Departmental employee acting in his or her official capacity; (3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (1) Relevant and necessary to the proceeding; and (2) Compatible with the purpose for which it compiled the information.

(3) To the appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation order or license, when the Department becomes aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license.

(4) To a congressional office in response to an inquiry to that office by the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in an automated database.

RETRIEVABILITY:

Records are retrieved by a unique number assigned by the automated system to each letter received, name of correspondent(s), subject(s) of correspondence, date of correspondence, date correspondence received in the Office of Executive Secretariat, and disposition of correspondence.

SAFEGUARDS:

Records are maintained in a secure database with access limited by security software. Database is installed on hardware located in a secure room.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with General Records Schedule No.23, Item No.3, which you can find at http://www.nara.gov.

SYSTEM MANAGER(S) AND ADDRESSES:

Director, Office of Executive Secretariat, U.S. Department of the Interior, 1849 C Street NW, MS–7229 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, state that the requester seeks information on his/her records, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and

comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

The information contained in this system of records is obtained both from the individuals to whom the records pertain and the agency officials who respond to the correspondence received.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–10215 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–RP–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; As Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary (OS) is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–82, ''Executive and Manager Development Program (EMDP).'' The revisions will update the system name and number, the categories of records in the system, safeguards, and retention and disposal statements, and address of the system locations and system managers.

EFFECTIVE DATE: These actions will be effective on April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Team Leader, Executive Resources and Career Management Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Department of the Interior is proposing to amend the system notice for OS–82, ''Executive and Manager Development Program (EMDP),'' to update the name of the system to more adequately describe the current executive and managerial training being provided to Departmental employees, and the system number to more accurately reflect the Departmentwide scope of the system. The Executive and Manager Development Program described in the system notice when it was first published has been replaced by the Senior Executive Service Candidate Development Program, a competitive twelve-month developmental program open to GS–14 and GS–15 applicants to enhance candidates' managerial and leadership skills in preparation for Office of Personnel Management certification of graduates' managerial competencies for noncompetitive Senior Executive Service selection, and the Team Leadership Program, a related developmental program open to applicants at the GS–11 through GS–13 levels. The Department is also proposing to update the categories of records in the system statement to indicate, more specifically, what types of records are being maintained on individuals covered by the system, and to update the safeguards and retention and disposal statements and the address of the system locations and system managers to reflect changes that have occurred since the notice was last published. Accordingly, the Department of the Interior proposes to amend the ''Executive and Manager Development Program (EMDP),'' OS–82 system notice in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary, Privacy Act Officer, National Business Center.

INTERIOR/DOI–82

SYSTEM NAME:

Executive Development Programs Files—Interior, DOI–82.

SYSTEM LOCATION:

(1) Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Department of the Interior University, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–7129 MIB, Washington, DC 20240.

(3) Bureau personnel offices:

(a) Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue NW, Washington, DC 20245.

(b) U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(c) U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(d) Bureau of Reclamation, P.O. Box 25001, Denver, CO 80225.

(e) Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(f) National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(g) Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(h) Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Departmental employees who apply for, participate in, and/or graduate from Departmentwide executive development programs such as the Senior Executive Service Candidate Development Program and the Team Leadership Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application and nomination documents, reports of training assignments, evaluation statements, and lists of graduates. Application and nomination documents contain personal information that may include the following (or similar) data elements: name, date of birth, Social Security number, home address and telephone number, physical limitations or interests which might affect type of location of assignment, career interests, education history, work or skills experience, outside activities (including membership in professional organizations), listing of special qualifications, licenses and certificates held, listing of honors and awards, career goals and objectives, and annual supervisory evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301; Pub. L. 91–616, Pub. L. 92–255, Pub. L. 93–282, Pub. L. 79–258 (5 U.S.C. 7901); OMB Circular A–72.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are:

(a) By personnel staffing specialists, evaluation panel members, and selecting officials to determine selections for the programs.

(b) By employee development specialists for purposes of review in connection with training and employee development activities, transfers, promotions, reassignments, adverse actions, disciplinary actions, and determination of qualifications, of an individual.

(c) By bureau and Departmental officials for setting out developmental goals and objectives of the employee

and for documenting attainment of these goals. Disclosures outside the Department of the Interior may be made:

(1) To the Office of Personnel Management for the purpose of obtaining Qualifications Review Board certification of the executive qualifications of Senior Executive Service Candidate Development Program participants.

(2) Educational institutions providing training and development opportunities.

(3) To the U.S. Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when: (a) One of the following is a party to the proceeding or has an interest in the proceeding: (1) The Department or any component of the Department; (2) Any Department employee acting in his or her official capacity; (3) Any departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or (4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and (b) The Department deems the disclosure to be: (1) Relevant and necessary to the proceeding; and (2) Compatible with the purpose for which the Department compiled the information.

(4) To appropriate Federal, State, tribal, local or foreign agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation order or license, when we become aware of an indication of a violation or potential violation of the statute, rule regulation, order or license.

(5) To a congressional office in response to an inquiry to that office by the individual to whom the record pertains.

(6) To a Federal, State, or local agency which has requested information relevant or necessary to the hiring or retention of an employee, or the issuing of a security clearance, license, grant or other benefit, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(7) To a Federal, State, or local agency where necessary to obtain information relevant to the hiring or retention of an employee, or the issuing of a security clearance, license, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are stored in file folders, in file cabinets. Electronic records are stored on disk, tape or other appropriate media.

RETRIEVABILITY:

Records are retrieved by name of individual.

SAFEGUARDS:

Access to records is limited to authorized personnel. Paper records are maintained in locked file cabinets. Electronic records are maintained with safeguards meeting minimum security requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records on applicants are retained for two years after close of selection process. Records on current participants and graduates are retained in accordance with established retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Team Leader, Executive Resources and Career Management Group, Office of Personnel Policy, U.S. Department of the Interior, 1849 C Street NW, MS–5221 MIB, Washington, DC 20240.

(2) Vice President, Department of the Interior University, National Business Center, U.S. Department of the Interior, 1849 C Street NW, MS–7129 MIB, Washington, DC 20240.

(3) Bureau personnel officers:

(a) Director of Administration, Bureau of Indian Affairs, Division of Personnel Management, 1951 Constitution Avenue NW, Washington, DC 20245.

(b) Personnel Officer, U.S. Geological Survey, National Center, 12201 Sunrise Valley Drive, Reston, VA 22092.

(c) Personnel Officer, U.S. Fish and Wildlife Service, Division of Personnel Management and Organization, 1849 C Street NW, Washington, DC 20240.

(d) Labor Relations Officer, Bureau of Reclamation, PO Box 25001, Denver, CO 80225.

(e) Personnel Officer, Bureau of Land Management, Division of Personnel (530), 1849 C Street NW, Washington, DC 20240.

(f) Personnel Officer, National Park Service, Division of Personnel, Branch of Labor Management Relations, 1849 C Street NW, Washington, DC 20240.

(g) Personnel Officer, Minerals Management Service, Personnel Division, 1110 Herndon Parkway, Herndon, VA 22070.

(h) Personnel Officer, Office of Surface Mining, Division of Personnel, 1951 Constitution Avenue NW, Washington, DC 20245.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

An individual requesting access to records maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or her should address his/her request to the appropriate System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Departmental applicants and agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–10216 Filed 4–22–99; 8:45 am]
BILLING CODE 4310–RJ–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Natural Gas Pipeline Right-of-Way Permit Application To Cross Lower Rio Grande Valley National Wildlife Refuge

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior, DOI.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) advises the public that Tennessee Gas Pipeline Company has applied for a right-of-way easement for the installation of a 24″ O.D. welded steel pipeline across the Lower Rio Grande Valley National Wildlife Refuge, Hidalgo Bend Tract #354. The 0.79 mile right-of-way will consist of a 100 foot construction right-of-way, with additional work space of varying widths, which will revert to a 50 foot right-of-way 30 year easement. The project will temporarily impact 7.92 acres and the 30 year permanent easement area will comprise 4.92 acres. Notice of the complete project, which allows for bi-directional transportation

of natural gas between the United States and Mexico, was previously published in the **Federal Register** on November 6, 1998, (63 FR 59,962) and an environmental assessment was subjected to public review. As a result, the applicant received authorization for the 9.3 mile pipeline project from the Federal Energy Regulatory Commission in Docket No. CP99–29 pursuant to sections 157.205, 157.208 and 157.212 of the Commission's Regulations. In addition, a Natural Gas Act (NGA) Section 3 Presidential Permit has been issued by the Secretary of State and the Secretary of Defense.

This notice informs the public that this right-of-way application and associated documents is available for review.

DATES: Written comments should be received on or before May 24, 1999 to receive consideration by the service.

ADDRESSES: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306 (RE), Albuquerque, New Mexico 87103–1306, Attention: Wanda McKean, Realty Specialist.

FOR FURTHER INFORMATION CONTACT: Wanda McKean, Realty Specialist at the above Albuquerque, New Mexico address (505) 248–7415 or FAX (505) 248–6803.

Dated: April 16, 1999.

Stephen C. Helfert,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–10189 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Privacy Act of 1974; As Amended; Deletion of Systems of Records

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed deletion of existing systems of records.

SUMMARY: We conducted a review of our Privacy Act systems pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), and the President's May 14, 1998, memorandum concerning Personal Information in Federal Records. As a result of our review, we found 12 Privacy Act systems that needed deletion. We are deleting three systems because they are now part of Department of the Interior, Office of the Secretary systems, another system because it no longer contains personal identifiers, three systems because we no longer collect the information, and five systems because they are now part of another agency's records.

DATES: These actions will be effective on April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny R. Hunt, Service Privacy Act Officer, U.S. Fish and Wildlife Service, Phone: 703/358–1730.

SUPPLEMENTARY INFORMATION: We list the twelve systems of records proposed for deletion and the reasons for deletion below.

1. FWS–1, ''Labor Cost Information Records,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19081). The system of records is now part of a Department of the Interior, Office of the Secretary system-OS–85 entitled ''Payroll, Attendance, Retirement, and Leave Records—Interior, Office of the Secretary-85.''

2. FWS–2, ''Travel Records'', previously published in the **Federal Register** on December 6, 1983 (48 FR 54715). The system of records is now part of an Department of the Interior, Office of the Secretary system—OS–88 entitled ''Travel-Interior, Office of the Secretary-88.''

3. FWS–3, ''Security File,'' previously published in the **Federal Register** on March 24, 1981, (46 FR 18368). The system of records is now part of a Department of the Interior, Office of the Secretary system—OS-45 entitled ''Security Clearance Files and Other Reference Files—Interior, Office of the Secretary.''

4. FWS–6, ''Hunting and Fishing Survey Records,'' previously published in the **Federal Register** on March 24, 1981 (46 FR 18370). We receive this information from the Department of Commerce, Bureau of Census without personal identifiers. We disposed of any records that contained personal identifiers in accordance with the U.S. Fish and Wildlife Service Records Disposition Schedule.

5. FWS–8, ''Fish Disease Inspection Reports,'' previously published in the **Federal Register** on March 24, 1981 (46 FR 18371). We no longer collect this information. Records containing personal information were disposed of in accordance with the U.S. Fish and Wildlife Service Records Disposition Schedule. We transferred any remaining records to those States which still inspect private facilities.

6. FWS–9, ''Farm Pond Stocking Report,'' previously published in the **Federal Register** on March 24, 1981 (46 FR 18372). We are no longer involved in the Farm Pond Stocking Program. We disposed of the records in accordance with the U.S. Fish and Wildlife Service Records Disposition Schedule.

7. FWS–13, ''North American Breeding Bird Survey,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19086). We no longer maintain the information. The Department of Interior, U.S. Geological Survey is now responsible for the system and data contained therein.

8. FWS–14, ''Great Lakes Commercial Fisheries Catch Records,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19086). We no longer maintain the information. The Department of Interior, U.S. Geological Survey is now responsible for the system and the data contained therein.

9. FWS–17, ''Diagnostic Extension Service Records,'' previously published in the **Federal Register** on April 11, 1977 (42 FR 19088). We no longer maintain the information. The Department of the Interior, U.S. Geological Survey is now responsible for the system and the data contained therein.

10. FWS–23, ''Motor Vehicle Permit Log,'' previously published in the **Federal Register** on March 24, 1981 (46 FR 18376). We no longer collect this information. We disposed of the records in accordance with the U.S. Fish and Wildlife Service Records Disposition Schedule.

11. FWS–28, ''Avitrol Authorization Records,'' previously published in the **Federal Register** on March 24, 1981 (46 FR 18379). We no longer maintain the information. The Department of Agriculture is now responsible for the system and the data contained therein.

12. FWS–29, ''Animal Damage Control Non-Federal Personnel Records,'' previously published in the **Federal Register** on December 6, 1983, (48 FR 54722). We no longer maintain the information. The Department of Agriculture is now responsible for the program. The records are now part of a system of records entitled ''Animal Damage Control Non-Federal Personnel Records—USDA/APHIS–7.'' We transferred the previous records when the Department of Agriculture assumed responsibility for the program.

Roy M.Francis,

Departmental Privacy Act Officer.

[FR Doc. 99–10211 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

Privacy Act of 1974; As Amended; Revisions to the Existing System of Records

AGENCY: Office of Hearings and Appeals, Department of the Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of Hearings and Appeals is issuing public notice of its intent to modify an existing Privacy Act system of records, OHA–01, ''Hearings and Appeals Files.'' The revisions will update the address of the system locations in its regional offices and the authority for maintenance of the system.

EFFECTIVE DATE: These actions will be effective April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203.

SUPPLEMENTARY INFORMATION: In this notice, the Department of the Interior is amending OHA–01, ''Hearings and Appeals Files,'' to update the address of the system locations in the regional offices and the authority for maintenance of the system. Accordingly, the Office of Hearings and Appeals proposes to amend ''Hearings and Appeals Files,'' OHA–01, in its entirety to read as follows:

Sue Ellen Sloca,

Office of the Secretary Privacy Act Officer, National Business Center.

INTERIOR/OHA–01

SYSTEM NAME:

Hearings and Appeals Files—Interior, OHA–01.

SYSTEM LOCATION:

(1) National headquarters: Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203.

(2) Field offices: Office of Hearings and Appeals, Hearings Division, Offices of Administrative Law Judges. (Contact the System Manager to obtain a current address list for these field offices).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in hearings and appeals proceedings before the Hearings Division, Appeals Boards, and/or the Director of the Office of Hearings and Appeals (or his/her designee/s).

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Information assembled in case files pertaining to hearings proceedings, and to appeals to the Department relating to:

(1) Contract disputes arising out of findings of fact or decisions by contracting officers of any bureau or office of the Department, or any field installation thereof, which are considered and decided finally for the Department by the Interior Board of Contract Appeals.

(2) Indian probate matters, including determination of heirs, and approval of wills, except as to members of the Five Civilized Tribes, and resolution of appeals to the Department in such matters; proceedings in Indian probate relating to Tribal acquisition of certain interests of decedents in trust and restricted lands; and appeals pertaining to administrative actions of Bureau of Indian Affairs officials in cases involving determinations, findings and orders protested as a violation of a right or privilege of the appellant, which are considered and decided finally for the Department by the Interior Board of Indian Appeals.

(3) Appeals from decisions rendered by Departmental officials relating to the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf, which are considered and decided finally for the Department by the Interior Board of Land Appeals,

(4) Appeals from orders and decisions issued by Departmental officials and administrative law judges in proceedings relating to surface coal mining control and reclamation which are considered and decided finally for the Department by the Interior Board of Land Appeals.

(5) Wildlife civil penalty assessment hearings before administrative law judges of the Office of Hearings and Appeals and appeals from their orders and decisions which are considered and finally decided for the Department by the Director, Office of Hearings and Appeals, or ad hoc appeals boards appointed by him.

(6) Appeals from orders and decisions of Departmental bureaus pertaining to relocation assistance benefits claims, or requests for waiver of claims for erroneous overpayments, considered and finally decided for the Department by the Director, Office of Hearings and Appeals, or ad hoc appeals boards appointed by him/her.

(7) Grievance proceedings involving employees of the Department, in which hearings are conducted and recommended decisions are prepared by Office of Hearings and Appeals attorneys and hearing examiners under authority delegated by the Director, Office of Hearings and Appeals.

(8) Proceedings and decisions by administrative law judges and the Director, Office of Hearings and Appeals, concerning nondiscrimination in Federally assisted programs in connection with which Federal financial assistance is extended under laws administered in whole or in part by the Department of the Interior Effectuation of Title VI of the Civil Rights Act of 1964.

(9) Proceedings and decisions by administrative law judges and the Director, Office of Hearings and Appeals, concerning nondiscrimination in activities conducted under permits, rights-of-way, public land orders, and other Federal authorizations granted or issued under Title II of the Trans-Alaska Pipeline Authorization Act.

(10) Proceedings and decisions by the Director, Office of Hearings and Appeals, or his/her designee/s, in matters arising under various statutes or Departmental regulations providing for a hearing and/or a right to appeal within the Department as set forth in 43 CFR part 4.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 43 CFR Part 4; 41 U.S.C. 601; 43 U.S.C. 1201; 43 U.S.C. 1701; 25 U.S.C. 2, 9, 372, 373, 373a, 373b, 374; 43 U.S.C. 315a; 43 U.S.C. 1601–1628; 5 U.S.C. 551; 30 U.S.C. 1202 et seq.; 43 U.S.C. 1331; 30 U.S.C. chap. 2, 3, 3A, 5, 7, 15, 16, 23, 25 and 29.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is the adjudication of appeals and determination of issues in hearings and appeals proceedings.

Disclosure outside the Department of the Interior may be made:

(1) To the U.S. Department of Justice, or to a court or adjudicative body with jurisdiction, when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the Government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or compatible with the purpose for which the records were compiled.

(2) To appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing a statute, rule, regulation,

order or license, when the disclosing agency becomes aware of information indicating the violation or potential violation of a statute, rule, regulation, order or license.

(3) To a congressional office in connection with an inquiry an individual covered by the system has made to the congressional office.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual form in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by the name of the appellant, claimant, or other party, or by designated Office of Hearings and Appeals docket number.

SAFEGUARDS:

Access to and use of these records is limited to those persons whose official duties require such access. Records are maintained in accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained in accordance with approved records retention and disposal schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records shall be addressed to the System Manager. The request must be in writing, signed by the requestor, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager. The request must be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Records in the system contain information submitted by all parties to the adjudication, including but not limited to the following categories of individuals: appellants, claimants, grievants, and other persons involved in the hearings and appeals proceedings, and government officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–10213 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–76195]

Notice of Coal Lease Offering by Sealed Bid; The Pines Tract

U.S. Department of the Interior, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155. Notice is hereby given that at 11 a.m., May 20, 1999, certain coal resources in lands hereinafter described in Sevier and Emery Counties, Utah will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid will be accepted for less than fair market value as determined by the authorized officer. A company or individual is limited to one sealed bid. If a company or individual submits two or more sealed bids for this tract, all of the company's or individual's bids will be rejected.

This lease is being offered for sale under the provisions set forth in the regulations for Leasing on Application at 43 CFR 3425.

The lease sale will be held in the State of Utah, Division of Community and Economic Development Conference Room, 324 South State Street, Suite 501, Salt Lake City, Utah, at 11 p.m. on May 20, 1999. At that time, the sealed bids will be opened and read. No bids received after 10 a.m., May 20, 1999, will be considered.

Coal Offered

The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Sevier and Emery Counties, Utah, approximately 5 miles northwest of Emery, Utah on public land located in the Manti-LaSal National Forest:

T. 20 S., R 5 E., SLM, Utah
Sec. 35, S2NE, SENW, NESW, S2SW, SE;
Sec. 36, W2SW, SESW.
T. 21 S., R. 5 E., SLM, Utah
Sec. 1, lots 3, 4, S2SW, SWSE;
Sec. 2, lots 1–4, S2S2;
Sec. 10, E2;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, E2;
Sec. 22, E2;
Sec. 23, all;
Sec. 24, all;
Sec. 25, N2, N2S2;
Sec. 26, N2, NESW, E2NWSW, SE.
T. 21 S., R. 6 E., SLM, Utah
Sec. 19, lots 3, 4, E2SW;
Sec. 30, lots 1–3, E2NW, NESW.
Containing 7,171.66 acres

The minable portions of the seams in this area are from 6 to 14 feet in thickness. This tract contains an estimated 60 million tons of recoverable high volatile C bituminous coal.

The estimated coal quality using weighted averages of samples on an as-received basis is:

11,539	BTU/lb.;
8.37	Percent moisture:
0.5	Percent sulphur;
8.78	Percent ash;
45.98	Percent fixed carbon;
36.87	Percent volatile matter.

(Totals do not equal 100% due to rounding)

Rental and Royalty

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

Notice of Availability

Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84155–0155 or in the Public Room (Room 400), 324 South State Street, Salt Lake City, Utah 84111. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

Douglas M. Koza,

Deputy State Director, Natural Resources.

[FR Doc. 99–10187 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–099–0777–43]

Relocation/Change of Address/Office Closure: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On May 6, 1999, the Bureau of Land Management's California State Office will relocate to another facility.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Tony Staed at 916–978–4610 or Andy Smith at 916–978–4500; BLM California State Office; 2135 Butano Drive, Sacramento, CA 95825.

SUPPLEMENTARY INFORMATION: On May 6, 1999, BLM California State Office will relocate to 2800 Cottage Way, Sacramento, CA 95825; Telephone: 916–978–4400. The following business practices will be in effect from May 6 through May 21, 1999:

(A) A representative will be available at the Federal Building, 2800 Cottage Way; to provide assistance during the relocation period.

(B) The following telephone numbers may be utilized to contact a staff person in the offices listed below:

(1) Fire (pager) 1–888–705–3330.

(2) Law Enforcement, 909–697–5332, POC: Jim Beaudette, (Pager) 1–888–347–8904.

(3) Public Information Center 916–978–4400 POC: Gary Catledge.

(4) External Affairs 916–978–4610 or 916–978–5107.

(5) Director's Office 916–978–4600; fax 916–978–4620.

(C) Access our website at (www.ca.blm.gov) for information related to our relocation, BLM programs, news releases and other BLM related programs.

(D) The Public Information Center will be staffed for general inquiries only. There will be no over-the-counter sales transactions during this interim period. Orders received will be processed but mailed after May 24, 1999.

(E) Our official records (I.e., case files, maps, plats. etc.)will not be available for public inspection.

(F) Please Note: existing telephone numbers will remain the same. During the interim, BLM employees will access their voice mail and respond to messages in an expeditious manner.

(G) All correspondences should be sent to the following Cottage Way address effective May 5, 1999: Bureau of Land Management 2800 Cottage Way, Room W–1834 Sacramento, CA 95825

(H) We will resume a full service business on May 24, 1999 at 2800 Cottage Way; Sacramento, CA.

Dated: April 16, 1999.

Andrew M. Smith,

Acting Deputy State Director, Support Services.

[FR Doc. 99–10103 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Little Rock Central High School National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a General Management Plan and Environmental Impact Statement for Little Rock Central High School National Historic Site, Arkansas.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an Environmental Impact Statement (EIS) for the Little Rock Central High School National Historic Site (hereafter, ''the historic site''), Arkansas, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) and Public Law 105–356. This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters, open houses, etc.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list, should be directed to: Bill Koning, National Park Service, Denver Service Center, P.O. Box 25287, Denver, Colorado 80225, 303–969–2390, bill__koning@nps.gov

FOR FURTHER INFORMATION CONTACT: Sändra Washington, Chief, Planning and Compliance, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102, 402–221–3351, sandra__washington@nps.gov

SUPPLEMENTARY INFORMATION: As established, the historic site shall consist of lands and interests therein comprising the Central High School campus and adjacent properties in Little Rock, Arkansas. Congress established the historic site to preserve, protect, and interpret for the benefit, education, and inspiration of present and future generations, Central High School and its role in the integration of public schools and the development of the Civil Rights movement in the United States.

In accordance with NPS park planning policy, the GMP will ensure the historic site has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

In accordance with Public Law 105–356, the GMP for the historic site will include provisions to:

(1) Identify specific roles and responsibilities for the NPS in administering the historic site.

(2) Identify lands or property, if any, that might be necessary for the NPS to acquire to carry out its responsibilities.

(3) Identify the roles and responsibilities of other entities in administering the historic site and its programs.

(4) Include a management framework that ensures the administration of the historic site does not interfere with the continuing use of Central High School as an educational institution.

Public Law 105–356 specifies that nothing in the Act shall affect the authority of the Little Rock School District to administer Central High School, nor shall the Act affect the authorities of the City of Little Rock in the neighborhood surrounding the school.

The environmental review of the GMP and EIS for historic site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The NPS estimates the draft GMP and draft EIS will be available to the public by June 2000.

Dated: April 14, 1999.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 99–10201 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Saguaro, National Park, Arizona; Transfer of Administrative Jurisdiction Over Certain Lands

AGENCY: National Park Service, Department of the Interior.

ACTION: Saguaro National Park, Arizona; Transfer of administrative jurisdiction over certain lands within Saguaro National Park.

DATES: The effective date of this Order is April 23, 1999.

SUMMARY: Saguaro National Park was established by the Saguaro National Park Establishment Act of 1994, Pub. L. 103–364, 108 Stat. 3467. Since the date of enactment of that act, October 14, 1994, the Bureau of Land Management has acquired certain lands and/or interests in lands within the area described in subsection 4(a) of the act. Notice is hereby given that, as of the date of publication of this notice, administrative jurisdiction over those lands and/or interests in lands is transferred from the Bureau of Land Management to the National Park Service.

The lands and/or interests acquired by the Bureau of Land Management, subject to this notice, are known as Tract 02–108 of Saguaro National Park and include 632.78 acres of land.

A map and legal description of these certain lands within Saguaro National Park may be reviewed by contacting National Park Service, Chief, Land Resources Program Center, Intermountain Region, P.O. Box 728, Santa Fe, New Mexico 87504.

Dated: March 30, 1999.

John E. Cook,

Regional Director, Intermountain Region, National Park Service.

[FR Doc. 99–10204 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Agenda for the June 2, 1999 Public Meeting of the Advisory Commission for the San Francisco Maritime National Historical Park

Public Meeting, Presidio Golden Gate Club 10:00 AM–12:15 PM

10:00 AM
Welcome—Neil Chaitin, Chairman
Opening Remarks—Neil Chaitin, Chairman, William Thomas, Superintendent
10:15 AM
Update—General Management Plan, Phase II Implementation, William Thomas
10:30 AM
Update—Haslett Warehouse, Stephen Crabtree, Concession Program Management
10:45 AM
Update—SAFR Space needs for: Haslett Warehouse, Building E
Space Update: Alameda Building Leasing Project
Status—Port of Oakland, Bay Ship & Yacht, Dry-dock, Tom Mulhern, Museum Services Manager
11:15 AM
Status—Ship Preservation Update, Wayne Boykin, Ships Manager & Staff
11:30 AM
Status—Volunteer Program, Sue Schmidt, Volunteer Coordinator
11:45 PM
Update—National Maritime Museum Association Projects, Kathy Lohan, Chief Executive Officer
12:00 PM
Public Comments and Questions
12:15 PM
Agenda items/Date for next meeting

William G. Thomas,

Superintendent.

[FR Doc. 99–10202 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of Bandelier National Monument, National Park Service, Los Alamos, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of Bandelier National Monument, National Park Service, Los Alamos, NM, which meet the definition of ''sacred object'' under Section 2 of the Act.

The 53 cultural items are projectile points.

In 1909, one projectile point was recovered during Edgar Hewett's excavation of the Tyuonyi site. The Tyuonyi site is believed to have been occupied between AD 1325–1600 on the basis of ceramic and tree-ring data from the site.

In 1943, J.W. Hendron recovered five projectile points from the Group M cavates in Frijoles Canyon. On the basis of ceramic data, the occupation of this site is believed to have been between AD 1400-1550.

Between 1948-1955, 29 projectile points were recovered from the Rainbow House site by Fredrick Worman and Louis Caywood. On the basis of ceramic and tree-ring dating of the site, these items are believed to date between AD 1400-1500.

Between 1974-1978, 15 projectile points were recovered from the Cochiti Flood Pool by National Park Service archeological crews. On the basis of ceramic and radiocarbon dating of sites in the Flood Pool, these items are dated between AD 1200-1600.

Monument accession and catalog records do not record the provenience for three projectile points. However, all are believed to have been recovered from the monument, as they are very similar to the type and appearance of other items found at sites in the monument area. On the basis of information from similar objects found in the area, the estimated dates of these items are between AD 1200-1600.

Anthropological, archeological, and oral tradition evidence indicates that the monument area has been continuously occupied by Keres-speaking pueblo groups (including the Pueblo of Acoma, Pueblo of Cochiti, Pueblo of Laguna, Pueblo of San Felipe, Pueblo of Santa Ana, Pueblo of Santo Domingo, and Pueblo of Zia) and the Tewa-speaking pueblo groups (including the Pueblo of Nambe, Pueblo of Pojoaque, Pueblo of San Ildefonso, Pueblo of San Juan, Pueblo of Santa Clara, Pueblo of Tesuque, and the present-day Hano community at Hopi) since at least AD 1100.

In 1995, representatives of Bandelier National Monument continued consultation with the Pueblo of Cochiti, New Mexico, as part of its NAGPRA compliance process. Two Cochiti traditional religious leaders reviewed the Monument's entire archeological collection and identified 53 projectile points as needed for the practice of traditional Cochiti religion by present-day adherents. After reviewing information obtained through tribal consultation, as well as considering recommendations forwarded by the NAGPRA Review Committee, National Park Service officials determined that in this instance these 53 projectile points meet the definition of ''sacred object'' under Section 2 of the Act. Information regarding the names of the traditional religious leaders and the specific ceremonies in which these objects will be used is being withheld from this notice by the Superintendent of the

Monument, at the request of the Cochiti representatives, in order to not compromise the Pueblo de Cochiti's code of religious practice.

Based on the above-mentioned information, and the recommendations of the NAGPRA Review Committee, officials of the National Park Service have agreed that, pursuant to 42 CFR 10.2(d)(3), these 53 projectile points are needed by traditional Native American religious leaders for the practice of traditional Native American religion by present-day adherents. Officials of the National Park Service have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Tesuque, New Mexico; and Pueblo of Zia, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Representatives of any other Indian Tribe that believes itself to be culturally affiliated with these objects should contact Roy W. Weaver, Superintendent, Bandelier National Monument, National Park Service, HCR 1, Box 1, Suite 15, Los Alamos, NM 87544; telephone: (505) 672-3861, ext. 501 before [*thirty days after publication in the Federal Register*]. Repatriation of these cultural items to the Pueblo of Cochiti, New Mexico, may begin after that date if no additional claimants come forward.

Dated: April 15, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–10209 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: Office of Surface Mining, Interior.

ACTION: Notice of deletion of two systems of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting two systems of records managed by the Office of Surface Mining (OSM). The system of records entitled ''Travel Advance File-Interior/OSMRE–2'' and the system of records entitled ''Travel Vouchers and Authorizations-Interior/OSMRE–3'' both have been re-examined and determined that the records contained in these two systems are covered by and maintained in ''Advanced Budget/Accounting Control and Information System (ABACIS)—Interior/MMS–8,'' published in the **Federal Register** on February 18, 1999 (64 FR 8116).

DATES: These actions will be effective on April 23, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht, Payments and Acquisitions Team, Division of Financial Management, Office of Surface Mining, Denver, Colorado, at (303) 236–0330, extension 243.

SUPPLEMENTARY INFORMATION: Earlier Privacy Act Compilations list the systems of records with the prefix of ''OSMRE'' (e.g., OSMRE–2) when originally published in the **Federal Register**. The prefix was later changed to ''OSM'' in subsequent records systems for convenience; the content of the systems of records is the same.

The two systems of records notices being deleted and the reasons for deletions are listed below:

1. Interior/OSM–2, ''Travel Advance File,'' previously published in the **Federal Register** on December 27, 1988 (53 FR 52240). The records contained in this system are covered by Interior/MMS–8, ''Advanced Budget/Accounting Control and Information Systems (ABACIS),'' published in the **Federal Register** on February 18, 1999 (64 FR 8116). OSM records can be located by contacting the OSM System Manager: Payments and Acquisitions Team Leader, Division of Financial Management, Office of Surface Mining, PO Box 25065, Denver, Colorado 80225–0065.

2. Interior/OSM–3, ''Travel Vouchers and Authorizations,'' previously published in the **Federal Register** on December 27, 1988 (53 FR 52241). The records contained in this system are covered by Interior/MMS–8, ''Advanced Budget/Accounting Control and Information System (ABACIS),'' published in the **Federal Register** on February 18, 1999 (64 FR 8116). OSM records can be located by contacting the OSM System Manager: Payments and Acquisitions Team Leader, Division of Financial Management, Office of Surface Mining, PO Box 25065, Denver, Colorado 80225–0065.

Robert Ewing,

Chief Information Officer, Office of Surface Mining.

[FR Doc. 99–10210 Filed 4–22–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Housing Criminal Alien Population in Non-Federal Low-Security Correctional Facilities

AGENCY: Bureau of Prisons, Department of Justice.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action: The mission of the U.S. Department of Justice, Federal Bureau of Prisons (Bureau) is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, cost efficient, and appropriately secure, and that provides work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. In addition, the Bureau supports the U.S. Marshals Service in its efforts to house the growing number of unsentenced federal detainees, and the Immigration and Naturalization Service in the rapidly increasing requirements for the detention of sentenced and unsentenced aliens awaiting hearings and/or release

or repatriation to their countries of origin. The Bureau accomplishes its mission through the appropriate use of community correction, detention, and correctional facilities that are either:

Federally owned and operated;
Federal owned and non-federally operated; and
Non-federally owned and operated.

Historically, the Bureau evaluated the establishment and operation of both federal and contract correctional facilities under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 (NEPA) on a case-by-case basis. This individualized approach to project evaluation carries with it the advantages of site-specific evaluation, significant public participation, and tailored mitigation plans. However, it is the Bureau's experience that the evaluation of low-security institutions has many common issues that must be separately addressed for each new project. The cost, time, and effort expended in examining these common issues are magnified and can become impractical in the context of awarding contracts for the operation and/or construction of non-federal low security facilities. Therefore, the Bureau proposes to establish national procedures in accordance with NEPA for the award and monitoring of contracts for low-security non-federally owned and operated detention and prison facilities.

In recent years, the Bureau has faced unprecedented growth in its inmate population. It is projected that this growth will accelerate as a result of programs implemented by the Immigration and Naturalization service regarding sentenced and unsentenced aliens. Correctional institutions at the low-security level will be impacted immediately because sentenced and unsentenced aliens are typically housed at the low-security level. Due to the current shortage of beds, especially at the low-security level, the Bureau has been forced to manage its population by designating minimum and medium-security level institutions as low-security institutions, which, in turn, creates a domino effect for all other security levels. The projected population of sentenced and unsentenced aliens will only exacerbate these population pressures.

As a result, the Bureau is seeking flexibility in managing its current shortage of beds in the low-security level as well as the anticipated sharp and/or short-term increases at this security level. Such management flexibility would have to meet population capacity needs in a timely fashion, conform with federal law, and maintain fiscal responsibility, all while successfully attaining the mission of the Bureau. Management flexibility includes the appropriate contracting of non-federal facilities. In order to do so, the Bureau over the next several months, will be preparing one or more Request for Proposals to be sent to prospective contractors requesting proposals to house in private contract facilities low-security adult non-U.S. citizen males with 60 months or less remaining on their sentences.

To ensure compliance with NEPA, the Bureau is undertaking preparation of a Draft Programmatic Environmental Impact Statement (DPEIS) to determine the potential impacts of this proposal. Topics to be studied as part of the DPEIS includes, but are not limited to: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, social and economic factors, hazardous materials, air and noise quality, among others.

Alternatives: In developing the DPEIS, the options of ''no action,'' ''alternative housing arrangements,'' and ''preferred alternative'' will be fully and thoroughly examined.

Scoping Process: During preparation of the DPEIS, there will be numerous opportunities for public involvement. Towards that end, the Bureau will host Scoping Meetings to which all interested persons are invited to attend. The purpose of the Scoping Meetings is to afford the public, regulatory agency representatives, and elected officials an opportunity to learn about and voice their interests and concerns regarding the privatization mandate. The Scoping Meetings are being held to provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by NEPA. The Scoping Meetings will be held:

7:00 p.m., Thursday, April 29, 1999, at the Solis Cohen Auditorium of Thomas Jefferson University, 1020 Locust Avenue, Jefferson Alumni Hall, 1020 Locust Avenue, Philadelphia, Pennsylvania
7:00 p.m., Tuesday, May 4, 1999, at the Hall of State Auditorium at Fair Park, 3939 Grand Avenue, Dallas, Texas
7:00 p.m. Thursday, May 6, 1999, at the Marina Village Conference Center Captain's Room, 1936 Quivira Way, San Diego, California

Inquiries or written comments may also be directed to the Bureau through June 1, 1999.

Draft Programmatic EIS Preparation: Public notice will be provided concerning the availability of the Draft Programmatic EIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DPEIS can be answered by: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street NW., Washington, D.C. 20534, Telephone 1–800–658–1117, Facsimile 202–616–6024, e-mail: siteselection@bop.gov

Dated: April 19, 1999.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 99–10337 Filed 4–22–99; 8:45 am]

BILLING CODE 4410–05–U

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 20, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Acting Departmental Clearance Officer, Pauline Perrow ({202} 219–5096 ext. 165) or by E–Mail to Perrow-Pauline@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title: Equal Employment Opportunity, Affirmative Action.

OMB Number: 1205–0224 (Extension).

Frequency: On-occasion.

Affected Public: Individuals or household, business or other for-profit, not-for-profit institutions, Federal Government, State, Local, or Tribal govt.

Number of Respondents: 5,350.

Section No.	Affected Public	Respondents	Frequency	Average time per response
30.3	Apprenticeship Sponsors	112	One-time	30 min.
30.4	.....do	1,336	One-time	1 hr.
30.5	.....do	3,964	One-time	30 min.
30.6	.....do	50	One-time	5hrs.
30.8	.....do	41,480	One-time	1min.
30.3	Apprenticeship Programs	30	One-time	5min.
ETA 9039	Apprentice	50	One-time	½ hr.

Total Burden Hours: 6,068.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Title 29 CFR Part 30 sets forth policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and recognized State apprenticeship agencies.

Agency: Bureau of Labor Statistics (BLS).

Title: Consumer Price Index Commodities and Services Survey.

OMB Number: 1220–0039 (Extension).

Frequency: Monthly.

Affected Public: Individuals and households; business or other for-profit; farms.

Number of Respondents: 49,675 (3 yr. Avg.).

Estimated Time Per Respondent:

Form No.	Total number of respondents	Frequency	Total annual responses	Minutes per response (Average)	Est. total burden hours
BLS 3400	11,831	Annual	11,831	4	789
BLS 3400A.2	11,831	Annual	11,831	36	7,099
BLS 3400B	11,831	Annual	11,831	23	4,535
BLS 3400C	3,076	Annual	3,076	6.9	354
BLS 3401	37,844	Monthly/Bimonthly	325,530	14.187	76,972
Totals	42,487		337,361	16	89,749

Total Burden Hours: 89,749 (3 yr. Avg.).

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $0.

Description: The collection of prices directly from retail establishments is essential for the timely and accurate calculation of the commodities and services component of the Consumer Price Index. Respondents include retail establishments throughout the country.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Consultation Agreements (29 CFR 1908).

OMB Number: 1218–0110 (Reinstatement).

Frequency: On-occasion, quarterly, biennially, annually.

Affected Public: Business or other for-profit; Federal Government, State, Local or Tribal.

Number of Respondents: 27,048.

Estimated Time Per Respondent: Varies (Average of 0.44 hour).

Total Burden Hours: 11,935.

Total Annualized Capital/startup costs: $0.

Total Annual (operating/maintaining): $0.

Description: The information collection requirements contained in the consultation regulations are necessary to ensure proper operation of the consultation programs funded by OSHA and operated by the states, and to meet employment participation requirements of the Compliance Assistance Authorization Act (CAAA) of 1998.

Pauline Perrow,

Acting Departmental Clearance Officer.

[FR Doc. 99–10276 Filed 4–22–99; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They

specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Act,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Pennsylvania
PA990024 (Mar. 12, 1999)

Volume III

None

Volume IV

None

Volume V

Iowa
IA990003 (Mar. 12, 1999)
IA990005 (Mar. 12, 1999)
IA990010 (Mar. 12, 1999)
IA990018 (Mar. 12, 1999)
IA990070 (Mar. 12, 1999)
IA990071 (Mar. 12, 1999)
IA990072 (Mar. 12, 1999)
IA990078 (Mar. 12, 1999)
IA990079 (Mar. 12, 1999)
IA990080 (Mar. 12, 1999)
Missouri
MO990046 (Mar. 12, 1999)

Volume VI

Alaska
AK990001 (Mar. 12, 1999)
AK990002 (Mar. 12, 1999)
AK990006 (Mar. 12, 1999)

Volume VII

Nevada
NE990002 (Mar. 12, 1999)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 16th day of April 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–9978 Filed 4–22–99; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships which have the full and balanced participation of business, industry, labor, education and other key groups.

Time and Place: The meeting will be held from 8:30 a.m. to approximately 12:00 p.m. on Tuesday, May 18, 1999, in The Westin, Southfield-Detroit at 1500 Town Center, Southfield Michigan.

Agenda: The agenda for the Board Meeting will include: an update from the Board's committees; and presentations from representatives of the Sales and Service Voluntary Partnership (SSVP) and the Manufacturing Skill Standards Council (MSSC).

Public Participation: The meeting, from 8:30 a.m. to 12:00 p.m., is open to the public. Seating is limited and will be available on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Leslie Donaldson at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Director of program Operations at (202) 254–8628.

Signed at Washington, DC, this 20th day of April 1999.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 99–10275 Filed 4–22–99; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Regulatory Oversight Process Pilot Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a public workshop to provide information to the NRC, industry, and public representatives of the participating pilot sites with the new PI reporting, inspection, assessment, and enforcement processes. This meeting is open to the public.

DATES: The workshop will be held May 17 through May 20, 1999. Registration will be held on May 17, 1999 from 10 a.m to noon. The hours of the workshop will be from 12 to 5 p.m. on May 17, 8 a.m. to 5 p.m. on May 18 and May 19, and 8 a.m. to 1 p.m. on May 20.

ADDRESSES: The workshop will be held at the Philadelphia Airport Ramada Inn, 76 Industrial Highway (Rt. 291), Essington, PA 19029. The hotel phone number is (610) 521–9600 or (800) 277–3900.

FOR FURTHER INFORMATION CONTACT: August Spector at 301–415–2140 or Lee Miller at 301–415–1361, Mail Stop: O–5H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1999, the staff issued SECY–99–007a Recommendations for Reactor Oversight Process Improvements (Follow-Up to SECY–99–007), forwarding the staff's recommendations for a new reactor oversight process. This paper forwarded additional information and noteworthy changes to the staff recommendations for improving the regulatory oversight process initially provided by SECY–99–007 Recommendations for Reactor Oversight Improvements. This paper also responds to the Commission's comments from the January 20, 1999, briefing on SECY–99–007 and provides the staff's responses to public comments.

The following issues represent a brief summary of the concepts presented in SECY–99–007A.

Over the last 10 years, commercial nuclear power plants have been operated safely and overall plant performance has improved. This improvement in plant performance can be attributed, in part, to successful regulatory oversight. Despite this success, the agency has noted that the current reactor oversight process (1) is at times not clearly focused on the most safety important issues, (2) consists of redundant actions and outputs, and (3) is frequently subjective, with NRC action taken in a manner that is at times neither scrutable nor predictable.

In the new regulatory oversight process:

- There will be a risk-informed baseline inspection program that establishes the minimum regulatory interaction for all licensees.
- Thresholds will be established for licensee safety performance, below which increased NRC interaction would be warranted.
- Adequate assurance of licensee performance will require assessment of both performance indicators (PIs) and inspection findings.
- Inspection findings will be evaluated for significance and integrated with PIs in timely manner to support overall assessment of licensee performance.
- Both PIs and inspection findings will be evaluated against risk-informed thresholds, where feasible.
- Crossing a PI threshold and an inspection threshold will have the same meaning with respect to safety significance and required NRC interaction.
- The baseline inspection program will cover those risk-significant attributes of licensee performance not adequately covered by PIs.
- The baseline inspection program will also verify the accuracy of PI data collection and analysis and provide for event response, as appropriate.
- Enforcement actions will be focused on issues that are risk significant.
- Guidelines will be established for identifying and responding to unacceptable licensee performance.

Additionally, the staff will pilot the new reactor oversight process during a 6-month period beginning in June, 1999. The purpose of the pilot program is to exercise the new processes (PI reporting, inspection, assessment, and enforcement), to identify process and procedure problems and make appropriate changes and, to the maximum extent possible, evaluate the effectiveness of the new process. Full implementation of the new oversight process will commence pending successful completion of the pilot program, as measured against pre-established success criteria. A notable feature of the pilot program is the use of the Pilot Program Evaluation Panel, consisting of NRC, NEI, industry, public, and State representatives, to aid in evaluating the effectiveness of the pilot program.

Scope of the Public Workshop

The NRC will hold a four day workshop from May 17–20, 1999, to review and familiarize NRC, industry, and public representatives of the participating pilot sites with the new PI reporting, inspection, assessment, and enforcement processes. However, representatives from all plants are welcome to attend the workshop. The pilot plants are: Hope Creek, Salem Units 1 and 2, FitzPatrick, Prairie Island Units 1 and 2, Quad Cities Units 1 and 2, Shearon Harris, Sequoyah Units 1 and 2, Ft. Calhoun, and Cooper.

Attendees should be familiar with the key attributes of the new oversight processes and their associated program documents and understand the key differences between the new processes and the existing oversight processes. Copies of SECY–00–007 and SECY–99–007a are available on the internet at http:/www.nrc.gov/NRC/COMMISSION/SECYS/index.html#1999.

The agenda for the workshop will consist of the following:

- Day 1: registration and check-in, background and concept review, review of performance indicators (PIs), thresholds, and PI manual.
- Day 2: practical examples of PI data reporting, and inspection procedure review and documentation.

• Day 3: significance determination process (including practical examples), and new enforcement policy.
• Day 4: assessment process review (including practical examples).

Workshop Pre-Registration

Workshop attendees are requested to pre-register with the NRC approximately two weeks before the workshop. Attendees may pre-register in either of the following ways:

1. Fax to Sun Hoon Kim at (301) 415–5106.
2. Mail to: U.S. Nuclear Regulatory Commission, Attn: Sun Hoon Kim, Office of Human Resources, Mailstop T3D45, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 19th day of April 1999.

For the Nuclear Regulatory Commission.

Cornelius F. Holden,

Acting Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

Regulatory Oversight Process Pilot Workshop Registration, Philadelphia Airport Ramada Inn, Essington, PA, May 17–20, 1999

(Please Print)

Name: _____
(Last) (First)

Title: _____

Address: _____
(department, division or unit)

_____
(organization/facility)

_____
(street or P.O. box)

_____
(city) (state) (zip code)

Pilot Plant (Yes/No) _____

Telephone (business): _____ (ext)____

E-mail: _____

Name (for name badge): _____

Mail your registration form to: Sun Hoon Kim, Nuclear Regulatory Commission, Office of Human Resources, Mail Stop T3D45, Washington, DC 20555.

Fax your registration form to: 301–415–5106, Attention: Sun Hoon Kim.

THIS REGISTRATION FORM IS FOR THE WORKSHOP ONLY.
PLEASE MAKE HOTEL RESERVATIONS SEPARATELY.

[FR Doc. 99–10191 Filed 4–22–99; 8:45 am]
BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: The Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the use of the Peace Corps World Wise Schools Educators Technology Information Form. A copy of the information collection may be obtained from Betsi Shays, Director of World Wise School Peace Corps, 1111 20th Street, NW, Washington, DC 20526. Ms. Shays may be contacted by telephone at 202–692–1455. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; 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; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden the collection of information those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Educator Technology Information Form.

Need for and Use of This Information: The Peace Corps needs this information to explore ways to involve World Wise Schools educators in accessing global information through cutting-edge technology.

Respondents: Educators who apply for World Wise Schools.

Respondents Obligation to Reply: Voluntary.

Burden to the Public:

a. Annual reporting burden: 833 hours
b. Annual recordkeeping burden: 250 hours
c. Estimated average burden per response: 3 min
d. Frequency of response: one time
e. Estimated number of likely respondents: 10,000
f. Estimated cost to respondents: $4,466–

This notice is issued in Washington, DC, on April 23, 1999.

Dated: April 19, 1999.

Doug Greene,

Associate Director for Management.

[FR Doc. 99–10142 Filed 4–22–99; 8:45 am]
BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) this notice announces that the information collection requests abstracted below have been forwarded to the Office of Management and Budget for emergency clearance and for review and comment. A copy of the information collection may be obtained from Paul Davis, Office of Volunteer Recruitment and Selection, United States Peace Corps, 1111 20th Street, NW, Washington, DC 20526. Mr. Davis may be contacted by telephone at (202) 692–1836. Comments on these forms should be addressed to Victoria Becker Wassner, Desk Office, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Reference Form.

Need for and use of this information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine suitability of applicants.

Respondents: Individuals who voluntarily agree to serve as references for Peace Corps applicants.

Respondents Obligation To Reply: Voluntary.

Burden on the Public

a. *Annual reporting burden:* 13,692.
b. *Annual record keeping burden:* 0 hr.
c. *Estimated average burden per response:* 30 minutes.
d. *Frequency of response:* one time.
e. *Estimated number of likely respondents:* 27,384.

This notice is issued in Washington, DC on April 19, 1999.

Dated: April 19, 1999.

Doug Greene,

Associate Director for Management.

[FR Doc. 99–10226 Filed 4–22–99; 8:45 am]
BILLING CODE 6051–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of a revised information collection. SF 2817, Life Insurance Election, is used by employees to enroll in or change their enrollment in the Federal Employees' Group Life Insurance Program. The Federal Employees Life Insurance Improvement Act (Pub. L. 105–311), enacted on October 30, 1998, necessitated changes to the SF 2817. That Act allowed employees to elect from one to five multiples of Option C—Family life insurance. In the past, employees either had Option C or they did not—there were no multiples to elect.

Approximately 100 forms are completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before June 22, 1999.

ADDRESSES: Send or deliver comments to Laura Lawrence, Senior Insurance Benefits Specialist, Insurance Operations Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3415, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–10132 Filed 4–22–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request Review of an Expired Information Collection SF 15

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for extending the information collection form, Standard Form 15, Application for 10-Point Veteran Preference. OPM examining offices and agency appointing officials use the information provided to adjudicate an individual's claim for veterans' preference in accordance with the Veteran Preference Act of 1944.

According to the General Services Administration, 45,000 forms were used last year. Each form requires approximately 10 minutes to complete. The annual burden is 7,500 hours. For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358 or e-mail to *mbtoomey@opm.gov*.

DATES: Comments on this proposal should be received on or before May 24, 1999.

ADDRESSES: Send or deliver written comments to—

Mary Lou Lindholm, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street, NW, Room 6500, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–10131 Filed 4–22–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 31a–2 [17 CFR 270.31a–2], SEC. File No. 270–174, OMB Control No. 3235–0179

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (''Paperwork Reduction Act''), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collections of information discussed below.

Section 31(a) of the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act'') requires registered investment companies (''fund'') and certain principal underwrites, broker-dealers, investment advisers and depositors of funds to maintain and preserve records as prescribed by Commission rules.[1] Rule 31a–1 specifies the books and records for each of these entities must be maintained.[2] Rule 31a–2, which the Commission adopted in 1944, specifies the time periods that entities must retain books and records required to be maintained under rule 31a–1.[3]

Rule 31a–2 requires the following:

(i) Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a–1(b)(1)–(4).[4]

(ii) Every fund must preserve for at least six years, and in an easily accessible place for the first two years: (a) All books and records required under rule 31a–1(b)(5)–(12); [5] (b) all

[1] 15 U.S.C. 80a–30(a)(1).

[2] 17 CFR 270.31a–1.

[3] 17 CFR 270.31a–2.

[4] 17 CFR 270.31a–1(b)(1)–(4). These include, among other records, journals detailing daily purchases and sales of securities or contracts to purchase and sell securities, general and auxiliary ledgers reflecting all asset, liability, reserve, capital, income and expense accounts, separate ledgers or records reflecting separately for each portfolio security as of the trade date, all ''long'' and ''short'' positions carried by the fund for its own account, and corporate charters, certificates of incorporation, and by-laws.

[5] 17 CFR 270.31a–1(b)(5)–(12). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund, all other portfolio purchases, records of all puts, calls, spreads, straddles or other options in which the fund has an interest, has granted, or has guaranteed, records of

Continued

vouchers, memoranda, correspondence, checkbooks, banks statements, canceled checks, cash reconciliations, canceled stock certificates and all schedules that support each computation of net asset value of fund shares; and (c) any advertisement, pamphlet, circular, form letter or other sales literature addressed or intended for distribution to prospective investors.

(iii) Every underwriter, broker or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act (''section 17'') for the periods established in those rules.

(iv) Every depositor of any fund, and every principal underwriter of any fund other than a closed-end fund, must preserve for at least six years records required to be preserved by brokers and dealers under rules adopted under section 17 of the Exchange Act to the extent the records are necessary or appropriate to record the entity's transactions with the fund.

(v) Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be maintained by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 (''section 204'') for the periods specified in those rules.

(vi) Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.

Rule 31a–2 permits the organizations subject to the rule to reproduce and preserve many records on photographic film (''microfilm'') or on magnetic tape, disk, or other computer storage medium. If one of these media is used by or on behalf of a fund, the fund must:

(i) Arrange the records and index and file the microfilm or computer storage medium in a way that will permit immediate access and retrieval of any particular record;

(ii) Be prepared to provide promptly a microfilm enlargement or computer printout, or other copy requested by Commission representatives or the fund's directors;

(iii) Store one copy separately from the original of the microfilm or computer record for the time required to store the original;

(iv) Maintain procedures for maintaining, preserving, and providing access to records stored on computer medium in order to reasonably safeguard them from loss or destruction; and

(v) At all times have microfilm available for examination by Commission representatives or fund directors, and have available facilities for immediate, easily readable projection and production of easily readable enlargements of microfilm records.

The Commission periodically inspects the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. Commission staff spend a significant portion of their time in these inspections reviewing the information contained in the books and records required to be kept by rule 31a–1 and to be preserved by rule 31a–2.

The retention of records, as required by the rule, is necessary to insure that the public has access to material business and financial information about issuers of securities and regulated entities. As noted above, the Commission periodically inspects the operations of funds to ensure they are in compliance with the Act and regulations under the Act. Due to the limits on the Commission's resources, however, each fund may only be inspected at intervals of several years. In addition, under the federal securities laws, there is no time limit on the prosecution of persons engaged in certain types of conduct that violate the securities laws. For these reasons, the Commission often needs information relating to events or transactions that occurred years ago. Without the requirement to preserve books, records and other documents, the Commission would have difficulty determining whether the fund was in compliance with the law in such areas as valuation of its portfolio securities, computation of the prices investors paid and, when purchasing and selling fund shares, types and amounts of expenses the fund incurred, kinds of investments the fund purchased, actions of affiliated persons, or whether the fund had engaged in any illegal or fraudulent activities.

There are approximately 3,900 active investment companies registered with the Commission as of December 31, 1998, all of which are required to comply with rule 31a–2. Based on conversations with representatives of the fund industry, Commission staff estimate that each fund spends approximately 27.8 hours per year complying with rule 31a–2, for a total annual burden for the fund industry of approximately 108,420 hours.[6]

The estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Commission staff estimates the average cost of preserving books and records required by rule 31a–2, to be approximately $.000018 per $1.00 of net assets per year.[7] Within the total net assets of all funds at about $4.5 trillion,[8] the staff estimates compliance with rule 31a–2 costs the fund industry approximately $81 million per year.[9] Commission staff estimates, based on conversations with representatives of the fund industry, that funds would spend at least half of this amount ($40.5 million) in any case to preserve the books and records that are necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns.[10]

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. 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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and

proof of money balances in all ledger accounts, files of all advisory material received from the investment adviser, and memoranda identifying persons, committees or groups authorizing the purchase or sale of securities for the fund.

[6] Commission staff surveyed several fund representatives to determine the current burden hour estimate. Although the Commission did not change its collection of information requirements in rule 31a–2, the fund representatives' estimates reflect an annual increase of 12.4 hours per fund over the burden of 15.4 hours estimated in the 1995 PRA submission. The change in annual hours is based upon an increase in the time each fund spends complying with the rule. The burden hours associated with maintaining records under rules adopted under section 204 of the Investment Advisers Act for investment advisers and under section 17 of the Exchange Act for underwriters, brokers, dealers, and depositors are addressed in the PRA submissions relating to the rules adopted under those sections.

[7] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs by several funds and then relating this total cost to the average net assets of these funds during the year.

[8] *See* Investment Company Institute, 1998 Mutual Fund Fact Book, at 1.

[9] This estimate is based on the annual cost per dollar of net assets of the average fund as applied to the net assets of all funds.

[10] Several of the fund industry representatives surveyed indicated that the records required to be preserved and maintained by rule 31a–2 also are required for accounting, tax return and state reporting requirements. In the experience of two investment companies, the major portion of the cost, approximately 60 percent, is for labor related costs and approximately 40 percent is for storage related costs, however these companies were not able to allocate the percentage of costs specifically attributable to rent or equipment.

Exchange Commission, Mail Stop 0–4, 450 5th Street, NW Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 16, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10194 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW, Washington, DC 20549

Extension:

Rule 10f–3 [17 CFR 270.10f–3], SEC File No. 270–237, OMB Control No. 3235–0226

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collections of information discussed below.

Section 10(f) of the Investment Company Act of 1940 [15 U.S.C. 80a–10(f)] (the ''Act'' or ''Investment Company Act'') prohibits a registered investment company (''fund'') from purchasing any security during an underwriting or selling syndicate if the fund has certain relationships with a principal underwriter [1] for the security (''affiliated underwriter'').[2] Congress enacted this provision in 1940 to protect funds and their investors by preventing underwriters from ''dumping'' unmarketable securities on affiliated funds.[3]

Under rulemaking authority under section 10(f), the Commission adopted rule 10f–3 in 1958 and last amended the rule in 1997. Rule 10f–3 currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things:

(1) The securities either are registered under the Securities Act of 1933, are municipal securities with certain credit ratings, or are offered in certain private or foreign offerings;

(2) The offering involves a ''firm commitment'' underwriting;

(3) The fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering;

(4) The fund purchases the securities from a member of the syndicate other than the affiliated underwriter;

(5) If the securities are municipal securities, the purchase is not a group sale; and

(6) The fund's directors have approved procedures for purchases made in reliance on the rule and regularly review fund purchases to determine whether they comply with these procedures.

These limitations are designed to ensure that the purchases are not likely to raise the concerns that section 10(f) was enacted to address and are consistent with the protection of investors.[4]

Among other conditions to the exemption, rule 10f–3 requires a fund's board of directors to approve procedures that would ensure compliance with the conditions of the rule and to approve changes to these procedures as necessary. The board also must review rule 10–f transactions on a quarterly basis. The rule requires funds to report, on Form N–SAR, any transactions effected under the rule and to attach to the report a written record of each transaction. The written record must state (i) from whom the securities were acquired, (ii) the identity of the underwriting syndicate's members, (iii) the terms of the transactions, and (iv) the information or materials on which the fund's board of directors has determined that the purchases were made in compliance with procedures established by the board. In addition, a fund must retain written records of the rule 10f–3 transactions and of the quarterly transactional information reviewed by the board for six years. These requirements are important not only because they provide a built-in mechanism for fund boards to monitor compliance with the rule, but also because they permit the Commission to review these materials during fund inspections, monitor developments under the rule, and consider whether to take enforcement action in appropriate cases.

These estimates of average coats are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

The collection of information requirements (as well as other requirements) of rule 10f–3 are designed to assure that appropriate arrangements are in place to confirm the enforceability of the Act against the fund. The records required to be maintained are reviewed by the Commission in the course of its compliance and examination program, and are used by fund directors to evaluate procedures and transactions executed pursuant to the rule. The rule does not impose any separate recordkeeping costs on funds because the records required to be maintained already are required by section 31(a) of the Act and rules 31a–1 and 31a–2.

From our review of Form N–SAR filings, we estimate that 300 funds rely on rule 10f–3 annually. We estimate that the board of directors of each of those funds makes, on average, 1 response each year when it approves procedures required by the rule. We estimate further that the approval of such procedures would take on average, 1 hour of director time (at $500 per hour) and 0.5 hours of professional time (at $150 per hour) for 70 funds that do not purchase foreign or municipal securities, and 1.5 hours of director time and 0.5 hours of professional time for 230 funds that invest in these securities. Thus, Commission staff estimates that the total annual reporting burden of the rule's paperwork requirement is 565 hours, at a total annual cost of $230,000.[5]

The estimated burden hours are a decrease from the current allocation of 670 hours. The decrease of 105 hours reflects a decrease in the number of funds that have reported the purchase of securities in reliance on rule 10f–3. The 1996 proposal to eliminate the

[1] *Principal underwriter* is defined to mean (in relevant part) an underwriter that, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer, (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate, or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution. 15 U.S.C. 80a–2(a)(29).

[2] Section 10(f) prohibits the purchase if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or if any officer, director, member of an advisory board, investment adviser, or employee of the fund is affiliated with the principal underwriter. 15 U.S.C. 80a–10(f).

[3] See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. 35 (1940) (statement of Commissioner Healy).

[4] *See* Exemption for the Acquisition of Securities During the Existence of An Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] (''1997 Adopting Release'').

[5] This estimate is equal to the number of funds that do not purchase foreign or municipal securities (70) multiplied by the estimated annual cost of adopting or reviewing procedures for each fund ((1×$500 + (0.5×$150) = $575) plus the number of funds that invest in foreign or municipal securities (230) multiplied by the estimated annual cost of adopting or reviewing procedures for each fund ((1.5 × $500) + (0.5×$150) = $825), for a total of $230,000 ((70× $575) + (230 × $825) = $230,000).

requirements that funds report information about rule 10f–3 transactions on Form N–SAR would not have led to a decrease in the burden hours reportable for rule 10f–3 because the hours associated with the reporting requirement are included in the burden hours reported for Form N–SAR.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

Commission staff estimates that there is no cost burden for rule 10f–3 other than the $230,000 in annual costs associated with the respondent reporting burden. The procedures to be developed and revised as necessary require no start-up or capital costs. Additionally, the development of and occasional review of procedures would be part of customary and usual business practice to ensure compliance with applicable laws and regulations.

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

It is mandatory that funds provide the information required by rule 10f–3 to obtain the benefit of the exemption provided by the rule.

The information required by rule 10f–3 that is reported on Form N–SAR is public and therefore not confidential. The written record of the rule 10f–3 transactions, the quarterly transactional information reviewed by the board, and the written procedures that ensure compliance with the rule, and any modifications, are non-public and therefore confidential.

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.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, Mail Stop 0–4, 450 5th Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 19, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10195 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–3 [17 CFR 240.17a–3], SEC File No. 270–026, OMB Control No. 3235–0033

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 17a–3 [17 CFR 240.17a–3] under the Securities Exchange Act of 1934 requires records to be made by certain exchange members, brokers, and dealers, to be used in monitoring compliance with the Commission's financial responsibility program and antifraud and antimanipulation rules as well as other rules and regulations of the Commission and the self-regulatory organizations. It is estimated that approximately 7,900 active broker-dealer respondents registered with the Commission incur an aggregate burden of 1,967,412 hours per year to comply with this rule.[1]

Rule 17a–3 does not contain record retention requirements. Compliance with the rule is mandatory. The required records are available only to the examination staff of the Commission and the self-regulatory organization of which the broker-dealer is a member. 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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: April 19, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10196 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549

Extension:

[Rule 24 [17 CFR 250.24]; SEC File No. 270–129; OMB Control No. 3235–0126]

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for an extension of the previously approved collection of information discussed below.

Rule 24 under the Public Utility Holding Company Act of 1935 (15 U.S.C. Section 79a *et seq.*) (''Act'') requires the filing with the Commission of certain information indicating that an authorized transaction has been carried out in accordance with the terms and conditions of the Commission order authorizing the transaction. The Commission needs the information under rule 24 to ensure that the terms and conditions of its orders are being complied with, and the Commission uses the information to ensure appropriate compliance with the Act. The respondents are comprised of two groups of entities: (a) Registered holding companies under the Act and their direct and indirect subsidiaries and affiliates; and (b) holding companies

[1] The Commission has increased its estimated number of active broker-dealers to 7,900 from the 7,769 that was included in the 60-day notice for the extension request. 64 FR 7915 (Feb. 17, 1999). In addition, the number of burden hours listed above reflects an adjustment for the increase in broker-dealers and an additional 312 hours required for OTC derivative dealers as discussed in Exchange Act Rel. No. 39455 (Dec. 17, 1997), which was inadvertently omitted from the 1,934,481 hours included in the 60-day notice for the extension request.

exempt from the provisions of the Act by rule or order from all provisions of the Act except section 9(a)(2). It is estimated that the total number of respondents is 134, and the average number of responses per respondent is 2.4 responses annually. The Commission estimates that the total annual reporting burden under rule 24 is 636 hours (*e.g.,* 318 filings × 2 hours = 636 burden hours).

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms. There is no requirement to keep the information in the forms confidential because it is public information.

General comments regarding the above information should be directed to the following persons: (i) Desk officer for the Securities and Exchanger Commission Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 19, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10197 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23788; 812–11398]

INVESCO Bond Funds, Inc., et al.; Notice of Application

April 16, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered management investment companies to invest uninvested cash in affiliated money market funds.

APPLICANTS: INVESCO Bond Funds, Inc., INVESCO Combination Stock and Bond Funds, Inc., INVESCO Diversified Funds, Inc., INVESCO Emerging Opportunity Funds, Inc., INVESCO Global Health Sciences Fund, INVESCO Growth Funds, Inc., INVESCO Industrial Income Fund, Inc., INVESCO International Funds, Inc., INVESCO Sector Funds, Inc., INVESCO Specialty Funds, Inc., INVESCO Stock Funds, Inc., INVESCO Tax-Free Income Funds, Inc., INVESCO Treasurer's Series Trust, INVESCO Value Trust, INVESCO Variable Investment Funds, Inc., INVESCO Money Market Funds, Inc. (collectively, the ''Funds''), and INVESCO Funds Group, Inc. (''INVESCO'').

FILING DATES: The application was filed on November 13, 1998, and amended on April 4, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 11, 1999, and should be accompanied by proof of service on applicants, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 7800 East Union Avenue, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George J. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102, (tel. (202) 942–8090).

Applicants' Representatives

1. The Funds, with the exceptions noted below, are registered under the Act as open-end management investment companies and organized as Maryland corporations. INVESCO Treasurer's Series Trust and INVESCO Value Trust are registered under the Act as open-end management investment companies and organized as Massachusetts business trusts. INVESCO Global Health Sciences Fund is registered under the Act as a closed-end management investment company and organized as a Massachusetts business trust. INVESCO, a wholly-owned subsidiary of AMVESCAP PLC, is registered under the Investment Advisers Act of 1940 and serves as the investment adviser for each of the Funds. Applicants also request relief for any other registered management investment company or series thereof that is currently, or in the future becomes, advised by INVESCO or an entity controlling, controlled by, or under common control with INVESCO (INVESCO and all such entities, collectively, ''INVESCO'').[1]

2. Each Fund has, or may be expected to have, uninvested cash (''Uninvested Cash'') held by its custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors. Currently, the Funds can invest Uninvested Cash directly in money market instruments. The policies of certain Funds permit them to purchase shares of a money market fund. The trustees and directors of the Funds that have investment restrictions currently prohibiting the investment in shares of other open-end management investment companies have determined that such policies should be changed to permit such investments and plan to recommend to shareholders the adoption of such policies.

3. Applicants request relief to permit Funds that are not money market funds (the ''Investing Funds'') to invest their Uninvested Cash in one of more series of INVESCO Money Market Funds, Inc. or any other money market series of any of the Funds (collectively, the ''Money Market Funds'') and the Money Market Funds to sell to and purchase shares from the Investing Funds. The Money

[1] All investment companies that currently intend to rely on the order have been named as applicants. Any other existing or future registered management investment company that relies on the order will comply with the terms and conditions of the application.

Market Funds are subject to rule 2a–7 under the Act. Any investment by an Investing Funds of Uninvested Cash in shares of the Money Market Funds will be in accordance with each Investing Fund's investment restrictions and will be consistent with each Investing Fund's policies. Applicants believe that the proposed investments may reduce transaction costs, create more liquidity, increase returns, and further diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) of the Act, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) of the Act to permit an Investing Fund to invest its Uninvested Cash in Money Market Funds, provided that in all cases the Investing Fund's aggregate investment of uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Investing Fund's total assets at any time.

3. Applicants believe that the proposed arrangement does not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that the Money Market Funds will have a highly liquid portfolio, and will enhance the Investing Funds' ability to manage Uninvested Cash. Applicants also represent that the proposed arrangement will not result in an inappropriate layering of fees because shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, asset-based distribution fee or service fee. In addition, the board of director or trustees of each Investing Fund (the ''Board''), including a majority of the directors or trustees who are not ''interested persons'' of the Fund, as defined in Section 2(a)(19) of the Act, (''Independent Directors or Trustees'') will consider to what extent the advisory fees charged by INVESCO should be reduced to account for reduced services provided such Investing Fund by INVESCO as a result of Uninvested Cash being invested in a Money Market Fund.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of an investment company to include the investment adviser, any person that owns 5% or more of the outstanding shares of that company, and any person directly or indirectly controlling, controlled by, or under common control with the investment company. Applicants state that, because the Funds have a common investment adviser and identical Boards, each Fund may be deemed to be under common control with the other Funds and could be deemed an affiliated person or an affiliated person of an affiliated person of each other Fund. In addition, applicants state that a Fund could become an affiliated person of a Money Market Fund by owning more than 5% of a Money Market Fund. Accordingly, applicants state that the sale of shares of the Money Market Funds to the Investing Funds, and the redemption of such shares by the Funds, may be prohibited under section 17(a) of the Act.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each investment company concerned, and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act if, and to the extent that, the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the request for relief satisfies the standards of sections 17(b) and 6(c) of the Act. Applicants state that the relief requested is fair and reasonable and would not involve overreaching because shares of the Money Market Funds will be sold and redeemed at their net asset values, the same consideration paid and received by any other shareholder. In addition, the Investing Funds will retain their ability to invest their cash balances directly into money market instruments if they believe that they can obtain a higher return or any other reason. Any Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if its Board determines that such sales would adversely affect the portfolio management and operations of the Money Market Fund.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of an investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates. Applicants state that each Investing Fund, by purchasing shares of the Money Market Funds, and INVESCO, by managing the assets of the Investing Funds invested in the Money Market Funds, could be participants in a joint enterprise within the meaning of section 17(d)(1) of the Act and rule 17d–1 under the Act.

8. Rule 17d–1 under the Act permits the Commission to approve a joint transaction covered by the terms of section 17(d) of the Act. In determining whether to approve a transaction, the Commission considers whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants. Applicants submit that the Funds will participate in the proposed transactions on a basis not different from or less advantageous than that of any other participants. Applicants submit that the Funds will participate in the proposed transaction on a basis not different from or less advantages than that of any other participant and that the transactions will be consistent with the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as

defined in rule 2830 of the NASD's Conduct Rules).

2. Before the next meeting of an Investing Fund's Board held for the purpose of voting on an advisory contract under section 15 of the Act, INVESCO will provide the Board with specific information regarding the approximate cost to INVESCO of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of such Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for an Investing Fund, the Board, including a majority of the Independent Directors or Trustees, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by INVESCO should be reduced to account for the reduced services provided to the Investing Fund by INVESCO as a result of Uninvested Cash being invested in the Money Market Funds. An Investing Fund's minute books will record fully the Board's consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Investing Funds will be permitted to invest Uninvested Cash in, and hold shares of, a Money Market Fund only to the extent that the Investing Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Investing Fund's total assets. For purposes of this limitation, each Investing Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Investing Fund, Money Market Fund, and any future Fund that may rely on the order requested will be advised by INVESCO.

6. No Money Market Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–10139 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23790; 812–11492]

MFS Series Trust XI, et al.; Notice of Application

April 19, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit in-kind redemptions of shares of certain registered open-end management investment companies held by certain affiliated shareholders.

APPLICANTS: MFS Series Trust XI, MFS Institutional Trust and MFS Variable Insurance Trust (each a ''Fund'' and collectively, the ''Funds'') and Massachusetts Financial Services Company (''MFS'') and Vertex Investment Management, Inc. (''Vertex,'' and together with MFS, the ''Advisers'').

FILING DATES: The application was filed on February 1, 1999, and amended on April 1, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 14, 1999, and should be accompanied by proof of service on applicants, 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Massachusetts Financial Services Company, 500 Boylston Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is registered under the Act as an open-end management investment company, and organized as a Massachusetts business trust. MFS, a Delaware corporation, serves as investment adviser to one series of MFS Series Trust XI and to each of the series of MFS Institutional Trust and MFS Variable Insurance Trust. Vertex, a Delaware corporation and a wholly-owned subsidiary of MFS, serves as investment adviser to the other series of MFS Series Trust XI. Each of the Advisers is registered as an investment adviser under the Investment Advisers Act of 1940.

2. Applicants request relief to permit the Funds to satisfy redemption requests made by any shareholder of a Fund who, at the time of such redemption requests, is an ''affiliated person'' of a Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares (''Covered Shareholder'') by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are ''affiliated persons'' of a Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

3. Each Fund's prospectus and statement of additional information provide that, in limited circumstances, the Fund may satisfy all or part of a redemption request by a distribution in-kind of portfolio securities. The boards of trustees of the Funds (''Boards'') including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Non-Interested Trustees''), have determined that it would be in the best interests of the Funds and their shareholders to pay to a Covered Shareholder the redemption price for shares of the Funds in-kind to the extent permitted by certain Funds' elections to be governed by rule 18f–1 under the Act.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines ''affiliated person'' of another person to include any person owning 5% or more of the outstanding voting securities of the other person. Applicants state that to the extent that

an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the Fund is not the issuer) by a Covered Shareholder, the proposed redemptions in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act to permit Covered Shareholders to redeem their shares of the Funds in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of a Fund within the meaning of sections 2(a)(3)(B) through (7) of the Act.

5. Applicants submit that the terms of the proposed in-kind redemptions by Covered Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that neither the Fund nor the Covered Shareholder will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valued according to an objective, verifiable standards and that the in-kind redemptions are consistent with the investment policies of the Fund. Applicants also state that the proposed in-kind redemption are consistent with the general purposes of the Act because the Covered Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities distributed pursuant to a redemption in-kind (the ''In-Kind Securities'') will be limited to securities that are traded on a public securities market or for which market quotations are available.

2. The in-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding (a) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities may be excluded from portfolio securities distributed in-kind to a Covered Shareholder. Cash will be paid for the portion of the in-kind distribution represented by the excluded assets set forth above, less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Funds' Boards, including a majority of the Non-Interested Trustees, will determine no less frequently than annually: (a) Whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each effected Fund as reflected in the prospectus. In addition, the Board will make and approve such changes as it deems necessary in the procedures for monitoring the Funds' compliance with the terms and conditions of this application.

5. The Funds will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed in-kind, the identity of the Covered Shareholder, the terms of the in-kind distribution and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10138 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41305; File No. SR–DTC–99–08]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Amendments to its Organization Certificate and By-Laws

April 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 18, 1999, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on April 12, 1999, amended the proposed rule change (File No. SR–DTC–99–08) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will amend its Organization Certificate and By-Laws: (1) to increase the size of its Board of Directors, (2) to redesignate its capital stock, and (3) to modernize its Certificate of Organization. The amendments are subject to stockholder approval. DTC anticipates implementing

[1] 15 U.S.C. 78s(b)(1).

the proposed rule change on June 15, 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, DTC 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. DTC 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

Under the proposed rule change, DTC's Organization Certificate and By-Laws will be amended as follows:

1. Increasing the Number of Board Directors

The Board of Directors of DTC has unanimously determined to proceed with a plan for the integration over time of DTC with the National Securities Clearing Corporation (''NSCC''), and DTC has been advised that NSCC has taken similar action. An initial step in this plan is to propose the reelection by shareholders of DTC at this year's annual meeting and the reelection by the shareholders of NSCC at its annual meeting in June of the two entities' current Boards of Directors. Assuming there is no objection by DTC's and NSCC's regulators, the two current Boards will then be restructured so that one group of individuals will serve as the Board of Directors for each of the two companies. Since simply adding DTC's current Board to NSCC's current Board to achieve uniform Boards would result in certain user and marketplace organizations having more than one representative on the uniform Boards, each organization represented will be asked to select only one representative. Through this process and with the inclusion of DTC and NSCC management director, the Board of Directors for each company will be comprised of twenty-seven people.[3]

DTC's Organization Certificate and By-Laws currently provide for the number of directors of the Board to be not less than five nor more than twenty. In order to accommodate the number of directors resulting from the consolidation plan described above and in order to provide for a possible limited future expansion of the Board, paragraph ''SEVENTH'' of the Organization Certificate (which after elimination of paragraph ''FOURTH,'' as described below, will become paragraph ''SIXTH'') and Article II, Section 2.1 of the By-Laws will be amended to provide that the number of directors be not less than seven nor more than twenty-five. Section 2.1 of the By-Laws will also be amended to set the number of directors at twenty-five.

2. Redesignating DTC's Capital Stock

DTC's Organization Certificate currently limits DTC to only one class of stock, 18,500 shares of capital stock having a par value of $100,000 per share. All of this stock is issued and outstanding. The Board of Directors may in the future wish to consider authorizing the issuance of preferred stock, for example, as part of DTC's program to strengthen capital. Therefore, paragraph ''THIRD'' will be amended and paragraph ''FOURTH'' will be eliminated in order to designate the existing class of capital stock as ''common stock'' and to provide for 1,500,000 shares of preferred stock having a par value of $100,000 per share.

3. Modernizing the Organization

DTC's Organization Certificate was originally drafted in 1973. Provisions of the Organization Certificate relating to DTC's powers refer both explicitly and implicitly to New York State Statutory provisions that are no longer applicable. The Organization Certificate also fails to recognize DTC's status as a securities depository registered with the SEC (registration was required by federal law enacted two years later in 1975) and to describe more clearly powers incidental to DTC's role as a securities depository. Accordingly, paragraph ''THIRTEENTH'' (which after elimination of paragraph ''FOURTH,'' as described above, will become paragraph ''TWELFTH'') will be amended to correct these deficiencies.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(a) of the Act[4] and the rules and regulations thereunder applicable to DTC. The proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition 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 from DTC Participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 DTC consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–99–08 and should be submitted by May 14, 1999.

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Under the Federal Reserve Act, DTC's may have no more than twenty-five members on its Board. As a result, after the uniform Boards are elected DTC's Board will have twenty-five members and two non-voting advisors, and NSCC's board will have twenty-seven members.

[4] 15 U.S.C. 78q–1(b)(3)(A).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10199 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41302; File No. SR–NASD–99–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Creating a Discovery Guide for Use in NASD Arbitrations

April 16, 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 29, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. On March 23, 1999, NASD Regulation submitted Amendment No 1 to the proposed rule change.[3] NASD Regulation submitted Amendment No. 2 to the proposed rule change on April 9, 1999.[4] The Commission is publishing this notice of the rule change, as amended, 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

NASD Regulation has filed with the Commission a proposed Discovery Guide for use in NASD arbitration proceedings to improve the discovery process in NASD-sponsored securities arbitrations. Below is the text of the proposed rule change which would create the Discovery Guide and Document Production Lists.

* * * * *

Discovery Guide

For NASD arbitrations, the Discovery Guide supplements the section in The Securities Industry Conference on Arbitration (''SICA'') publication entitled ''The Arbitrator's Manual,'' and captioned ''Prehearing Conference,'' found on pages 11 through 16, regarding public customer cases.

I. The Need for New Discovery Procedures

Discovery disputes have become more numerous and time consuming. The same discovery issues repeatedly arise. To minimize discovery disruptions, the NASD Regulation Office of Dispute Resolution has developed too initiatives to standardize the discovery process: early appointment of arbitrators to conduct an initial prehearing conference and document production lists (''Document Production Lists'').

No requirement under the Discovery Guide supersedes any record retention requirement of any federal or state law or regulation or any rule of a self-regulatory organization.

The Discovery Guide and Document Production Lists are designed for customer disputes with firms and Associated Person(s).[5] The Discovery Guide also discusses additional discovery requests, information requests, depositions, admissibility of evidence, and sanctions.

The Discovery Guide, including the Document Production Lists, will function as a guide for the parties and the arbitrators; it is not intended to remove flexibility from arbitrators or parties in a given case. For instance, arbitrators can order the production of documents not provided for by the Document Production Lists or alter the production schedule described in the Discovery Guide. Further, nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. In fact, the Office of Dispute Resolution encourages the parties to agree to the voluntary exchange of documents and information and to stipulate to various matters. The fact that an item appears on a Document Production List does not shift the burden of establishing or defending any aspect of a claim.

II. Document Production Lists.

The Office of Dispute Resolution will provide the parties with Document Production Lists (attached to the Discovery Guide) at the time it serves the statement of claim in customer cases. The arbitrators and the parties should consider the documents described in Document Production Lists 1 and 2 presumptively discoverable. Absent a written objection, documents on Document Production Lists 1 and 2 shall be exchanged by the parties within the time frames set forth below.

The arbitrators and parties also should consider the additional documents identified in Document Production Lists 3 through 14, respectively, discoverable, as indicated, for cases alleging the following causes of action: churning, failure to supervise misrepresentation/omission, negligence/ breach of fiduciary duty, unauthorized trading, and unsuitability. For the general document production and for each of these causes of action, there are separate Document Production Lists for firms/Associated Person(s) and for customers.

NASD Rule 10321 provides that the parties shall cooperate to the fullest extent practicable in the voluntary exchange of documents and information to expedite the arbitration process. As noted, nothing in the Discovery Guide precludes parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

A. Time Frames for Document Production and Objections

The parties should produce all required documents listed in the applicable Document Production Lists not later than thirty days[6] from the date the answer is due or filed, whichever is earlier. If a party redacts any portion of a document prior to production, the redacted pages (or ranges of pages) shall be labeled ''redacted.'' A party may object to the production of any document, which would include an objection based upon an established privilege such as the attorney-client privilege. If any party objects to the production of any document listed in the relevant Document Production Lists, the party must file written objections with the Office of Dispute Resolution and serve all parties not later than thirty days following the date the answer is due or filed, whichever is earlier. Objections should set forth the reasons the party objects to producing the documents. An objection to the production of a document or a category of documents is not an acceptable reason to delay the production of any document not covered by the objection. A response to an objection should be served on all parties within 10 days from service of the written objections. Objections and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties. The arbitrator(s) shall then determine whether the objecting party has overcome the presumption based upon sufficient reason(s).

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Alden S. Adkins, Senior vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 23, 1999. In Amendment No. 1, NASD Regulation made minor changes to the Discovery Guide in response to some of the Commission's concerns about the Guide (''Amendment No. 1'').

[4] *See* letter from S. Alden, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 9, 1999. In Amendment No. 2, NASD Regulation made minor changes to clarify some of the language within the Discovery Guide (''Amendment No. 2'').

[5] NASD Regulation may develop separate Document Production Lists for intra-industry disputes.

[6] All time periods referenced herein are calendar days.

B. Confidentiality [7]

If a party objects to document production on grounds of privacy or confidentiality, the arbitrator(s) or one of the parties may suggest a stipulation between the parties that the document(s) in question will not be disclosed or used in any manner outside of the arbitration of the particular case, or the arbitrator(s) may issue a confidentiality order. The arbitrator(s) shall not issue an order or use a confidentiality agreement to require parties to produce documents otherwise subject to an established privilege. Objections to the production of documents, based on an established privilege, should be raised in accordance with the time frame for objections set forth above.

C. Affirmation in The Event That There Are No Responsive Documents or Information

If a party responds that no responsive information or documents exist, the customer or the appropriate person in the brokerage firm who has personal knowledge (i.e., the person who has conducted a physical search), upon the request of the requesting party, must: (1) State in writing that he/she conducted a good faith search for the requested information or documents; (2) describe the extent of the search; and (3) state that based on the search, no such information or documents exist.

III. The Initial Prehearing Conference

To maximize the efficient administration of a case by the arbitration panel,[8] the Office of Dispute Resolution staff will schedule an initial prehearing conference in which the arbitrator(s) usually participates.[9] The initial prehearing conference gives the arbitrator(s) and the parties an opportunity to organize the management of the case, set a discovery cut-off date,[10] identify dispositive or other potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve any other preliminary issues.[11] During the initial prehearing conference, the arbitrator(s) and the parties should schedule hearing dates for the earliest available time, consistent with the parties' need to prepare adequately for the hearing.

Prior to the initial prehearing conference, each arbitrator should become familiar with the claims and defenses asserted in the pleadings filled by the parties. At the initial prehearing conference, the arbitrator(s) should order time limits for discovery that will allow the scheduling of hearing dates within a reasonable time and address all outstanding discovery disputes. If the exchange of properly requested documents has not occurred, the arbitrator(s) should order the production of all required documents, including those outlined in the Document Production List (see section II. above), within 30 days following the conference.

IV. Additional Discovery Requests

The parties may request documents in addition to those identified in the Document Production Lists pursuant to Rule 10321(b). Unless a longer period is allowed by the requesting party, requests should be satisfied or objected to within 30 days from the date of service of the document request. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties.

A party may move to compel production of documents when the adverse party (a) refuses to produce such documents or (b) offers only to produce alternative documents that are unacceptable to the requesting party. The Office of Dispute Resolution will provide the chairperson of the panel with the motion, opposition, and reply, along with the underlying discovery documents the parties have attached to their pleadings. The chairperson should determine whether to decide the matter on the papers or to convene a prehearing conference (usually via telephone). In considering motions to compel, particularly where non-production is based upon an argument asserting an established privilege, such as the attorney-client privilege, the arbitrator(s) should always give consideration to the arguments set forth by both sides, particularly as to the relevancy of the documents or information. The arbitrator(s) should carefully consider such motions, regardless of whether item requested is on any of the Document Production Lists. If in doubt, the arbitrator(s) should ask the requesting party what specific documents it is trying to obtain and what it seeks to prove with the documents.

V. Information Requests

Like requests for documents, parties may serve requests for information pursuant to Rule 10321(b). Requests for information are generally limited to identification of individuals, entities, and time periods related to the dispute; such requests should be reasonable in number and not require exhaustive answers or fact finding. Standard interrogatories, as utilized in state and federal courts, are generally not permitted in arbitration.

Unless a longer period is allowed by the requesting party, information requests should be satisfied or objected to within 30 days from the date of service of the requests. A response to an objection should be served on all parties within 10 days from service of the written objections. Requests, objections, and responses should be filed with the Office of Dispute Resolution at the time they are served on the parties.

A party may move to compel responses to requests for information that the adverse party refuses to provide. The Office of Dispute Resolution will provide the chairperson of the panel with the motion, opposition, and reply, along with the underlying discovery documents the parties have attached to their pleadings. The chairperson should determine whether to decide the matter on the papers or to convene a prehearing conference (usually via telephone).

VI. Depositions

Depositions are strongly discouraged in arbitration. Upon request of a party, the arbitrator(s) may permit depositions, but only under very limited circumstances, such as: (1) To preserve

[7] Section II. B. is also applicable to additional discovery requests and information requests (see sections IV. and V.).

[8] The panel consists of three arbitrators in most cases. Claims between $25,000 and $50,000 may proceed with a single arbitrator. Claims under $25,000 are decided by a single arbitrator, generally on the pleadings.

[9] In some instances, the parties may opt out of the initial prehearing conference. To opt out, parties must supply the following information to the Office of Dispute Resolution by the specified deadline:

(1) A minimum of four sets of mutually agreeable hearing dates;

(2) A discovery cut-off date;

(3) A list of all anticipated motions with the motion due dates, opposition due dates, and reply due dates provided;

(4) A minimum of four dates and times for any proposed prehearing conferences to hear motions; and

(5) A determination whether briefs will be submitted and, if so, the due date for submission.

[10] The Office of Dispute Resolution recommends that the panel set a cut-off date during the initial prehearing conference for service of discovery requests, giving due consideration to time frames that permit timely resolution of objections and disputes prior to the scheduled exchange of hearing exhibits pursuant to the NASD Code of Arbitration Procedure.

[11] The arbitrators should direct one of the parties to prepare and forward to the Office of Dispute Resolution, within 48 hours, a written order memorializing the results of the prehearing conference, approved as to form and content by the other parties. When motions are heard at the initial prehearing conference, the panel may order the parties to submit the order with a stipulation as to form and content from all parties.

the testimony of ill or dying witnesses; (2) to accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing; (3) to expedite large or complex cases; and (4) to address unusual situations where the arbitrator(s) determines that circumstances warrant departure from the general rule. Balanced against the authority of the arbitrator(s) to permit depositions, however, is the traditional reservation about the overuse of depositions in arbitration.

VII. Admissibility

Production of documents in discovery does NOT create a presumption that the documents are admissible at the hearing. A party may state objections to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

VIII. Sanctions

The arbitration panel should issue sanctions if any party fails to produce documents or information required by a written order, unless the panel [12] finds that there is ''substantial justification'' for the failure to produce the documents or information. The panel has wide discretion to address noncompliance with discovery orders. For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys' fees caused by noncompliance. In extraordinary cases, the panel may initiate a disciplinary referral against a registered entity or person who is a party or witness in the proceeding or may, pursuant to Rule 10305(b), dismiss a claim, defense, or proceeding with prejudice as a sanction for intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.

* * * * *

Document Production Lists

* * * * *

List 1

Documents to be Produced in all Customer Cases [13]

Firm/Associated Persons(s)

(1) All agreements with the customer, including, but not limited to, account opening documents, cash, margin, and option agreements, trading authorizations, powers of attorney, or discretionary authorization agreements, and new account forms.

(2) All account statements for the customer's account(s) during the time period and/or relating to the transaction(s) at issue.

(3) All confirmations for the customer's transaction(s) at issue. As an alternative, the firm/Associated Person(s) should ascertain from the claimant and produce those confirmations that are at issue and are not within claimant's possession, custody, or control

(4) All ''holding (posting) pages'' for the customer's account(s) at issue or, if not available, any electronic equivalent.

(5) All correspondence between the customer and the firm/Associated Person(s) relating to transaction(s) at issue

(6) All notes by the firm/Associated Person(s) or on his/her behalf, including entries in any diary or calendar, relating to the customer's account(s) at issue.

(7) all recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Persons(s) and the customer (and any person purporting to act on behalf of the customer), and/or between the firm and the Associated Person(s).

(8) All Forms RE–3, U–4, and U–5, including all amendments, all customer complaints identified in such forms and all customer complaints of a similar nature against the Associated Person(s) handling the account(s) at issue.

(9) All sections of the firm's Compliance Manual(s) related to the claims alleged in the statement of claim, including any separate or supplemental manuals governing the duties and responsibilities of the Associated Person(s) and supervisors, any bulletins (or similar notices) issued by the compliance department, and the entire table of contents index to each such Manual.

(10) All analyses and reconciliations of the customer's account(s) during the time period and/or relating to the transaction(s) at issue.

(11) All records of the firm/Associated Person(s) relating to the customer's account(s) at issue, such as, but not limited to, internal reviews and exception and activity reports which reference the customer's account(s) at issue.

(12) Records of disciplinary action taken against the Associated Person(s) by any regulator or employer for all sales practices or conduct similar to the conduct alleged to be at issue.

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LIST 2

Documents to be Produced in All Customer Cases

CUSTOMER

(1) All customer and customer-owned business (including partnership or corporate federal income tax returns, limited to pages 1 and 2 of Form 1040, Schedules B, D, and E, or the equivalent for any other type of return, for the three years prior to the first transaction at issue in the statement of claim through the date of the statement of claim was filed.

(2) Financial statements or similar statements of the customer's assets, liabilities and/or net worth for the period(s) covering the three years prior to the first transaction at issue in the statement of claim through the date the statement of claim was filed.

(3) Copies of all documents the customer received from the firm/Associated Person(s) and from any entities in which the customer invested through the firm/Associated Person(s), including monthly statements, opening account forms, confirmations, prospectuses, annual and periodic reports, and correspondence.

(4) Account statements and confirmations for accounts maintained at securities firms other than the respondent firm for the three years prior to the first transaction at issue in the statement of claim through the date the statement or claim filed.

(5) All agreements, forms, information, or documents relating to the account(s) at issue signed by or provided by the customer to the firm/Associated Person(s).

(6) All account analyses and reconciliations prepared by or for the customer relating to the account(s) at issue.

(7) All notes, including entries in diaries or calendars, relating to the account(s) at issue.

(8) All recordings and notes of telephone calls or conversations about the customer's account(s) at issue that occurred between the Associated Person(s) and the customer (any person purporting to act on behalf of the customer).

(9) All correspondence between the customer (and any person acting on behalf of the customer) and the firm/Associated Person(s) relating to the account(s) at issue.

(10) Previously prepared written statements by persons with knowledge of the facts and circumstances related to the account(s) at issue, including those by accountants, tax advisors, financial planners, other Associated Person(s), and any other third party.

(11) All prior complaints by or on behalf of the customer involving securities matters and the firm's/Associated Person(s') response(s).

(12) Complaints/Statements of Claim and Answers filed in all civil actions involving securities matters and securities arbitration proceedings in which the customer has been a party, and all final decisions and awards entered in these matters.

(13) All documents showing action taken by the customer to limit losses in the transaction(s) at issue.

* * * * *

List 3

Churning

Firm/Associated Person(s)

(1) All commission runs relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.

(2) All documents reflecting compensation of any kind, including commissions, from all sources generated by the Associated

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[12] As with other rulings, an arbitration panel's ruling need only be by majority vote; it need not be unanimous.

[13] Only named parties must produce documents pursuant to the guidelines set forth herein. However, non-parties may be required to produce documents pursuant to a subpoena or an arbitration panel order to direct the production of documents (see Rule 10322). In addition, the arbitration chairperson may use the Document Production Lists as guidance for discovery issues involving non-parties.

Person(s) assigned to the customer's account(s) for the two months preceding through the two months following the transaction(s) at issue, or up to 12 months, whichever is longer. The firm may redact all information identifying customers who are not parties to the action, except that the firm/Associated Person(s) shall provide at least the least four digits of the non-party customer account number for each transaction.

(3) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated during the years in which the transaction(s) or occurrence(s) in question occurred, including: (a) any bonus or incentive programs; and (b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

* * * * *

List 4

Churning

Customer

No additional documents identified.

* * * * *

List 5

Failure to Supervise

Firm/Associated Person(s)

(1) All commission runs and other reports showing compensation of any kind relating to the customer's account(s) at issue or, in the alternative, a consolidated commission report relating to the customer's account(s) at issue.

(2) All exception reports and supervisory activity reviews relating to the Associated person(s) and/or the customer's account(s) that were generated not earlier than one year before or not later than one year after the transaction(s) at issue, and all other documents reflecting supervision of the Associated Person(s) and the customer's account(s) at issue.

(3) Those portions of internal audit reports at the branch in which the customer maintained his/her account(s) that: (a) focused on the Associated Person(s) or the transaction(s) at issue; and (b) were generated not earlier than one year before or not later than one year after the transaction(s) at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

(4) Those portions of examination reports or similar reports following an examination or an inspection conducted by a state or federal agency or a self-regulatory organization that focused on the Associated Person(s) or the transaction(s) at issue or that discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.

* * * * *

List 6

Failure to Supervise

Customer

No additional documented identified.

* * * * *

List 7

Misrepresentation/Omissions

Firm/Associated Person(s)

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being ''for internal use only,'' and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

* * * * *

List 8

Misrepresentation/Omissions

Customer

(1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.

(2) Copy of the customer's resume.

(3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 2.

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List 9

Negligence/Breach of Fiduciary Duty

Firm/Associated Person(s)

Copies of all materials prepared or used by the firm/Associated Person(s) relating to the transactions or products at issue, including research reports, prospectuses, and other offering documents, including documents intended or identified as being ''for internal use only,'' and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents that contains sufficient detail for the claimant to identify each document listed. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

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List 10

Negligence/Breach of Fiduciary Duty

Customer

(1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.

(2) Copy of the customer's resume.

(3) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customers educational and employment background if not set forth in a resume produced under item 2.

* * * * *

List 11

Unauthorized Trading

Firm/Associated Person(s)

(1) Order tickets for the customer's transaction(s) at issue.

(2) Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).

(3) All documents relied upon by the firm/Associated Person(s) to establish that the customer authorized the transaction(s) at issue.

* * * * *

List 12

Unauthorized Trading

Customer

1. Copies of all telephone records, including telephone logs, evidencing telephone contact between the customer and the firm/Associated Person(s).

2. All documents relied upon by the customer to show that the transaction(s) at issue was made without his/her knowledge or consent.

* * * * *

List 13

Unsuitability

Firm/Associated Person(s)

(1) Copies of all materials prepared, used, or reviewed by the firm/Associated Person(s) related to the transactions or products at issue, including but not limited to research reports, prospectuses, other offering documents, including documents intended or identified as being ''for internal use only,'' and worksheets or notes indicating the Associated Person(s) reviewed or read such documents. As an alternative, the firm/Associated Person(s) may produce a list of such documents. Upon further request by a party, the firm/Associated Person(s) must provide any documents identified on the list.

(2) Documents sufficient to describe or set forth the basis upon which the Associated Person(s) was compensated in any manner during the years in which the transaction(s) or occurrence(s) in question occurred, including, but not limited to: (a) any bonus or incentive program: and (b) all compensation and commission schedules showing compensation received or to be received based upon volume, type of product sold, nature of trade (e.g., agency v. principal), etc.

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List 14

Unsuitability

Customer

(1) Documents sufficient to show the customer's ownership in or control over any business entity, including general and limited partnerships and closely held corporations.

(2) Written documents relied upon by the customer in making the investment decision(s) at issue.

(3) Copy of the customer's resume.

(4) Documents sufficient to show the customer's complete educational and employment background or, in the alternative, a description of the customer's educational and employment background if not set forth in a resume produced under item 3.

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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, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Discovery Guide, which includes Document Production Lists, provides guidance to parties on which documents they should exchange without arbitrator or staff intervention, and to arbitrators in determining which documents customers and member firms or associated persons are presumptively required to produce in customer arbitrations. The NASD developed the Discovery Guide because parties and their attorneys often do not comply or do not comply fully with discovery requests in NASD arbitrations. The proposal will streamline discovery in arbitrations in several ways, including reducing the number and scope of document productions and other discovery disputes, thereby reducing staff, arbitrator and party resources required to resolve such disputes. The Discovery Guide is a consensus document. It was developed over more than a two-year period, and reflects the view of many arbitration experts, experienced practitioners, and self-regulatory organization (''SRO'') arbitration staff.

The Discovery Guide and Document Production Lists will function as a guide for the parties and the arbitrators; they are not intended to bind arbitrators in a given case or to bind parties. For instance, arbitrators can order the production of documents not provided for by the Document Production Lists or alter the production schedule described in the Discovery Guide. Further, nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide or in the Document Production Lists. In fact, the Office of Dispute Resolution (''ODR'') of NASD Regulation encourages the parties to agree to the voluntary exchange of documents and information and to stipulate to various matters. However, the Discovery Guide is binding on parties to the extent it is used by arbitrators to order the exchange of documents.

Background

In January 1996, the Arbitration Policy Task Force (''Task Force''), in *Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors of NASD* (''*Task Force Report*''), made a number of broad recommendations to the NASD Board of Governors to improve the securities arbitration process administered by the NASD Board of Governors to improve the securities arbitration process administered by the NASD. One of these recommendations states that: ''Automatic production of essential documents should be required for all parties, and arbitrators should play a much greater role in directing discovery and resolving discovery disputes.''[14] The Task Force reported that parties and their attorneys routinely failed to comply with discovery requests or only complied partially. In addition, the Task Force noted that existing NASD rules did not provide guidance to an arbitrator as to the proper scope of discovery and, thus, discovery disputes were resolved largely according to the standards of individual arbitrators.[15] According to the Task Force, some arbitrators had experience in civil litigation, but others had little knowledge or training that would enable them to resolve a dispute according to any uniform standard or rules. [16]

After the work of the Task Force was completed, several groups were formed to work on the discovery issue. Each group was composed of persons offering diverse perspectives, and all made a substantial contribution to the process. The proposed Discovery Guide is the product resulting from these groups' efforts which were composed of arbitration experts, experienced practitioners, and SRO arbitration staff. Among those contributing to the Discovery Guide were persons who are members of the Securities Industries Conference on Arbitration (''SICA'') [17], members of the Securities Industry Association (''SIA''), directors of the Public Investors Arbitration Bar Association (''PIABA''), industry representatives from major broker-dealers, counsel for claimants, and counsel for the industry. The Discovery Guide represents a compromise reached over more than two years among a variety of securities industry and investor representatives and their counsel. Most of the contributors believe the proposal represents an opportunity to improve discovery in arbitration.

The approval of the Discovery Guide would result in the implementation of key recommendations of the Task Force by establishing the practice in customer arbitrations that essential documents will be produced, and requiring that arbitrators play a greater role in directing the discovery process and resolving discovery disputes. The Discovery Guide follows the Task Force's recommendation in all but one respect. Although the Task Force recommended that any proposed arbitration rule or guideline require that documents be produced automatically, the Discovery Guide is drafted so that the documents are presumptively discoverable instead to give the arbitrators more discretion in managing the discovery process and to provide more flexibility to the process.

Features of the Discovery Guide

The Discovery Guide will be used as a supplement or an addendum to the guidance regarding discovery set forth in The Arbitrator's Manual, published by SICA, and particularly the provisions in the section entitled, ''Prehearing Conference,'' at pages 11–16. The Arbitrator's Manual is compiled by members of SICA as a guide for arbitrators, and is designed to

[14] *Task Force Report* at 2.

[15] *Id.* at 79.

[16] *Id.*

[17] SICA was formed to develop and maintain a Uniform Code of Arbitration and to provide a forum for the discussion of new developments in securities arbitration among arbitration SRO forums and participants in those forums. The membership includes representatives from the SRO's with securities arbitration forums, three of four ''public'' members, and a representative from the SIA.

supplement and explain the Uniform Code of Arbitration as developed by SICA. By the terms of The Arbitrator's Manual, the procedures and policies contained therein are discretionary and may be changed by the arbitrators. Further, nothing in the Discovery Guide, including The Document Production Lists, precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

The Discovery Guide consists of introductory and instructional text, and fourteen Document Production Lists. It is intended for use by arbitrators in customer arbitrations only. These lists include the following (parenthetical references refer to the party from whom documents are sought):

List 1: Documents To Be Produced In All Customer Cases (Firm/Associated Person(s))
List 2: Documents To Be Produced In All Customer Cases (Customer)
List 3: Churning (Firm/Associated Person(s))
List 4: Churning (Customer)
List 5: Failure To Supervise (Firm/Associated Person(s))
List 6: Failure To Supervise (Customer)
List 7: Misrepresentation/Omission (Firm/Associated Person(s))
List 8: Misrepresentation/Omission (Customer)
List 9: Negligence/Breach Of Fiduciary Duty (Firm/Associated Person(s))
List 10: Negligence/Breach Of Fiduciary Duty (Customer)
List 11: Unauthorized Trading (Firm/Associated Person(s))
List 12: Unauthorized Trading (Customer)
List 13: Unsuitability (Firm/Associated Person(s))
List 14: Unsuitability (Customer).

The ODR will provide the parties with the Discovery Guide including the Document Production Lists at the time ODR serves the statement of claim. The document production requirements in the first two Document Production Lists, ''List 1, Documents To Be Produced In All Customer Cases: (Firm/Associated Person(s)),'' and ''List 2, Documents To Be Produced In All Customer Cases: Customer,'' would apply in virtually all cases involving member-customer or associated person-customer disputes, unless the arbitrator(s), in the exercise of discretion, determines that some or all of the documents in the relevant Document Production Lists should not be produced. For cases in which allegations of churning, failure to supervise, misrepresentation/omission, negligence/breach of fiduciary duty, unauthorized trading, or unsuitability are stated, additional Document Production Lists (*e.g.*, Document Production Lists 3 and 4—Churning) provide additional guidance. If a Document Production List is applicable, the Discovery Guide is drafted to guide the arbitrator(s) to order production, unless in the exercise of discretion, the arbitrator(s) believes that there is good cause not to order production.

In addition to specific document production requirements, the Discovery Guide also discusses other topics such as confidential treatment of documents, additional discovery requests, depositions, admissibility of evidence, arbitrator participation, and sanctions. These general instructions are discussed below.

Confidential Treatment. Under the Discovery Guide, parties may stipulate that private or confidential document(s) will not be disclosed or used in any manner outside of the arbitration of the particular case. Alternatively, the arbitrator(s) may issue confidentiality orders. The Discovery Guide further provides that arbitration panels shall not issue orders or use confidentiality agreements to require parties to produce documents otherwise protected by established privileges.

Additional Discovery Requests. The Discovery Guide states that parties may request documents in addition to those identified in the Document Production Lists, and it provides guidance regarding the timing of such requests. Unless a longer period is allowed by the requesting party, requests should be satisfied or objected to within 30 days from the date of service of the document request. Any response to objections to a request should be served on all parties within 10 days of service of the objection.

The Discovery Guide provides a mechanism for a party to seek to compel production of documents when the adverse party (a) refuses to produce such documents or (b) offers only to produce alternative documents that are unacceptable to the requesting party. The Discovery Guide directs the arbitrator(s) to carefully consider such motions, regardless of whether the item requested is on any of the Document Production Lists.

Depositions. The Discovery Guide enables the arbitrator(s) to allow depositions, but only under very limited circumstances, such as: (a) to preserve the testimony of ill or dying witnesses; (b) to accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing; (c) expedite large or complex cases; and (d) to address unusual situations where the arbitrator(s) determines that circumstances warrant departure from the general guidance.

Admissibility. Production of documents pursuant to the Discovery Guide does not create a presumption that the documents are admissible at the arbitration hearing. Nothing in the Discovery Guide prevents a party from objecting to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

Arbitrator Participation. Under the Discovery Guide, the NASD arbitrator(s) will participate in the initial and subsequent prehearing conferences to organize the management of the case, set a discovery cut-off date, identify dispositive or other potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve any other preliminary issues. If the exchange of properly requested discovery has not occurred, the Discovery Guide provides that the arbitrator(s) may order the production of all required documents subject to production.

Sanctions. The Discovery Guide instructs arbitration panels to issue sanctions if any party fails to produce documents or information required by a written order, unless the panel [18] finds that there is ''substantial justification'' for the failure to produce the documents or information. The Discovery Guide gives wide discretion to address noncompliance with discovery orders. For example,the panel may make an adverse inference against a party or assess adjournment fees, forum fees, cost and expenses, and/or attorney's fees caused by noncompliance. In extraordinary cases, the Discovery Guide permits the panel to initiate a disciplinary referral against a registered entity or person who is a party or witness in the proceeding or may, pursuant to Rule 10305(b), dismiss a claim, defense, or proceeding with prejudice as a sanction for intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.

The Discovery Guide Is a Guideline

As noted, the Discovery Guide will function as a guide for the parties and the arbitrator(s), and is intended to supplement The Arbitrator's Manual, which does not create any binding regulatory obligations. Further, the policies set forth in the Discovery Guide are discretionary and may be changed by the arbitrator(s). Moreover, the parties may agree to a voluntary exchange of documents in a manner that

[18] An arbitration panel's ruling need only be by majority vote; if need not be unanimous.

is different from that set forth in the Discovery Guide.

2. Statutory Basis

NASD Regulation believes that the proposed Discovery Guide is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the Discovery Guide will reduce the number and limit the scope of disputes involving document productions and other matters, thereby improving the arbitration process for the benefit of public investors, broker/dealer members, and associated persons who are the users of the process.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed Discovery Guide will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether utilizing the Discovery Guide, as amended, is consistent with the Act. In addition to any other issues that the public may wish to address, the Commission specifically requests comments on the following aspects of the Discovery Guide:

A. The Discovery Guide as a Compromise Document

The Discovery Guide provides guidance to parties on which documents they should exchange without arbitrator or staff intervention in NASD-sponsored arbitrations, and to arbitrators in determining which documents customers and member firms or associated persons are presumptively required to produce in customer arbitrations. In January 1996, the Arbitration Policy Task Force chaired by former Commission Chairman David Ruder recommended that ''[a]utomatic production of essential documents should be required for all parties, and arbitrators should play a much greater role in directing discovery and resolving discovery disputes.'' *Task Force Report* (January 1996), at 2.

The NASD's National Arbitration and Mediation Committee, together with advisors from various diverse backgrounds, helped to draft the Discovery Guide over a period of two years in an effort to implement this recommendation. Among those contributing to the Discovery Guide were persons who are members of SICA, members of SIA, directors of PIABA, industry representatives, representatives from major broker-dealers, counsel for claimants, and counsel for the industry. The Discovery Guide reflects a compromise between the various interests of the drafters.

The Commission seeks comment on whether the Discovery Guide's document discovery lists, when considered as a whole, reflect a balanced compromise between the various interests of the drafters.

The Commission seeks comment on whether the Discovery Guides document discovery lists, when considered as a whole, reflect a balanced compromise between the production needs of, and burdens on, both claimants and industry defendants in customer arbitrations. For example, while some may believe production of a particular class of documents on one of the industry production lists is burdensome, there may be an equally burdensome production requirement on the corresponding customer production list. Comments should provide specific examples to support their views of whether the Discovery Guide is a balanced effort to make both sides in an arbitration produce more relevant documents more quickly. Comments should take into account that, as noted in the Discovery Guide, parties are not precluded from seeking additional classes of documents either by agreement or by order of the arbitrators in any particular case.

B. Customer Personal Financial Information

Under List 2 of the Discovery Guide, claimants in all cases are asked to produce a significant amount of personal financial information. For example, claimants are asked to produce portions of all customer and customer-owned business federal income tax returns (List 2, Item 1), financial statements or similar statements of the customer's assets, liabilities and or net worth (List 2, Item 2), and account statements and confirmations for accounts maintained at a securities firm other than the respondent firm (List 2, Item 4) for a period of at least three years and as many as six years.[19]

The Commission seeks comment on whether the scope of these requests on List 2 is reasonable in all customer cases. For example, should these requests be limited to a lesser amount of personal financial and tax information (*e.g.*, either tax returns or financial statements), or to a shorter period of coverage (*e.g.*, financial information covering a year before the transactions at issue until the date the claim is made)? Should federal income tax returns be made presumptively discoverable in only certain types of cases where the information contained in those documents may be more relevant (such as unsuitability cases (List 14)), than in other types of cases (such as churning claims)?

The Commission also seeks comment on whether the relative production burden is reasonably equivalent for both claimants and respondents in an arbitration proceeding. The drafters of the Discovery Guide sought to effect a compromise between competing interests, with each party being required to give up certain types of information in order to receive other types of information on a regular and timely basis. For example, does requiring customers to produce personal financial information (List 2, Items 1, 2, and 4) balance the respondent's obligation to produce records of customer complaints and disciplinary action, without time limitation (List 1, Items 8 and 12).[20]

[19] These requests seek documents covering the period from 3 years prior to the transaction(s) in issue through the time the claim is filed. Since most arbitration claims must be brought within 3 years from the date of the transaction under applicable statutes of limitations, depending on when a claim is filed, a claimant may have to produce 6 years' worth of personal financial information.

[20] List 1, Item 8 requires firms/associated persons to produce ''[a]ll Forms RE–3, U–4, and U–5s, including all amendments, all customer complaints

Commenters should provide specific examples to support their opinions where possible.

C. Privilege Issues

The Discovery Guide states in Part II.B. that ''[t]he arbitrator(s) shall not issue an order or use a confidentiality agreement to require parties to produce documents otherwise subject to an established privilege.'' Those privileges that would be deemed ''established,'' however, are not listed in the Guide. While the attorney-client privilege would clearly be an example of an established privilege, would it be helpful to parties and arbitrators to identify if other privileges also could be claimed? Do securities firms intend to assert any other types of privileges? Is the absence of specificity an invitation to argument about whether a privilege has been ''established''?

As the NASD has stressed, the Lists of presumptively discoverable documents were the result of significant compromise between representatives of the industry, the plaintiffs' bar, and other interested persons. Each group agreed to include certain types of documents in the Lists that it could otherwise object to producing because it would receive other types of documents in return. Is the term ''established privilege'' sufficiently limited to assure that the balance between competing interests that the NASD sought to achieve through the Discovery Guide will not be upset?

The Commission therefore seeks comment on the privileges that should be considered ''established'' for purposes of the Discovery Guide. Should the only privilege recognized as ''established'' be the attorney/client privilege (and the related work product doctrine)? In light of the compromises reached in fashioning the Discovery Guide, should a party be precluded from asserting a blanket privilege to keep from producing an entire category of documents contained on one of the discovery Lists?

D. Internal Audit Reports

List 5, Item 3(a) calls for the production of those portions of internal audit reports that ''focused on'' the associated person(s) or transaction(s) at issue. There may be instances where an internal audit report does not ''focus on'' a particular person or transaction, but may nonetheless relate to a claim made in arbitration. For example, an internal report that addresses a particular practice of the firm or branch office may be relevant to the customer's claim even if it does not ''focus on'' the associated person named in the customer's complaint.

Therefore, the Commission would like comment on whether the internal audit reports subject to production under List 5, Item 3(a) should be limited to those that ''focus on'' the associated person(s) or transaction(s) at issue in the claim, or whether the class of internal audit reports should be expanded to include those that ''concern'' or ''relate to'' the claims made in the arbitration. Is the limitation in List 5, Item 3(a) to reports that ''focus on'' the associated person(s) and transaction(s) at issue necessary to prevent production of audit reports that are unrelated to the claims in a particular arbitration, or does the limitation exclude particular types of reports that will almost always be relevant?

List 5, Item 3(b) requires production of those portions of internal audit reports that ''were generated not earlier than one year before or not later than one year after the transaction(s) at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged in the statement of claim.'' Does this provision help ensure that all portions of internal audit reports that may be relevant to the claims asserted in an arbitration will be produced by firms? Would an expansion of the documents called for in List 5, Item 3(a) upset the balance strived for by the members of the NASD's drafting committee?

E. Particular Types of Claims

Lists 1 and 2 set forth documents to be produced in all customer cases by firms/associated persons and customers, respectively. Lists 3 through 14 call for the production of additional classes of documents in particular types of cases, including churning (Lists 3 and 4), failure to supervise (Lists 5 and 6), misrepresentation/omission (Lists 7 and 8), negligence/breach of fiduciary duty (Lists 9 and 10), unauthorized trading (Lists 11 and 12) and unsuitability (Lists 13 and 14). Are there other types of specific claims that should be included in particular lists in the Discovery Guide? For instance, claims alleging failure to obtain best execution on particular trades do not have individualized production lists. Because of the nature of best execution claims, the documents called for in List 11 may be relevant in those cases. Should List 11 also apply to best execution claims as well as unauthorized trading claims? When commenting, commenters should take into account that recently best execution has become a topic of significant interest.[21]

Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0690. 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–99–07 and should be submitted by May 14, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10200 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

identified in such forms, and all customer complaints of a similar nature against the Associated Person(s) handling the account(s) at issue.'' List 1, Item 12 calls for production of ''[r]ecords of disciplinary action taken against the Associated Person(s) by any regulator or employer for all sales practices or conduct similar to the conduct alleged to be at issue,'' in all cases.

[21] *See, e.g., Newton* v. *Merrill Lynch, Pierce, Fenner & Smith Incorporated, et al.*, 135 F.3d 266 (3d Cir. 1998); *Order Execution Obligations*, Exchange Act Release No. 37619A, 61 FR 48290 (Sept. 12, 1996) (duty of best execution requires broker-dealer to seek the most favorable terms reasonably available under the circumstances of the customer's transaction).

[22] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41298; File No. SR–OCC–99–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding Joint Back Office Participants

April 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 3, 1999, The Options Clearing Corp. (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will amend its rules and by-laws to allow clearing members to maintain joint back office accounts in which long positions can be used to offset short positions in options for broker-dealers with which they have joint back office arrangements.

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

The purpose of the proposed rule change is to allow OCC clearing members to maintain joint back office accounts (''JBO accounts'') for broker-dealers with whom the clearing members have joint back office arrangements. (These broker-dealers are referred to as JBO participants.) Under the proposed rule change, a broker-dealer registered with the Commission will be considered a JBO participant if it (1) maintains a joint back office arrangement with an OCC clearing member that satisfies the requirements of Regulation T,[3] (2) meets the applicable requirements as specified in exchange rules, and (3) consents to having its exchange transactions cleared and its positions carried in a JBO participant account.

OCC will treat JBO participants like market makers and specialists and will treat JBO participants' accounts like market maker's accounts and specialist's accounts. For example, long positions in a JBO participants' account will be treated as unsegregated long positions. The one exception to this treatment relates to Chapter IV of OCC's rules which pertains to matched trade reporting. OCC does not anticipate that its participant exchanges will report JBO transactions as market maker or specialist transactions for purposes of reporting matched trades. Accordingly, JBO participants will not be included within the term ''market maker'' or ''specialist'' for the purposes of the rules in Chapter IV.

To implement the above changes, OCC will add definitions for ''JBO participant'' and ''JBO participants' account'' in Article I, Section 1 of the by-laws. OCC will also amend the definition of ''unsegregated long position'' to include long positions in JBO participants' accounts. OCC will amend Interpretation .03 to Article V, Section 1 of the by-laws, which provides that applicants for clearing membership must agree to seek approval for the membership/margin committee to clear types of transactions for which the applicant did not initially seek approval in its membership application, by adding JBO participant transactions. Finally, Article VI, Section 3 of the by-laws will be amended to add JBO participants' accounts to the list of permissible accounts clearing members may maintain with OCC.

OCC believes that the proposed rule change is consistent with Section 17A of the Act[4] and the rules and regulations thereunder because the proposal is consistent with OCC's requirement to assure the safeguarding of securities and funds which are in OCC's custody or control or for which OCC is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any material impact 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

Within thirty-five 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 ninety 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 OCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. 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. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–05 and should be submitted by May 14, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10198 Filed 4–22–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB Review.

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Joint back office arrangements are authorized under Section 220.7 of Regulation T of the Board of Governors of the Federal Reserve System and permit non-clearing broker-dealers to be deemed self-clearing for credit extension purposes if the non-clearing broker-dealer has an ownership interest in the clearing firm.

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before May 24, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW , 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: Small Business Investment Company (SBIC) Leverage Application Forms & Documents, Leverage Application Kits.

Form No's: 25, 33, 34 and 1065.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies and Minority Small Business Investment Companies.

Annual Responses: 327.

Annual Burden: 507.

Dated: April 13, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–10156 Filed 4–22–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9A81, Amdt. #1]

State of California

The above numbered declaration is hereby amended to include Glenn County and the contiguous counties of Butte, Colusa, Lake, Mendocino, and Tehama in the State of California as an economic injury disaster loan area as a result of extremely low temperatures and sub-freezing conditions beginning on December 20, 1998 and continuing. Applications may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for economic injury is October 15, 1999.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: April 19, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–10255 Filed 4–22–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3165, Amdt. #1]

State of Louisiana

As a result of the President's major disaster declaration on April 9, 1999 for Public Assistance only for Bossier Parish, and an amendment thereto on April 12 adding Individual Assistance for Bossier and Caddo Parishes in the State of Louisiana, I find that the above Parishes constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding that occurred on April 3–7, 1999. This amendment supercedes SBA's existing Administrative disaster declaration to comply with the requirements of a major declaration by the President. Applications for loans for physical damages may be filed until the close of business on June 7, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties or parishes may be filed until the specified date at the previously designated location: Bienville, DeSoto, Red River, and Webster Parishes in Louisiana; Lafayette and Miller Counties in Arkansas; and Cass, Harrison, Marion, and Panola Counties in Texas.

The economic injury numbers are 9C1600 for Louisiana, 9C1700 for Arkansas, and 9C4900 for Texas.

All other information remains the same, i.e., the deadline for filing applications for economic injury is January 7, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 13, 1999.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99–10254 Filed 4–22–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3167]

State of Ohio

Hamilton County and the contiguous counties of Butler, Clermont, and Warren in the State of Ohio; Dearborn and Franklin Counties in Indiana; and Boone, Campbell, and Kenton Counties in Kentucky constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on April 9, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 14, 1999 and for economic injury until the close of business on Jan. 18, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 316712 for Ohio; 316812 for Indiana; and 316912 for Kentucky. For economic injury the numbers are 9C5000 for Ohio; 9C5100 for Indiana; and 9C5200 for Kentucky.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 15, 1999.

Fred P. Hochberg,

Acting Administrator.

[FR Doc. 99–10253 Filed 4–22–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Federal Assistance To Provide Financial Counseling, Technical Assistance and Long-Term Training to Women

AGENCY: Small Business Administration.

ACTION: Program announcement No. OWBO–95–007, as amended by OWBO–98–011.

SUMMARY: The Small Business Administration (SBA) plans to issue program announcement No. OWBO–95–007, as amended by OWBO–98–011, to invite applications of private, not-for-profit organizations to conduct Women's Business Center projects in the Mid-Delta Region of Mississippi. The authorizing legislation is the Small Business Act, Section 29, 15 U.S.C., Section 656, as amended by Pub. L. 105–277,111 Stat. 2592. SBA Headquarters must receive applications/proposals by May 31, 1999. SBA will select successful applicants competitively. The successful applicant(s) will receive an award to provide long-term training, counseling and technical assistance to women who want to start or expand businesses. The women's business center project of the successful applicant(s) will replace a previous project in the 4th year and complete the 5th year of the previous project's 5-year term. Service and assistance areas must include financial, management, marketing and government procurement/certification assistance. The applicant must also target women who are socially and economically disadvantaged . The applicant must plan to provide services locally and on the Internet via the SBA-funded Online Women's Business Center, www.onlinewbc,org.

The applicant must submit a two-year plan that describes proposed fund-raising, training and technical assistance activities. A twelve-month award will be issued for each project year, without re-competition. Award recipients must provide non-Federal matching funds as follows: one non-Federal dollar for each Federal dollar for both project years. Up to one-half of the non-Federal matching funds may be in the form of in-kind contributions.

DATES: SBA will mail program announcements to interested parties immediately, upon request. The opening date will be May 3, 1999 and the closing date will be May 31, 1999.

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–6621.

Sherrye P. Henry,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 99–10157 Filed 4–22–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3009]

Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State is holding the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

The purpose of this quarterly meeting will be for the members to look at the substantive issues on which the committee should focus, as well as specific countries and regions of interest to the committee.

This meeting will be held on Thursday, May 20, 1999, from 9:30 a.m.–12:30 p.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 ''C'' Street, NW, Washington, DC 20520. Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Shirlett Thornton at (202) 647–8345 or by fax at (202) 647–0158. All attendees must use the ''C'' Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: April 19, 1999.

Timothy C. Finton,

Executive Secretary.

[FR Doc. 99–10279 Filed 4–22–99; 8:45 am]

BILLING CODE 4710–45–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP); Deadline for Submission of Petitions for the 1999 Annual GSP Product and Country Eligibility Practices Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the 1999 Annual GSP Product and Country Eligibility Practices Review.

SUMMARY: The deadline for the submission of petitions for the 1999 Annual GSP Product and Country Eligibility Practices Review is 5:00 p.m., Wednesday, June 16, 1999.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Announcement of 1999 Annual GSP Product and Country Eligibility Practices Review

The GSP regulations (15 CFR Part 2007) provide the schedule of dates for conducting an annual review unless otherwise specified by a **Federal Register** notice. Notice is hereby given that, in order to be considered in the 1999 Annual GSP Product and Country Eligibility Practices Review, all petitions to modify the list of articles eligible for duty-free treatment under GSP or to review the GSP status of any beneficiary developing country must be received by the GSP Subcommittee of the Trade Policy Staff Committee no later than 5 p.m., Wednesday, June 16, 1999. Petitions submitted after the deadline will not be considered for review and will be returned to the petitioner.

The GSP provides for the duty-free importation of designated articles when imported from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended (the ''Trade Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations. Section 505 of the Trade Act states that duty-free treatment provided under the GSP shall not remain in effect after June 30, 1999. If the program expires without reauthorization on that date, the 1999 Annual GSP review will be conducted according to a schedule to be issued in the **Federal Register** if and when the

program is reauthorized. The review will be based on those petitions that are submitted prior to the June 16 deadline and accepted for review by the GSP Subcommittee.

A. 1999 Annual Product Review

Interested parties or foreign governments may submit petitions: (1) To designate additional articles as eligible for GSP; (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary developing countries with respect to specific GSP eligible articles; (3) to waive the competitive need limits for individual beneficiary developing countries with respect to specific GSP eligible articles; and (4) to otherwise modify GSP coverage. As specified in 15 CFR 2007.1, all product petitions must include a detailed description of the product and the Harmonized Tariff Schedule (HTS) subheading in which the product is classified.

B. 1999 GSP Annual Country Eligibility Practices Review

Interested parties may submit petitions to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c)). Such petitions must comply with the requirements of 15 CFR 2007.01(b).

C. Submission of Petitions and Requests

Petitions to modify GSP treatment should be addressed to GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street, NW, Room 518, Washington, DC 20508. An original and fourteen (14) copies of each petition must be submitted in English. If the petition contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the submission containing confidential information should be clearly marked ''confidential'' at the top and bottom of each and every page of the submission. Petitions submitted as ''business confidential'' must conform to 15 CFR 2003.6 and other qualifying information submitted in confidence must conform to 15 CFR 2007.7. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each page (either ''public version'' or ''nonconfidential''). Furthermore, interested parties submitting petitions that request action with respect to specific products should list on the first page of the petition the following information: (1) The requested action; (2) the HTS subheading in which the product is classified; and (3) if applicable, the beneficiary country.

All such submissions must conform to the GSP regulations which are set forth in 15 CFR Part 2007. The regulations are also included in ''A Guide to the U.S. Generalized System of Preferences (GSP)'' (August 1991) (''GS Guide''). Petitioners are strongly advised to review the GSP regulations. Submissions that do not provide all information required by sections 2007.0 and 2007.1 of the GSP regulations will not be accepted for review, except upon a detailed showing in the submission that the petitioner made a good faith effort to obtain the information required. These requirements will be strictly enforced. Petitions with respect to waivers of the competitive need limitations must meet the information requirements for product addition requests in section 2007.1(c) of the GSP regulations. A model petition format is available from the GSP Subcommittee and is included in the GSP Guide. Petitioners are requested to use this model petition format so as to ensure that all information requirements are met.

Only the public versions of the submissions will be available for public inspection and only by appointment. Appointments to review petitions may be made by contacting Ms. Brenda Webb (Tel. 202/395–6186) of the USTR Public Reading Room. The hours of the Reading Room are 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–10283 Filed 4–22–99; 8:45 am]

BILLING CODE 3901–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–99–5051]

Passenger, Third–Party, and Property Liability Insurance Coverage for U.S. and Foreign Air Carriers—Non-Approval of Exclusions Related to the Year 2000 Problem

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The Department issues this notice to remind all carriers of its requirements with regard to passenger, third-party, and property liability insurance under 49 U.S.C. 41112(a) and 14 CFR part 205. The notice informs carriers that certain aviation insurers wish to write into airline insurance policies required by Title 49 and Department regulations an exclusionary clause that would exclude liability for damages related to the Year 2000 problem and other computer-related time, date, and year changes. The notice further informs carriers that no such exclusion has been approved by the Department and reminds carriers that any carrier operating with such an exclusion in place would not be in compliance with Title 49 of the United States Code and 14 CFR part 205 and would be subject to enforcement action.

FOR FURTHER INFORMATION CONTACT: Dayton Lehman, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590. Tel. No. (202) 366–9342.

Notice

We face a challenge in the Year 2000 (Y2K) computer problem that, if unmet, could pose risks to the public and disrupt the flow of commerce. Addressing the Y2K problem is a top priority for the U.S. Department of Transportation.

While transportation operations are typically the responsibility of the private sector, ensuring their safe, smooth functioning is a matter of national concern and the Department is taking steps to assist our partners.

Department officials have met with industry associations and businesses in every sector, and have held industry-wide forums to address the issue. We will continue to work with carriers to address Y2K problems; however, we wish to make clear that carriers must continue to comply with existing requirements while addressing Y2K problems.

Department regulations require airlines to provide a minimum level of insurance coverage for passenger, third-party, and property liability resulting from an accident. 14 CFR Part 205. It has come to our attention that some aviation insurers wish to write into airline insurance policies an exclusionary clause that would exclude all liability for damages related to the Y2K problem. No Y2K insurance exclusion has been approved by the Department.[1]

[1] The same endorsements that contain the Y2K exclusionary clauses of which we are aware also propose to eliminate coverage for claims arising

Continued

Pursuant to part 205, all direct air carriers and foreign air carriers, including U.S. commuters and air taxis (14 CFR 298.2) as well as Canadian charter air taxi operators (14 CFR 294.2(c)), are required to carry minimum ''aircraft accident liability insurance coverage'' for ''bodily injury to or death of aircraft passengers'' as well as ''persons, including non-employee cargo attendants, other than passengers, and for damage to property.'' Each carrier must file a certificate of insurance with the Department, signed by an authorized representative of the insurer or insurance broker, stating that the carrier has in effect insurance coverage meeting the requirements of Part 205. Minimum coverage amounts depend on the class of carrier and aircraft size.

Section 205.6 of the Department's regulations, 14 CFR 205.6, prohibits the effectiveness of any liability insurance policy exclusion not specifically approved by the Department. The Department and the Civil Aeronautics Board before it have permitted exclusions from liability coverage only in a very limited number of circumstances. These exclusions cover, in essence, the following risks:

(1) War and insurrection;

(2) Noise, pollution, and other effects not caused by a ''crash, fire, explosion, or collision, or a recorded in-flight emergency causing abnormal aircraft operation'' (an accident);

(3) Nuclear risks;

(4) Damages incurred by an employee arising out of and in the course of his/her employment; and

(5) Injury to property owned, leased, occupied or used by the insured.

The Department recently established a public docket, OST–99–5051, that contains correspondence regarding exclusions requested in the past, including those described above. All future correspondence regarding requests for exclusions will also be placed in the docket, which can be accessed through the Internet at http://dms.dot.gov. You should be aware that, although the Department may not have permitted a particular exclusion, section 205.6 also specifically provides that insurers retain the right to recover from carriers any amounts paid under the policy. For example, although an insurer may be obligated to make payments to claimants because the regulations require a particular coverage, the regulations would not prohibit a provision in a policy requiring a carrier to reimburse an insurer for Y2K-related claims where the carrier has failed to satisfy the insurer that it has in place a program to become Y2K compliant.

Any carrier operating with a Y2K exclusion in place covering passenger, third party, or property liability for aircraft accidents would not be in compliance with the insurance requirements contained in part 205. All U.S. carriers should be aware that, under 49 U.S.C. 41112(a), any certificate to provide air transportation ceases to be effective if an air carrier fails to comply with part 205. This condition is also specifically made a part of the operating certificate of each U.S. carrier. Likewise, pursuant to 14 CFR 298.37 air taxis and commuter air carriers are prohibited from conducting operations not properly covered under part 205. In addition, all foreign air carriers should be aware that all permit and exemption authority of foreign air carriers is also specifically conditioned on compliance with part 205. Consequently, any operations performed without lawful insurance coverage as required by part 205 would be unauthorized.

The Department has been approached by a major aviation industry insurer requesting approval of its Y2K exclusion. In addition, other major insurers have attempted to impose such an exclusion on carriers without first seeking Department approval of the exclusion. The exclusions of which we are aware would involve immediate imposition of a Y2K exclusion, with the insured carrier given the right to obtain a limited ''write-back'' of coverage, provided it demonstrates adequate Y2K compliance or planning to the insurer's satisfaction. The write-back coverage would be designed to meet Part 205 requirements. We urge carriers that have not done so to implement programs to ensure that they will achieve timely Y2K compliance and to work with their insurers to ensure that there is no lapse in required coverage. We wish to make clear, however, that the Department has not approved any insurance arrangement for Y2K-related problems that does not provide continuous coverage meeting the minimum coverage requirements set forth in part 205.

Certain insurers have assured us they recognize that, in the absence of Department approval, any Y2K exclusion written into the policies of their particular airline clients will not be applicable to the minimum liability requirements of part 205. However, we are concerned that other carriers may have had Y2K exclusions written into their liability policies by insurers with different views and that such carriers may not yet have obtained coverage meeting the requirements of part 205 under a ''write-back'' clause, or otherwise. Any carrier operating without the liability coverage required by part 205, including coverage for Y2K-related problems, is subject to immediate enforcement action, which could include civil penalties assessed under 49 U.S.C. 46301 and action against its operating authority. Section 46301 provides for civil penalties of $1,100 per violation and, in the case of a continuing violation, $1,100 per day for each day each violation continues. In addition, carriers and their responsible officials should be aware that 49 U.S.C 46316 provides for criminal penalties in the event of knowing and willful violations of the Department's regulations and Title 49.

This notice is not concerned with Y2K exclusions from insurance coverage not included in the minimum passenger, third-party, or property liability limits set forth in 14 CFR part 205, such as loss of business by an airline or other liability not resulting directly from operation of an aircraft.

If you have any questions, you may contact Dayton Lehman, Deputy Assistant General Counsel, Office of Aviation Enforcement and Proceedings, on 202–366–9342.

Dated: April 19, 1999.

An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

Nancy E. McFadden,

General Counsel.

[FR Doc. 99–10245 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–62–P

from computer-related problems in connection with ''any other change in time, date, or year,'' including the reset of the Global Positioning Satellite system that will occur on August 21–22, 1999. As with the Y2K exclusion, the Department has not approved any such exclusion.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–1999–5382]

Fiscal Year (FY) 2000 Implementation Guidance for Interstate Maintenance Discretionary Program Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; FHWA solicitation memorandum for FR 2000 funds; request for comments on selection criteria for FY 2001 and beyond.

SUMMARY: This document provides implementation guidance on the Interstate maintenance discretionary (IMD) program for FY 2000 and beyond. On March 4, 1999, a memorandum on

this topic was issued to division offices soliciting candidate projects from State transportation agencies for FY 2000 IMD funding, The memorandum also contains information of criteria used by the FHWA in evaluating candidate projects. This document seeks comments from all interested parties on the selection criteria and their continued use by the FHWA for FY 2001 and beyond.

DATES: Comments on the selection criteria for IMD funding for FY 2001 and beyond must be received on or before June 22, 1999.

ADDRESSES: Your signed, written comments on project selection criteria for IMD founding for FY 2001 and beyond must refer to the docket number appear at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL 401, Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Applications for candidate projects for FY 2000 funding should be submitted to the FHWA Division Office in the State of the applicant in accordance with the guidance provided in the solicitation memorandom.

FOR FURTHER INFORMATION CONTACT: Cecilio Leonin, Office of Program Administration, (202) 366–4651; or Wilbert Baccus, Office of the Chief Counsel, (202) 366–1396; Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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

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

The solicitation memorandum is available on the FHWA web site at *http://www.fhwa.dot.gov/discretionary.*

Background

On March 4, 1999, the FHWA issued a memorandum to its division offices, located in each State, the District of Columbia and Puerto Rico, soliciting from the State transportation agencies candidate projects for FY 2000 IMD funding. This memorandum is published for informational purposes. The memorandum contains information on the IMD program, eligible activities, the application process, and the selection criteria used by the FHWA in evaluating candidate projects.

Also, the purpose of this document is to invite comments on the selection criteria used by the FHWA for evaluating candidate projects for FY 2001 and beyond. The attachment to the March 4, 1999, memorandum presents the selection criteria that the FHWA will be using for FY 2000. These criteria reflect areas which are given preference when evaluating candidate projects; however, any project submitted by a State transportation agency which meets the eligibility requirements for this discretionary program can potentially be selected for funding. These are the same general selection criteria that the FHWA has used for several years to evaluate candidates for this discretionary program. Occasionally, a selection criterion may be added for an individual year that reflects a special emphasis area, but for the most part the selection criteria have remained unchanged.

The FHWA plans to continue to use these same basic selection criteria for FY 2001 and beyond for this discretionary program. However, before doing so, the FHWA is interested in the views of the States or others on these selection criteria. Accordingly, comments are invited to this docket on the selection criteria that the FHWA will use for the IMD program for funding available during FY 2001 and beyond.

Publicaton of the implementation guidance for the Interstate maintenance discretionary program satisfies the requirement of section 9004(a) of the TEA–21 Restoration Act, Pub. L. 105–206, 112 Stat. 685, 842 (1998).

Authority: 23 U.S.C. 118 and 315; 49 CFR 1.48.

Issued on: April 12, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

The text of the FHWA solicitation and implementation guidance memorandum follows:

ACTION: Request for Project for FY 2000 Interstate Maintenance Discretionary (IMD) Funds—March 4, 1999 (Reply Due: July 1, 1999)

Henry H. Rentz for Vincent F. Schimmoller, Program Manager, Infrastructure, HIPA

Division Administrators

We are requesting submission of eligible candidate projects for FY 2000 IMD funds. It appears that approximately $90 million will be available for allocation in FY 2000 Candidate project submissions are to be received in Headquarters no later than July 1, 1999.

Please work with the States to identify viable projects to assure high quality candidates for this program. The attached program guidance for the IMB program provides information on eligibility, selection criteria, and submission requirements. Your office should review all candidates submitted by a State to ensure the application is complete and contains all of the requested information as outlined in the attached program guidance. After review, please forward candidate project submissions to the Director of Program Administration, HIPA.

When sending in candidate projects, the States must understand that any qualified project may or may not be selected, and it may be necessary to supplement allocated IMD funds with other Federal-aid and/or State funds to construct a section of highway which will be usable to the traveling public in as short a period of time as possible.

Any allocations in FY 2000 will be made on the assumption that proposed projects are viable and implementation schedules are realistic. Obligation limitation will be distributed with each allocation of funds.

In 1992, Headquarters established a policy (reference Mr. Willett's November 3, 1992, memorandum to the regions; Subject: Transfer of Funds/Discretionary Allocations) that Interstate 4R discretionary funds would not be allocated to a State that had, in the preceding fiscal year, transferred either National Highway System (NHS) or Interstate Maintenance (IM) funds to the Surface Transportation Program (STP) apportionment. This policy was based on the tremendous Interstate System needs across the country and FHWA's belief that congressional intent was to give priority consideration to high cost

projects in States where available apportionments were insufficient to allow such projects to proceed on a timely basis. We believe this policy is still appropriate at this time, and it will continue to be applied to IMD funds, with modifications to reflect the uniform transfer provisions enacted by the Transportation Equity Act for the 21st Century. Our policy is:

The IMD funds will not be allocated to a State that has, in the preceding year, transferred either NHS or IM funds to the STP, the Congestion Mitigation and Air Quality Improvement Program, the Bridge Replacement and Rehabilitation Program, or to Recreational Trails apportionments. However, this restriction will not apply to transfers from (IM to NHS or vice-versa.

As a reminder, any requests to adjust the amount of IMD funds allocated to a specific project or to shift funds among previously approved IMD projects must be forwarded in writing to the Director of Program Administration, HIPA, for approval.

Questions concerning preparation of applications and other matters may be directed to Mr. Cecilio Leonin of the Office of Program Administration, HIPA, telephone (202) 366–4651.

Attachment

INTERSTATE MAINTENANCE DISCRETIONARY PROGRAM PROGRAM GUIDELINES

Background

The Interstate Maintenance Discretionary Program provides funding for resurfacing, restoration, rehabilitation and reconstruction (4R) work, including added lanes to increase capacity, on most existing Interstate System routes. This discretionary program was first established by the Surface Transportation Assistance Act of 1982, where funding were derived from lapsed I–4R apportionments, and was known as the I–4R Discretionary Program. The Surface Transportation and Uniform Relocation Assistance Act of 1987 and the Intermodal Surface Transportation Efficiency Act of 1991 continued funding with set asides from I–4R and NHS authorizations, respectively, for each of fiscal years 1988 through 1997. The 1998 Transportation Equity Act for the 21st Century (TEA–21) continued this program by authorizing set asides from the Interstate Maintenance (IM) funds for fiscal years 1998 through 2003. This is now called the Interstate Maintenance Discretionary (IMD) Program.

Statutory References

23 U.S.C. 118.

Funding

Fiscal year	1998	1999	2000	2001	2002	2003
Authorization	$50M	$100M	$100M	$100M	$100M	$100M

TEA–21 provides $2,914 million in FY 1998 and increasing each year to $4,218 million in FY 2003 for the Interstate Maintenance Program. In accordance with 23 U.S.C. 118(c), before any apportionment is made under 23 U.S.C. 104(b)(4), the Secretary shall set aside $50 million in FY 1998 and $100 million for each of FY's 1999 through 2003 for the IMD program.

The amount of available funding is impacted by any obligation limitation imposed on the Federal-aid highway program under the provisions of TEA–21 Section 1102(f), Redistribution of Certain Authorized Funds. Under this provision, any funds authorized for the program for the fiscal year, which are not available for obligation due to the imposition of an obligation limitation, are not allocated for the IMD program, but are redistributed to the States by formula as STP funds.

After the Section 1102(f) reduction, it is expected that approximately $90 million will be available for candidate projects in each of fiscal years 2000 through 2003. This available funding may also increase or decrease each year depending on the obligation limitation calculation and on the estimated receipts to the Highway Trust Fund.

Federal Share

In accordance with 23 U.S.C. 120 the normal pro-rata Federal share of the costs for any project eligible under this program is 90 percent.

Obligation Limitation

The IMD discretionary funds are subject to obligation limitation. The obligation limitation reduces the available funding for the program under the provisions of TEA–21 Section 1102(f) discussed above.

Eligibility

The eligibility for IMD projects is provided in Section 118(c) of 23 U.S.C., as follows:

1. IMD funds are available for resurfacing, restoring, rehabilitating and reconstructing (4R) work, including added lanes, on the Interstate System. However, not eligible for allocation of IMD funds are projects on any highway designated as a part of the Interstate System under Section 139 of 23 U.S.C., as in effect before the enactment of TEA–21 and any toll road on the Interstate System not subject to an agreement under Section 119(e) of 23 U.S.C., as in effect on December 17, 1991.

2. A State is eligible to receive an allocation of IMD funds if it has obligated or demonstrates that it will obligate in FY 2000 all of its IM funds apportioned under Section 104(b)(4) of 23 U.S.C. other than an amount which, by itself, is insufficient to pay the Federal share of the cost of a project for resurfacing, restoring, rehabilitating and reconstructing the Interstate System which has been submitted by the State to the Secretary for approval.

3. The applicant must be willing and able to obligate the IMD funds within a year of the date the funds are made available, apply them to a ready-to-commence project, and in the case of construction work, begin work within 90 days of obligation.

In 1992, Headquarters established a policy that Interstate 4R discretionary funds would not be allocated to a State that had, in the preceding fiscal year, transferred either National Highway System (NHS) or Interstate Maintenance (IM) funds to the Surface Transportation Program (SIP) apportionment. This policy was based on the tremendous Interstate System needs across the country and FHWA's belief that congressional intent was to give priority consideration to high cost projects in States where available apportionments were insufficient to allow such projects to proceed on a timely basis. This policy is still appropriate at this time, and will continue to be applied to IMD funds, with modifications to reflect the uniform transfer provisions enacted by the Transportation Equity Act for the 21st Century. The policy is: IMD funds will not be allocated to a State that has, in the preceding year, transferred either NHS or IM funds to the STP, the Congestion Mitigation and Air Quality Improvement Program, the Bridge Replacement and Rehabilitation Program, or to Recreational Trails apportionments. However, this restriction will not apply to transfers from IM to NHS or vice-versa.

Selection Criteria

The following criteria are used to evaluate the submitted candidates for selection. The statutory criteria for priority consideration are found in 23 U.S.C. 118(c)(3) and Section 1223 of TEA–21, as follows:

- Any project the cost of which exceeds $10 million (23 U.S.C. 118(c)(3)).
- A project on any high volume route in an urban area or high truck-volume route in a rural area (23 U.S.C. 118(c)(3)).
- Priority may be given to funding a transportation project relating to an international quadrennial Olympic or Paralympic event, or a Special Olympics International event if the project meets the extraordinary needs associated with such events and is otherwise eligible for assistance with IMD funds (Section 1223, TEA–21).

There are no regulatory criteria for selection of IMD discretionary projects; however, the following criteria are also considered in the evaluation of candidates for his program:

- Leveraging of private or other public funding—Because the annual requests for funding far exceed the available IMD funds, commitment of other funding sources to complement the requested IMD funds is an important factor.
- State priorities—For States that submit more than one project, consideration is given to the individual State's priorities if specified.
- Expeditious completion of project—Preference is also given to requests that will expedite the completion of a viable project over requests for initial funding of a project that will require a long-term commitment of future IMD funding. For large-scale projects consideration is given to the State's total funding plan to expedite the completion of the project.

Because the concept of equity was important in the development of TEA–21, project selection will also consider national geographic distribution among all of the discretionary programs as well as congressional direction or guidance provided on specific projects or programs.

Solicitation Procedure

Each year, usually around March, a memorandum is sent from the FHWA Headquarters Office of Program Administration to the FHWA division offices requesting the submission of candidate projects for the following fiscal year's funding. This solicitation is also published in the **Federal Register**. The FHWA division offices provide this solicitation request to the State transportation departments, who are the only agencies that can submit candidates. The State transportation departments coordinate with local and Federal agencies within their respective States in order to develop viable candidate projects. The State transportation departments submit the candidate applications to the FHWA division offices, who send them in to the Office of Program Administration. Candidate projects are due in FHWA Headquarters usually around the first of July. The specific timetable for the solicitation process for any particular fiscal year is provided in the solicitation memorandum. The most recent solicitation is provided in these Guidelines for reference.

The candidate project applications are reviewed and evaluated by the Office of Program Administration and an allocation plan is prepared for presentation of the candidate projects to the Office of the Federal Highway Administrator, where the final selection of projects for funding is made. The announcement of the selected projects and the allocation of funds is usually accomplished by the middle of November.

Submission Requirements

Only State transportation departments may submit applications for funding under this program. Although there is not a prescribed format for a project submission, the following information must be included to properly evaluate the candidate projects. With the exception of the project area map, all of the following must be included to consider the application complete. Those applications that do not include these items are considered incomplete and returned.

1. State in which the project is located.
2. Federal-Aid Project Number
3. Project Location—Describe the specific location of the project, including route number and mileposts, if applicable.
4. County or Counties in which the project is located.
5. U.S. Congressional District No.(s) in which the project is located.
6. U.S. Congressional District Member's Name(s).
7. Name of Urban Area or indicate if located in a rural area.
8. Proposed Work—Describe the project work to be completed under this particular request, and whether this is a complete project or part of a larger project. If the project is related to one of the Olympic events listed in Section 1223 of TEA–21, that relationship should be described.
9. Current 2-way Average Daily Traffic including percentage of trucks.
10. Number of lanes before and after construction of the project. The number of lanes and current ADT are used to gauge the degree of congestion on the route.
11. Project Plan Status—PS&E Status.
12. Estimated Authorization Date (month/year).
13. Total Project Cost
14. Amount of IMD funds requested—Indicate amount of IMD funds being requested. If a State is willing to accept partial funding of this amount, that should be indicated. Sometimes, partial funding of requests is utilized to provide funding for more projects since the requests far exceed the available funds.
15. An Obligation Schedule—Demonstrate how the State will obligate all of its IM apportionments before the end of FY 2000.
16. Commitment of Other Funds—Indicate the amounts and sources of any private or other public funding being provided as part of this project. Only indicate those amounts of funding that are firm with documented commitments. The submission must include written confirmation of these commitments from the entity controlling the committed funds.
17. Previous Interstate 4R Discretionary (IDR) Funding—Indicate the amount and fiscal year of any previous IDR discretionary funds received for this project or route.
18. Future Funding Needs—Indicate the estimated future funding needs for the project, including anticipated requests for additional IMD funding, the items of work to be completed and projected scheduling.
19. Talking Points Briefing—A one page talking points paper covering basic project information is also needed for use by the Office of the Secretary for the congressional notification process should a project be selected for funding. Each State's request for discretionary funds must include a talking points paper. A sample paper is included in these Guidelines.

State Transportation Agency Responsibilities

1. Coordinate with State, local, and Federal agencies within the State to develop viable candidate projects.
2. Ensure that the applications for candidate projects meet the submission requirements outlined above.
3. Establish priorities for their candidate projects if desired.
4. Submit the applications to the local FHWA division office on time so that the submission deadline can be met.

FHWA Division Office Responsibilities

1. Provide the solicitation memorandum and this program information to the State transportation agency.

2. Request candidate projects be submitted by the State to the FHWA division office to meet the submission deadline established in the solicitation.

3. Review all candidate applications submitted by the State prior to sending them to FHWA Headquarters to ensure that they are complete and meet the submission requirements.

4. Submit the candidate applications to FHWA Headquarters by the established submission deadline.

FHWA Headquarters Program Office Responsibilities

1. Solicit candidates from the States through annual solicitation memorandum.

2. Review candidate project submissions and compile program and project information for preparation of allocation plan.

3. Submit allocation plan to the Office of the Federal Highway Administrator for use in making final project selections.

4. Allocate funds for the selected projects.

FHWA Headquarters Program Office Contact

Cecilio Leonin, Highway Engineer, Office of rogram Administration, Phone: (202) 366–4651, Fax: (202) 366–3988, E-mail: cecilio.leonin@fhwa.dot.gov.

Sample Talking Points Briefing for Secretary

Note: These talking points will be used by the Office of the Secretary in making congressional notification contacts. Since some of the recipients of the calls may not be closely familiar with the highway program, layman's language should be used to the extent possible. Information contained in the talking points may be used by a member of Congress in issuing a press release announcing the discretionary allocation.

Interstate Maintenance (IMD) Discretionary Funds

Grantee: <List full name of State Transportation Agency>

Project No: IMD–xxx–x(xxx) <List each project number in this format>

FHWA Funds: $xx,xxx,xxx. <If more than one project, also show cost for each>

- This project provides for resurfacing ____ miles of the two northbound lanes of I-xx in _____ county, extending from the U.S. Route 1 interchange at Hometown to the State Road 2 overpass in the vicinity of Smallville.
- The project provides for a 2-inch overlay of the existing bituminous concrete pavement which is badly deteriorated and rutted. (If there is anyhing innovative about the project be sure to mention in layman's terms.)
- This project is part of the second phase of a 5-year program to resurface a 25-mile section of I-xx between Town-A and Town-B. In 1998, the southbound lanes at this same location are being resurfaced using State funds.
- In addition to State matching funds, a portion of the total project cost will be financed by $_____ in funds provided by _____.
- The project includes improvements to several safety features within the project limits including upgrading of guardrail and traffic signs.
- The project will be advertised for construction in <month/year> and is scheduled for completion in <month/year>.

[FR Doc. 99–10246 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Atlantic and Western Railway, L.P. (Docket Number FRA–1998–4624)

The Atlantic and Western Railway (ATW) seeks a permanent waiver of compliance with the *Safety Glazing Standards*, 49 CFR 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The ATW seeks this waiver for locomotive number RSS 202. The locomotive has been leased to replace retired locomotive ATW 101 which was previously granted a waiver from the glazing requirements, FRA Docket Number RSGM–90–16. Locomotive number 202 is not equipped with FRA certified glazing but the operator states replacement of broken or damaged glazing will be made with certified glazing. ATW operates on track consisting of approximately 10 miles under yard limits requirements.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1998–4624) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days from the publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at DOT's Central Docket Managment Facility at Room PL–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC on April 15, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development. .

[FR Doc. 99–10162 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Burlington Northern Santa Fe Railway (Docket Number FRA–1999–5429)

The Burlington Northern Santa Fe Railway (BNSF) seeks a permanent waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.21, which requires each locomotive in use be inspected once during each calendar day. BNSF seeks this waiver for locomotives utilized to haul loaded coal trains through Alliance, Nebraska. BNSF states that these locomotives are inspected before the empty coal trains are hauled to the mine. The round trip from the Alliance service track to the mine takes 24 to 36 hours. BNSF states that on the return trip, the locomotives are removed from their train and placed on the service track for a second inspection which at a minimum takes three hours. BNSF indicates that this second inspection is unwarranted and causes undue congestion in the terminal.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5429) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at http://dms.dot.gov.

Issued in Washington, DC on April 15, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–10165 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favour of relief.

Mid-Continent Railway Historical Society, Inc., Docket Number FRA–1999–5106

The Mid-Continent Railway Historical Society, Inc. (MCRY) seeks a waiver of compliance from 49 CFR 230.116(h)—which requires that oil burning steam locomotives taking air for combustion through the fire door opening be equipped with a suitable conduit extending from the fire door to the outside of the cab which will prevent air being drawn into the fire box from the interior of the cab. This is required within the specified territory during the period from November 1 to April 1. MCRY is asking that the requirement be waived for steam locomotive number MCRY 2. MCRY indicates that they operate the steam locomotive a total of six days from November 1 to April 1.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–5106) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC, on April 15, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–10163 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of the Federal safety laws and regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Middletown & Hummelstown Railroad Company (Docket Number FRA–1999–4989)

The Middletown & Hummelstown Railroad Company (MH) seeks a permanent waiver of compliance with the *Safety Glazing Standards*, 49 CFR Part 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The MH seeks this waiver for two locomotives, number 1016 built in 1969, and number 151 built in 1956. The owner states the locomotives are equipped with automotive type safety glazing and were never equipped with FRA certified glazing. The MH operates 6.5 miles of track through rural country side with a maximum speed of 10 mph freight and 15 mph passenger. I11All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1999–4989) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC. 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular

business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC, on April 15, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–10164 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Southern Freight Logistics (Waiver Petition Docket Number FRA–1998–4565)

The Southern Freight Logistics (SFL) Company seeks a permanent waiver of compliance with the *Safety Glazing Standards,* 49 CFR 223.11(c), which requires certified glazing in all locomotive windows, except those locomotives used in yard service. The SFL seeks this waiver for locomotive number 39–5310. The locomotive is a Model ALCO RS3 built in 1951 and has never been equipped with FRA certified glazing. SFL indicates that they operate 17 miles of track of which 12 miles is on a United States Department of Energy reservation with guard service, the five miles outside the reservation is rural and not heavily populated.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–1998–4565) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC, on April 15, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–10161 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on October 8, 1998 (63 FR 54184-54185).

DATES: Comments must be submitted on or before May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. John Eberhard at the National Highway Traffic Safety Administration, Office of Research and Traffic Records (NTS–31), 202–366–5595. 400 Seventh Street, SW, Room 6240, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Older Person's Driving and Transportation Issues.

OMB Number: 2127–NEW.

Type of Request: New information collection.

Abstract: NHTSA proposes to conduct a survey by telephone among some nationally representative samples of 3,220 adults, including older adults. Participation by respondents would be voluntary. NHTSA's information needs require collection of information to assess the awareness of the American public concerning the mobility issues of seniors and establish benchmarks against which progress in improving seniors' safety and mobility can be assessed over time.

In conducting the proposed survey, the interviewers would use computer-aided telephone interviewing (CATI) to reduce interview length and minimize recording errors. A Spanish-language translation and bilingual interviewers are proposed to minimize language barriers to participation. The proposed survey would be anonymous and confidential.

Affected Public: Randomly selected members of the general public aged sixteen and older in telephone households.

Estimated Total Annual Burden: 882.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, D.C. 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, D.C., on April 20, 1999.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 99–10247 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay'':

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes:

N—New application
M—Modification request
PM—Party to application with modification request.

Issued in Washington, DC, on April 19, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11699–N	GEO Speciality Chemicals, Bastrop, LA	4	05/31/1999
11761–N	Vulcan Chemicals, Birmingham, AL	4	05/31/1999
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	05/31/1999
11817–N	FIBA Technologies, Inc., Westboro, MA	1, 4	05/31/1999
11862–N	The BOC Group, Murray Hill, NJ	4	05/31/1999
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	05/31/1999
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	05/31/1999
11934–N	UtiliCorp United, Inc., Omaha, NE	4	05/31/1999
12001–N	Albemarle Corporation, Baton Rouge, LA	4	05/31/1999
12020–N	Rhone-Poulenc, Inc., Shelton, CT	4	05/31/1999
12029–N	NACO Technologies, Lombard, IL	4	05/31/1999
12032–N	Physical Acoustics Quality Services, Lawrenceville, NJ	4	05/31/1999
12033–N	PPG Industries, Inc., Pittsburgh, PA	4	05/31/1999
12051–N	General American Transportation Corporation, Chicago, IL	4	05/31/1999
12064–N	Occident Chemical Corp., Webster, TX	4	05/31/1999
12071–N	Pennwalt India Limited, Worli, Mumbai, IN	4	05/31/1999
12072–N	Consani Engineering (PTY) Limited, Cape Province, RI	4	05/31/1999
12105–N	Becton Dickinson Microbiology Systems, Sparks, MD	4	05/31/1999
12106–N	Air Liquide America Corporation, Houston, TX	4	05/31/1999
12123–N	Eastman Chemical Co., Kingsport, TN	4	06/30/1999
12125–N	Mayo Foundation, Rochester, MN	4	06/30/1999
12126–N	LaRoche Industries Inc., Atlanta, GA	4	06/30/1999
12129–N	Kenyon International Emergency Services, Houston, TX	4	06/30/1999
12130–N	FIBA Technologies, Inc., Westboro, MA	4	06/30/1999
12136–N	Net Grocer, North Brunswick, NJ	4	06/30/1999
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	06/30/1999
12144–N	Sea-Land Service, Inc., Charlotte, NC	4	05/31/1999
12145–N	Dorbyl Heavy Engineering, Duncanville Vereeniging, SA	1	05/31/1999
12146–N	Luxfer Gas Cylinders, Riverside, CA	4	05/31/1999
12148–N	Eastman Kodak Company, Rochester, NY	4	05/31/1999
12156–N	Columbia Falls Aluminum Co., Columbia Falls, MT	4	06/30/1999
12158–N	Hickson Corporation, Conley, GA	4	06/30/1999
12164–N	Rhodia Inc., Shelton, CT	4	06/30/1999
12205–N	Independent Chemical Corp., Glendale, NY	4	05/31/1999
12208–N	Air Products & Chemicals, Inc., Allentown, PA	4	05/31/1999
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	05/31/1999
8915–M	Advanced Silicon Materials, Inc., Moses Lake, WA	4	04/30/1999
9266–M	ERMEWA, Inc., Houston, TX	4	05/31/1999
9275–M	Estee Lauder Company, Melville, NY	4	05/31/1999
9419–M	FIBA Technologies, Inc., Westboro, MA	4	05/31/1999
11050–M	Koppers Industries, Inc., Pittsburgh, PA	4	05/31/1999
11173–M	Olin Corporation, Norwalk, CT	4	05/31/1999
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	06/30/1999
11379–M	TRW Vehicle Safety Systems, Inc., Washington, MI	4	06/30/1999
11984–M	United Parcel Service Company, Louisville, KY	4	05/31/1999

[FR Doc. 99–10243 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before May 24, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, April 20, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12204–N	RSPA–1999–5016	Express Service and Lockheed Martin, Princeton, NJ.	49 CFR 173.245(a), 179.300–12(b).	To authorize the transportation of dinitrogen tetroxide, anhydrous hydrazine and/or other specified hazardous materials aboard cargo-only aircraft in separate specially modified stainless steel multi-unit tank car tanks. (modes 1, 4.)
12237–N	RSPA–1999–5397	Dept. of Defense, Falls Church, VA.	49 CFR 173.416, 175.3 ..	To authorize the transportation in commerce of Radioactive material, Class 7, inside specially designed devices. (modes 1, 3, 4.)
12240–N	RSPA–1999–5399	Spence Air Service, Enterprise, OR.	49 CFR 172.101 (Co. 9A), 175.75(a)(1) & (a)(2).	To authorize the transportation in commerce of Propane, Division 2.1, in DOT specification 4BA and/or 4BW cylinders and DOT Specification 39 containers which is presently forbidden for shipment by passenger aircraft. (mode 5.)
12241–N	RSPA–1999–5396	Solutia Inc., St. Louis, MO.	49 CFR 172.101(8C)	To authorize the bulk transportation of Metal catalyst, wetted, Division 4.2 in DOT specification tank trucks. (mode 1.)
12242–N	RSPA–1999–5394	United States Enrichment Corporation, Bethesda, MD.	49 CFR 172.302(c), 173.420.	To authorize the transportation in commerce of Uranium hexafluoride cylinders equipped with removable cylinder valve guards which have been manufactured in variance to the American National Standards Institute (ANSI). (modes 1, 2.)
12247–N	RSPA–1999–5490	Weldship Corp., Bethlehem, PA.	49 CFR 172.301(c), 173.302(c)(2); (c)(3); (c)(4), 173.34(e), 173.34(e)(16), 173.34(e)(3), 173.34(e)(4), 173.34(e)(5), 173.34(e)(6), 173.34(e)(7), 173.34(e)(8).	To authorize the ultrasonic testing of DOT–3A and DOT–3AA seamless steel cylinders for use in transporting Division 2.1, 2.2 or 2.3 material. (modes 1, 2, 3, 4.)
12248–N	RSPA–1999–5491	Ciba Specialty Chemicals Corp., High Point, NC.	49 CFR 171.12(b)(5), 173.242.	To authorize the transportation in commerce of Corrosive solid, flammable, n.o.s., Class 8, in IM 101 portable tanks not presently authorized. (modes 1, 2, 3.)
12249–N	RSPA–1999–5492	Breed Technologies, Inc., Lakeland, FL.	49 CFR 172.301(c), 178.65(f)(1).	To authorize the manufacture, mark and sale DOT-Specification 39 compressed gas cylinders (pressure vessels) for use as components of automobile vehicle safety systems with relief from the 30 second holdtime required at test pressure. (modes 1, 2, 3, 4.)

[FR Doc. 99–10242 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing

DATES: Comments must be received on or before May 10, 1999.

ADDRESS COMMENTS TO: Records Center, Research and Special programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington DC.

Application No.	Docket No.	Applicant	Modification of exemption
6299–M		MVE, Inc., New Prague, MN (See Footnote 1)	6299
7573–M		U.S. Department of Defense (MTMC), Falls Church, VA (See Footnote 2)	7573
8723–M		Nelson Brothers, Inc., Birmingham, AL (See Footnote 3)	8723
9997–M		Hodgdon Powder Co. Inc., Shawnee Mission, KS (See Footnote 4)	9997
10492–M		Detroit Water & Sewage Department, Detroit, MI (See Footnote 5)	10492
10938–M		Westvaco Corporation, Richmond, VA (See Footnote 6)	10938
11513–M		Thiokol Propulsion (Div of Cordant Tech Inc), Brigham City, UT (See Footnote 7).	11513
11667–M		Weldship Corporation, Bethlehem, PA (See Footnote 8)	11667
12069–M	RSPA–1998–3829	Compagnie des Containers Reservoirs, Paris, FR (See Footnote 9)	12069
12124–M	RSPA–1998–4309	Albemarle Corporation, Baton Rouge, LA (See Footnote 10)	12124
12219–M	RSPA–1999–5127	TRW Space and Electronics Group, Redondo Beach, CA (See Footnote 11).	12219

(1) To modify the exemption to reflect current revision levels on MVE's drawings for the manufacture, marking and sale of non-DOT specification portable tanks, for the transportation of Division 2.2 materials.

(2) To modify the exemption to provide for Division 1.5 as an additional class of material for the transport of certain hazardous materials presently forbidden or in quantities greater than allowed for cargo-only aircraft.

(3) To modify the exemption to provide for the addition of IM–101 portable tanks equipped with safety relief devices with lower set point devices that meet IM–102 set point and capacity requirements for bulk shipments of certain blasting agents.

(4) To modify the exemption to provide for Division 4.1 as an additional class of material for the transport of a kit containing smokeless powder for small arms, percussion caps and nonhazardous articles such as lead balls and bore cleaner, in non-DOT specification fiber boxes.

(5) To modify the exemption to authorize an alternative locking system and a change to the onsite bi-directional derail for tank cars loaded with chlorine allowed to remain attached to transfer connections when the unloading process is discontinued.

(6) To modify the exemption to allow for Class 8 as an additional class of material in tank cars authorized to remain standing with unloading connections attached when no product is being transferred.

(7) To modify the exemption to include cyclotrimethylene trinitramine (RDX), Division 1.1, as an additional material in limited quantities and under specially prescribed shipping conditions in UN 1G fiber drums.

(8) To modify the exemption to allow for the testing of DOT–3AA cylinders and the use of Automatic Sensor Test (AST) method for the transportation of certain compressed gases.

(9) To modify the exemption to provide for the addition of Class 8 material in certain DOT Specification IM 101 portable tanks used in dedicated service with an alternative visual inspection schedule.

(10) To modify the exemption to provide for design changes of the non-DOT specification portable tank comparable to a specification DOT 51 portable tank equipped with bottom outlet and no internal shutoff valve for use in transporting various Division 4.2 and 4.3 hazardous materials.

(11) To reissue the exemption originally issued on an emergency basis for the transportation of Division 2.2 materials in non-DOT specification refrigeration systems described as pulse tube coolers.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on April 19, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 99–10244 Filed 4–22–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting of the Community Development Advisory Board

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the Community Development Advisory Board which provides advice to the Director of the Community Development Financial Institutions Fund.

DATES: The next meeting of the Community Development Advisory Board will be held on Thursday, May 13, 1999 at 10:00 a.m.

ADDRESSES: The Community Development Advisory Board meeting will be held at the Treasury Executive Institute, 1255 22nd Street, NW., Suite 500, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Community Development Financial Institutions Fund (the ''Fund''), U.S. Department of Treasury, 601 13th Street, NW, Suite 200 South, Washington, DC, 20005, (202) 622–8662 (this is not a toll free number). Other information regarding the Fund and its programs may be obtained through the Fund's website at http://www.treas.gov/cdfi.

SUPPLEMENTARY INFORMATION: Section 104(d) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4703(d)) established the Community Development Advisory Board (the ''Advisory Board''). The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the Fund (who has been delegated the authority to administer the Fund) on the policies regarding the activities of the Fund. The Fund is a wholly owned corporation within the Department of the Treasury. The Advisory Board shall not advise the Fund on the granting or denial of any particular application for monetary or non-monetary awards. The Advisory Board shall meet at least annually.

It has been determined that this document is not a major rule as defined in Executive Order 12291 and therefore regulatory impact analysis is not required. In addition, this document does not constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

The next meeting of the Advisory Board, all of which will be open to the public, will be held at the Treasury Executive Institute, located at 1255 22nd Street, NW, Suite 500, Washington, DC, on Thursday, May 13, 1999 at 10:00 a.m. The room will accommodate 30 members of the public. Seats are available on a first-come, first-served basis. Participation in the discussions at the meeting will be limited to Advisory Board members and Department of the Treasury staff. Anyone who would like to have the Advisory Board consider a written statement must submit it to the Fund, at the address of the Fund specified above in the **FOR FURTHER INFORMATION CONTACT** section, by 4:00 p.m., Monday, May 11, 1999.

The meeting will include a report from Director Lazar on the activities of the CDFI Fund since the last Advisory Board meeting, including programmatic, fiscal and legislative initiatives for the year 1999.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: April 19, 1999.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 99–10186 Filed 4–22–99; 8:45 am]

BILLING CODE 4810–70–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Land of Myth and Fire: The Ancient and Medieval Culture of Georgia''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit ''Land of Myth and Fire: The Ancient and Medieval Culture of Georgia,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Walters Art Gallery, Baltimore, MD, from on or about October 24, 1999 to on or about January 16, 2000; the Mingei International Museum, San Diego, CA, from on or about March 1, 2000 to on or about July 15, 2000; The Museum of Fine Arts, Houston, TX, from on or about August 27, 2000 to on or about January 7, 2001; the Memphis Brooks Museum of Art, Memphis, TN, from on or about February 15, 2001 to on or about May 15, 2001; and possibly at other U.S. venues yet to be identified, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit items, or for other information, contact Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel at 202/619–6084. The address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: April 20, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–10358 Filed 4–22–99; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0014]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine enrollment conditions and to certify pursuit and attendance for rehabilitation and special restorative or specialized vocational training program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0014'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Authorization and Certification of Entrance or Reentrance into Rehabilitation and Certification of Status, VA Form 28–1905.

OMB Control Number: 2900–0014.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The information collected on VA Form 28–1905 ensures that veterans or other eligible persons do not receive benefits for periods when they did not actually begin to participate in any rehabilitation or special restorative or specialized vocational training program. The information is used by VA to establish the correct beginning and ending dates for the education, training, or other rehabilitation services and the correct rates for subsistence allowance payments.

Affected Public: Not-for-profit institutions, Individuals or households, Business or other for-profit, farms, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 2,917 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 35,000.

Dated: April 9, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–10148 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0064]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine the individual who may be entitled to accrued benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0064'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Amounts Due Estates of Person Entitled to Benefits, VA Form 21–609.

OMB Control Number: 2900–0064.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–609 is used to gather the necessary information to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries. It would be impossible for VA to administer the accrued benefits program without this collection of information.

Affected Public: Individuals or households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

Dated: April 7, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–10149 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0068]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a veteran's eligibility for Service Disabled Veterans Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0068'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Service-Disabled Insurance, VA Form 29–4364.

OMB Control Number: 2900–0068.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by veterans to apply for Service Disabled Veterans Insurance, to designate a beneficiary and to select an optional settlement. The data collected on the form is used by VA to determine the veteran's eligibility for insurance.

Affected Public: Individuals or households.

Estimated Annual Burden: 4250 hours.

Estimated Average Burden Per Respondent: 40 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 2833.

Dated: April 7, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–10150 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0161]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to report medical expenses paid by claimants in connection with claims for pension and other income-based benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0161'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Medical Expense Report, VA Form 21–8416.

OMB Control Number: 2900–0161.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Title 38, CFR 3.272 provides that a claimant's countable income for Improved Pension purposes can be reduced if the individual pays unreimbursed medical expenses. These expenses may be deducted from otherwise countable in determining the rate of VA benefits payable. VA Form 21–8416 is used to report unreimbursed medical expenses paid by claimants.

Affected Public: Individuals or households.

Estimated Annual Burden: 48,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 96,400.

Dated: April 9, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–10151 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to notify contractors of available work, solicit and evaluate bids and monitor work in progress.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 1999.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0208'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers:

a. Daily Log—Formal Contract, VA Form 10–6131.

b. Architect—Engineer Fee Proposal, VA Form 10–6298.

c. Supplement to SF 129, Solicitation Mailing List Application, VA Form 6299.

OMB Control Number: 2900–0208.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract:

a. VA Form10–6131 is used to disseminate information to potential contractors about the type and volume to be done at VA facilities and to compile a list of potential bidders.

b. VA Form 10–6298 is completed by the contractor to guarantee the performance of the work necessary to complete the project.

c. VA Form 10–6299 is used to assure the contractor provides sufficient labor and materials to accomplish the contracted work.

Affected Public: Business or other for-profit, and State, Local or Tribal Government.

Estimated Total Annual Burden: 7,400 hours.

a. VA Form10–6131—3,600 hours.

b. VA Form 10–6298—800 hours.

c. VA Form 10–6299—3,000.

Estimated Average Burden Per Respondent:

a. VA Form10–6131—12 minutes.

b. VA Form 10–6298—4 hours.

c. VA Form 10–6299—1 hour.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 21,200.

a. VA Form10–6131—18,000.

b. VA Form 10–6298—200.

c. VA Form 10–6299—3,000.

Dated: April 7, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–10152 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0236]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine eligibility for an education loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0236'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Education Loan, VA Form 22–8725.

OMB Control Number: 2900–0236.

Type of Review: Revision of a currently approved collection.

Abstract: This form requests information needed to determine

eligibility for an education loan. VA uses the information to determine whether an eligible student's education-related expenses will exceed his or her financial resources during a specific enrollment period. The amount of the education may not be more than the difference between an applicant's education-related expenses and his or her available financial resources. Without this information, VA might underpay or overpay the amount of an education loan.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden Per Respondent: 40 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 30.

Dated: April 7, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–10153 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0492]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to process a policyholder's request.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 22, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0492'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VAMATIC Authorization, VA Form 29–0532–1.

OMB Control Number: 2900–0492.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: The form is used by policyholders to authorize deductions from their bank accounts to pay insurance premiums. The information collected is used by VA to process the policyholder's request.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 3,000.

Dated: April 6, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–10154 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Voluntary Service National Advisory Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that the annual meeting of the Department of Veterans Affairs Voluntary Service National Advisory Committee (NAC) will be held at the Richmond Marriott Hotel, 500 East Broad Street, Richmond, Virginia, May 5–8, 1999. The meeting begins with participant registration from 10:00 a.m. to 5:00 p.m. on Tuesday, May 4, and from 8:00 a.m. to 5:00 p.m. on Wednesday, May 5, through Friday, May 7, 1999, in the Upper Level Coatroom.

The committee, comprised of fifty nine national voluntary organizations, advises the Under Secretary for Health and other members of the Department of Veterans Affairs Central Office staff on how to coordinate and promote volunteer activities within VA facilities. The primary purposes of this meeting are: to provide for committee review of volunteer policies and procedures; to accommodate full and open communications between the organizations, representatives and the Voluntary Service Office and field staff; to provide educational opportunities geared towards improving volunteer programs with special emphasis on methods to recruit, retain, motivate and recognize volunteers; and to approve committee recommendations.

On Tuesday, May 4, 1999, VAVS Field Staff will meet from 2:00 p.m. until 4:00 p.m. in Salon E. The National Executive Committee will meet on Wednesday, May 5, from 8:00 a.m. until 12:00 p.m. in Salon E. The Richmond VA Medical Center will provide a Health Fair from 8:00 a.m.–1:00 p.m. in Foyer A–D. There will be an orientation for new members from 1:00 p.m. until 2:30 p.m. in Salon E, and from 3:00 p.m. until 4:30 p.m. there will be an open forum in Salon E. Opening ceremonies will begin at 6:00 p.m. featuring Dr. Kenneth Kizer, M.D., M.P.H, as keynote speaker. A reception from 7:00 p.m. to 8:00 p.m. is planned for all participants in Salon F–J.

On Thursday, May 6, 1999, there will be a Business Session from 8:30 a.m. until 10:15 a.m. in Salon A–E. A plenary session on End of Life Care will be conducted by Judy Salerno from 10:30 a.m. to 11:30 a.m. in Salon A–E. Repeating educational workshops will be presented from 1:00 p.m.–2:30 p.m. and 2:45 p.m.–4:15. The workshop topics include: Community Based

Volunteer Programs, Salon 4; ''Today's Students—Tomorrows Leaders'' Workshop, Salon 5; Final Salute Workshop, Salon 6–8, and No One Need Die Alone Workshop, Monroe.

On Thursday evening from 5:00 p.m. to 7:30 p.m. the Richmond VA Medical Center and Veterans Canteen Service are sponsoring a barbecue and tours of the VA Medical Center.

On Friday, May 7, 1999, a NAC Business Session will be held from 8:30 a.m. – 9:30 a.m, followed by plenary session conducted by Dr. Alfonso Batres, on Vet Centers, in Salon A–E. The educational workshops will be repeated from 10:30 a.m.–12:30 p.m. and from 3:00 p.m.–4:30 p.m., rooms remain the same as on Thursday. The James H. Parke luncheon will be held from 12:30 p.m.–2:00 p.m. in Salon F–J, honoring the 1999 recipient of the James H. Parke Scholarship.

On the morning of Saturday, May 8, 1999, the NAC will hold a Business Session from 8:30 a.m.–11:30 a.m. in Salon A–E. A critique of the meeting will be held from 11:30 a.m.–12:30 p.m. in Salon 4–5. A closing celebration honoring the NAC Volunteers of the Year will be held in Salon F–J, beginning at 6:00 p.m.

The meeting is open to the public. Individuals interested in attending are encouraged to contact: Ms. Laura Balun, Administrative Officer, Voluntary Service Office (10C2), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC, 20420, (202) 273–8392.

Dated: April 14, 1999.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–10147 Filed 4–22–99; 8:45 am]

BILLING CODE 8320–01–M

Friday
April 23, 1999

Part II

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program (PTFP); Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket Number: 981028269–9093–02]

RIN 0660–ZA05

Public Telecommunications Facilities Program (PTFP)

AGENCY: National Telecommunications and Information Administration, Commerce.

ACTION: Notice of applications received.

SUMMARY: The National Telecommunications and Information Administration (NTIA) previously announced the solicitation of grant applications for the Public Telecommunications Facilities Program (PTFP). This notice announces the list of applications received and notifies any interested party that it may file comments with the Agency supporting or opposing an application.

FOR FURTHER INFORMATION CONTACT: William Cooperman, Acting Director, Public Telecommunications Facilities Program, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet (send inquiries to http://www.ntia.doc.gov).

SUPPLEMENTARY INFORMATION: By **Federal Register** notice dated November 6, 1998, the NTIA, within the Department of Commerce, announced that it was soliciting grant applications for the Public Telecommunications Facilities Program (PTFP). NTIA announced that the closing date for receipt of PTFP applications was 8 p.m. EST, January 14, 1999.

In all, the PTFP received 252 applications from 48 states and territories. The total amount of funds requested by the applicants is $74.8 million.

Notice is hereby given that the PTFP received applications from the following organizations. The list includes all applications received. Identification of any application only indicates its receipt. It does not indicate that it has been accepted for review, has been determined to be eligible for funding, or that an application will receive an award.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. PTFP will forward a copy of any opposing comments to the applicant. Comments must be sent to PTFP at the following address: NTIA/PTFP, Room 4625, 1401 Constitution Ave., N.W., Washington, D.C. 20230.

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

Alaska

File No. 99069CRB, Rainbird Community Broadcasting Corporation, 123 Stedman Street, Ketchikan, AK 99901. Contact: Ms. Mary White, General Manager, (907) 225–9655. Funds Requested: $42,494. Total Project Cost: $56,659. To replace the obsolete 23-year-old transmitter at public radio station KRBD(FM), which operates on 105.9 MHz in Ketchikan, AK.

File No. 99070CRB, Wrangell Radio Group, Inc., 202 St. Michael St., Wrangell, AK 99929. Contact: Ms. Elizabeth Peterman, General Manager, (907) 874–2345. Funds Requested: $38,969. Total Project Cost: $51,959. To replace an obsolete and worn-out 20-year-old transmitter at public radio station KSTK(FM), which operates on 101.7 MHz in Wrangell, AK.

File No. 99086CRB, University of Alaska/Fairbanks, 201 Theatre Building, Fairbanks, AK 997755620. Contact: Mr. Jerry Brigham, General Manager, (907) 474–7508. Funds Requested: $25,951. Total Project Cost: $51,903. To replace worn-out and obsolete studio production equipment at public radio station KUAC(FM), which operates on 89.9 MHz in Fairbanks, AK, and which is licensed to the University of Alaska. The project would purchase a hard disk record/playback system, two digital, dual-line, auto-nulling telephone hybrids, and six computerized audio editing systems.

File No. 99097CRB, CoastAlaska, Inc., 360 Egan Drive, Juneau, AK 99801. Contact: Mr. James Waste, Executive Director, (907) 463–6420. Funds Requested: $61,320. Total Project Cost: $81,760. To replace inadequate, obsolete and aging automation systems at two public radio stations in southeast Alaska: KFSK(FM), Petersburg, and KTOO(FM), Juneau. The project would purchase new digital storage and automation systems for the two stations. The new systems would allow KFSK(FM) and KTOO(FM) to participate fully in their regional network, which is part of Alaska's Satellite Interconnection Project (SIP). CoastAlaska, Inc. is a consortial effort of the five public radio stations in Southeast Alaska. CoastAlaska, Inc. provides centralized administrative, development, membership, engineering, and news programming support services to its member-stations. The three other stations in the consortium are: KCAW(FM), Sitka; KRBD(FM), Ketchikan; and KSTK(FM), Wrangell.

File No. 99098CRB, Raven Radio Foundation, Inc., 2B Lincoln St., Sitka, AK 99835. Contact: Ms. Lisa Herwald, Chief Operating Officer, (907) 747–5877. Funds Requested: $32,744. Total Project Cost: $43,659. To replace an obsolete, failing 18-year-old transmitter at public radio station KCAW(FM), which operates on 104.7 MHz in Sitka, AK.

File No. 99129CRB, Koahnic Broadcast Corporation, 818 E 9th Avenue, Anchorage, AK 99501. Contact: Ms. Jaclyn Sallee, President & CEO, (907) 258–8880. Funds Requested: $103,555. Total Project Cost: $138,073. To improve the studio production capabilities of public radio station KNBA(FM), which operates on 90.3 MHz in Anchorage. KNBA(FM) is a Native-owned station that targets its programming for Native people not only in Anchorage but also, via satellite distribution, throughout Alaska and nationwide. The project would purchase four additional workstations, upgrade the station's storage capacity, ensure Y2K compliance of its current Dalet automation system, upgrade the production equipment in the station's existing studios, and create a new production/recording room to provide production facilities that must now be rented.

File No. 99130PRB, Koahnic Broadcast Corporation, 818 East 9th Avenue, Anchorage, AK 99501. Contact: Ms. Jaclyn Sallee, President & CEO, (907) 258–8880. Funds Requested: $38,670. Total Project Cost: $94,858. To assist the Koahnic Broadcast Corporation to plan how best to relocate the studios of its public radio station, KNBA(FM), which operates on 90.3 MHz in Anchorage, AK. The Koahnic Broadcast Corporation is a Native-owned entity. KNBA(FM) offers programming targeted to Native people not only in Anchorage but also, via satellite distribution, throughout Alaska and nationwide.

File No. 99151CRB, Unalakleet Broadcasting, Inc., P.O. Box 178, Unalakleet, AK 99684. Contact: Mr. Henry Ivanoff, General Manager, (907) 624–3745. Funds Requested: $85,302. Total Project Cost: $113,737. To improve the transmission and interconnection facilities at public radio station KNSA(AM), in Unalakleet, AK. The project would replace KNSA(AM)'s 17-year-old transmitter and would help the station purchase a satellite receive-only earth station. The latter would allow the station to have access to statewide and nationally-distributed programming.

File No. 99170CRB, Alaska Public Radio Network, 810 East 9th Avenue, Anchorage, AK 99501. Contact: Ms. Tammy Gilstrap, Business Manager, (907) 277–2776. Funds Requested: $54,225. Total Project Cost: $72,300. To improve the studio production facilities of the Alaska Public Radio Network (APRN). The APRN is a nonprofit organization that, from its Anchorage studios, provides programming, representation, and satellite distribution to its 29 public radio member-stations statewide. The project would upgrade APRN's digital audio processing system to make it Y2K compliant and purchase an ISDN transmitter/receiver, a telephone hybrid, eight minidisc portable recorders, and six minidisc studio recorders.

File No. 99179CRB, Kuskokwim Public Broadcasting Corporation, Mile 389 Iditarod Trail, McGrath, AK 99627. Contact: Ms. Amie Hind, General Manager, (907) 561–9234. Funds Requested: $34,305. Total Project Cost: $75,741. To improve the studio production and interconnection facilities of public radio station KSKO(AM), which brings the sole such signal to the 6,000 residents of McGrath, AK. The project would replace a 20-year-old satellite receive-only earth station, a power generator at the station's transmission site, and diverse items of studio equipment.

File No. 99244PRTBN, Tanana Chiefs Conference, Inc., 122 First Avenue, Fairbanks, AK 99701. Contact: Mr. Alfred Ketzler, Chief Administrative Officer, (907) 452–8251. Funds Requested: $59,066. Total Project Cost: $67,866. To help the Tanana Chiefs Conference, Inc., Fairbanks, AK, plan for possible activation of tribally-owned public radio, public television, and distance learning facilities to serve the needs of the 14,000 Alaskan Natives who reside in the State's vast Interior Region. The Tanana Chiefs Conference, Inc. is a consortium of 42 tribal villages that are located throughout an area of 235,000 square miles, which represents approximately 39% of the entire State of Alaska.

Alabama

File No. 99085CTB, Alabama Educational Television Commission, 2112 11th Avenue, South Birmingham, AL 352052884. Contact: Mr. Philip Hutcheson, Deputy Director/CFO, (205) 328–8756. Funds Requested: $810,667. Total Project Cost: $1,621,334. To improve the statewide microwave system operated by the applicant which interconnects the state's nine public television stations. The project will replace 60 FM analog modulators and 59 FM analog demodulators with digital encoders and decoders and add MPEG II equipment. The project will ensure continued public television service to 4.2 million residents of Alabama and will assist in the state's conversion to digital technologies.

Arkansas

File No. 99055CTB, Arkansas Educational Television Commission, 350 S. Donaghey, Conway, AR 72032. Contact: Ms. Susan Howarth, Executive Director, (501) 682–2386. Funds Requested: $178,842. Total Project Cost: $357,685. To improve the state's public TV network by replacing old, obsolete origination equipment. New equipment includes prompters, lighting system, camera pedestals and an audio mixer. Network serves about 2.35 million people.

File No. 99248CRB, Arkansas Broadcasting Foundation, 2101 S. Main Street, Little Rock, AR 72206. Contact: Ms. Valerie Coffin, Station Manager, (501) 372–6119. Funds Requested: $68,925. Total Project Cost: $93,925. To improve public radio station KABF–FM, 88.3 MHz, in Little Rock by replacing old, worn out dissemination and origination equipment including remote control, studio-to-transmitter link, coax cable, consoles, speakers, microphones and similar equipment. KABF–FM serves about 623,000 people. The Little Rock area is also served by several other public radio stations.

Arizona

File No. 99008CTB, Arizona Board of Regents in behalf of Arizona State University, Box 871405, Tempe, AZ 852874505. Contact: Mr. Larry Fallis, Sponsored Projects Officer, (602) 965–1415. Funds Requested: $1,395,000. Total Project Cost: $2,790,000. To assist in the digital conversion for KAET–DT, Ch. 29, Phoenix, by purchasing a DTV transmitter, antenna, transmission line, digital microwave, digital master control, test and monitoring equipment. KAET–TV, Ch. 8, Phoenix, currently serves about 3.5 million people.

File No. 99056ICTN, Arizona Board of Regents for and on Behalf of Northern Arizona University, Old Main, Bldg 10, Room 209 Flagstaff, AZ 86011. Contact: Mr. Edward Groenhout, VP for Strategic Initiatives, (520) 523–1805. Funds Requested: $1,403,838. Total Project Cost: $1,871,784. To expand the interactive instructional television network (NAUNet) of Northern Arizona University, Flagstaff, from existing hubs to three remote locations on Indian Reservations in Arizona. The receive sites would be placed at the Tsaile Campus of Dine' College on the Navajo Indian Reservation, the Tohono O'odham Nation Indian Reservation, at Sells, and the San Carlos Apache Indian Reservation. The addition of these sites would require expansion of NAUNet network routing equipment at the system's Flagstaff and Phoenix hubs.

File No. 99087CRB, Arizona Board of Regents for and on behalf of Northern Arizona University, Building 83, Flagstaff, AZ 86011. Contact: Mr. John Stark, General Manager, (520) 523–5628. Funds Requested: $86,762. Total Project Cost: $115,683. To activate a 3 KW repeater/satellite public radio station on 90.3 MHz, in Grand Canyon Village. Station will repeat the signal of KNAU–FM, Flagstaff, and will provide a first public radio service to about 4,257 people.

File No. 99128PRB, Tohono O'odham Nation, P.O. Box 835, Sells, AZ 85634. Contact: Mr. Alex Ritchie, Executive Assistant, (520) 383–2028. Funds Requested: $29,526. Total Project Cost: $80,710. To plan for a new public radio station to serve about 20,000 people on the 2.8 million acres of the Tohono O'Odham Nation in Sells, Arizona.

File No. 99132CTB, Arizona Board of Regents for Benefit of University of Arizona, University of Arizona, Tucson, AZ 85721. Contact: Mr. Ronald Stewart, Associate Director, (520) 621–5828. Funds Requested: $251,298. Total Project Cost: $502,596. To improve public television station KUAT–TV, Ch. 6, in Tucson by replacing field acquisiton cameras, video cassette recorders (VCR's) and the master control VCR with a video server. The new digital equipment will allow KUAT–TV and its satellite station KUAS–TV, to provide quality local programming to approximatley 690,000 people.

California

File No. 99006CTB, Valley Public Television, Inc., 1544 Van Ness Avenue, Fresno, CA 93721. Contact: Mr. Colin Dougherty, General Manager/Exec. Dir., (559) 266–1800. Funds Requested: $181,765. Total Project Cost: $363,531. To improve public television station KVPT–TV, Channel 18 in Fresno, CA, by replacing obsolete master control equipment with digital capable units, including a video server, a non-linear editing system and a routing switcher. The station serves a population of over 2.2 million people in the San Joaquin Valley.

File No. 99027CRB, San Bernardino Community College District, 701 S. Mt. Vernon Avenue, San Bernardino, CA 92410. Contact: Mr. Lew Warren, General Manager, (909) 888–6511. Funds Requested: $77,445. Total Project Cost: $154,890. To improve public radio

station KVCR–FM, operating on 91.9 MHz in San Bernardino, CA, by increasing power and replacing its antenna, transmitter and associated test equipment. The station serves a population of over 2.5 million people in the Riverside/San Bernardino market.

File No. 99031CTB, Board of Trustees, Coast Community College District, 15751 Gothard Sreet, Huntington Beach, CA 92647. Contact: Mr. Mel Rogers, President, (714) 895–5623. Funds Requested: $142,779. Total Project Cost: $285,558. To improve public television station KOCE–TV, Channel 50 in Huntington Beach, CA, by replacing obsolete and unreliable ¾-inch U-matic videotape machines with ten state-of-the-art Panasonic DVC Pro digital VTRs. The station serves a population of 8.2 million people.

File No. 99043CTB, KVIE, Inc., P.O. Box 6, Sacramento, CA 95833. Contact: Mr. Michael Wall, Director of Engineering, (916) 923–7474. Funds Requested: $1,600,842. Total Project Cost: $3,201,684. To convert public station KVIE–TV, Channel 6 in Sacramento, CA, to digital broadcasting on DTV Channel 53 by purchasing digital equipment including antenna, transmission line, digital transmitter, STL digital microwave, digital test equipment and upconverters. The station serves a population of over 4.3 million people in North Central California.

File No. 99057CRB, Santa Monica Community College District, 1900 Pico Blvd., Santa Monica, CA 90405. Contact: Ms. Ruth Seymour, General Manager, (310) 450–5183. Funds Requested: $135,990. Total Project Cost: $181,320. To expand the broadcast services of KCRW–FM, operating on 89.9 MHz in Santa Monica, by constructing a full power, repeater station in Mojave, California. The new station, KCRI–FM will operate on 88.1 MHz and will provide first public radio services to over 32,000 residents of the Antelope Valley.

File No. 99062ICTN, Monterey County Office of Education, 901 Blanco Circle, Salinas, CA 93901. Contact: Mr. Michael Mellon, Director, Instruct. Resources, (831) 755–0383. Funds Requested: $408,982. Total Project Cost: $968,842. To extend the ITFS-based distance learning system of the Monterey County Office of Education, Salinas, CA, to San Benito and San Luis Obispo Counties and to expand the already-existing system in Monterey and Santa Cruz Counties to presently-unserved audiences.

File No. 99081CRB, KPFK Pacifica Radio, 3729 Cahuenga Boulevard West, North Hollywood, CA 91604. Contact: Mr. Mark Schubb, General Manager, (818) 985–2711. Funds Requested: $247,704. Total Project Cost: $495,408. To improve public radio station KPFK–FM, operating on 90.7 MHz in North Hollywood, CA, by replacing the obsolete and failing transmission chain and worn out origination equipment, including two 23-year-old transmitters, a 40-year-old tower and antenna, control room mixing boards, recorders, CD players and microphones. The station serves a population of over 13.8 million people in Greater Los Angeles.

File No. 99082CTB, KTEH–TV Foundation, 1585 Schallenberger Road, San Jose, CA 95131. Contact: Mr. Gary Martinez, Grants Associate, (408) 795–5412. Funds Requested: $674,191. Total Project Cost: $898,922. To extend the signal and broadcast services of KTEH–TV, Channel 54 in San Jose, CA, by reactivating KCAH–TV, Channel 25 in Watsonville. The station is expected to serve approximately 1.2 million residents of Salinas, Monterey and Santa Cruz. The project will aquire DTV-capable equipment to replace KCAH's transmitter, antenna, STL and transmission line. KTEH serves a population of over 6.2 million people in 14 northern California counties.

File No. 99088CTB, KTEH–TV Foundation, 1585 Schallenberger Road, San Jose, CA 95131. Contact: Mr. Gary Martinez, Grants Associate, (408) 795–5412. Funds Requested: $558,310. Total Project Cost: $1,116,620. To improve public television station KTEH–TV, Channel 54 in San Jose, CA, by replacing the 25-year-old transmitter, antenna, STL and transmission line with DTV-ready equipment. The station serves a population of over 6.2 million in Northern California.

File No. 99122CRB, Radio Bilingue, Inc., 5005 E. Belmont, Fresno, CA 93727. Contact: Mr. Hugo Morales, Executive Director, (204) 455–5757. Funds Requested: $133,541. Total Project Cost: $178,055. To improve public radio station KSJV–FM, 91.5 MHz in Fresno, and KMPO–FM, 88.7 MHz in Modesto, CA, by replacing both transmitters and associated equipment. In addition, the KSJV studio facility will be upgraded by replacing analog equipment with digital equipment, including an audio console, CD players and recorders/playback units. The stations serve a Spanish-speaking population of over 100,000 people.

File No. 99133CTB, Community Television of Southern California, 4401 Sunset Boulevard, Los Angeles, CA 90027. Contact: Mr. Donald Youpa, Exec. VP & COO, (323) 953–5210. Funds Requested: $1,440,685. Total Project Cost: $1,920,914. To convert public station KCET–TV, Channel 28 in Los Angeles, CA, to digital broadcasting on Channel 59 by purchasing a transmitter, antenna, transmission line, STL, encoder and test equipment. The station serves a population of over 18 million people.

File No. 99140CTB, Los Angeles Unified School District, 1061 West Temple Street, Los Angeles, CA 90012. Contact: Mr. Tom Mossman, Station Manager, (213) 625–6958. Funds Requested: $156,391. Total Project Cost: $312,781. To improve public television station KLCS–TV, Channel 58 in Los Angeles, CA, by replacing obsolete and failing master control equipment with digital units, including videotape machines, a video server, a still storer and a character generator. The station serves a population of over 12 million people.

File No. 99142CRB, Fresno Free College Foundation, 1449 N. Wishon Avenue, Fresno, CA 93728. Contact: Mr. Victor Bedoian, Executive Director, (559) 233–2221. Funds Requested: $5,315. Total Project Cost: $10,630. To improve public radio station KFCF–FM, operating on 88.1 MHz in Fresno, CA, by replacing the 38-year-old transmitter. The station serves a population of over 600,000 people.

File No. 99161CRB, Humboldt State University, Humboldt State University, Arcata, CA 95521. Contact: Terry Green, Assistant Manager/Chief Engine, (707) 826–3979. Funds Requested: $13,175. Total Project Cost: $26,350. To improve public radio station KHSU–FM, operating on 90.5 MHz in Arcata, CA, by replacing failing analog two-track recorders and the production console with a digital audio workstation and a digital, 8 channel audio console unit. The station serves a population of over 135,000 people.

File No. 99164CRB, KQED, Inc., 2601 Mariposa Street, San Francisco, CA 94110. Contact: Ms. Jo Anne Wallace, Vice Pres. & General Mgr., (415) 553–2296. Funds Requested: $253,152. Total Project Cost: $506,304. To improve public radio station KQED–FM, operating on 88.5 MHz in San Francisco, CA, by replacing analog recording and playback equipment and related production hardware with an a Audiovault digital storage and delivery system. The station serves a population of over 6 million people.

File No. 99165CRB, University of Southern California, 3716 South Hope Street, Suite 26, Los Angeles, CA 90007. Contact: Ms. Brenda Pennell, General Manager, (213) 514–1450. Funds Requested: $84,200. Total Project Cost: $168,400. To improve public radio station KUSC–FM, 91.5 MHz in Los

Angeles, CA, by upgrading the master control and the production studios to digital technology, including consoles, production/storage workstations, CD players and miniDisc player/recorders. The station serves a population of approximately 12 million people.

File No. 99168CRB, University of Southern California, 3716 South Hope Street, Suite 26, Los Angeles, CA 90007. Contact: Ms. Brenda Pennell, General Manager, (213) 514–1450. Funds Requested: $270,424. Total Project Cost: $360,565. To expand the coverage area and improve the signal of KUSC–FM, operating on 91.5 MHz in Los Angeles, CA, by upgrading the transmission system and doubling the station's broadcast power. The project includes replacement of the transmitter, antenna, transmission line and STL. The station currently serves about 12 million people and will add over 700,000 as a result of the power increase.

File No. 99172CTB, Rural California Broadcasting Corporation, 5850 LaBath Avenue, Rohnert Park, CA 94928. Contact: Ms. Nancy Dobbs, President and CEO, (707) 585–8522. Funds Requested: $110,357. Total Project Cost: $147,143. To improve public television station KRCB–TV, Channel 22 in Rohnert Park, CA, by replacing ten 15-year-old ¾″ videotape machines in master control, production control and editing rooms with digital units. The station serves a population of over 2.8 million people.

File No. 99182PRB, Radio Bilingue, Inc., 5005 E. Belmont Fresno, CA 93727. Contact: Mr. Hugo Morales, Executive Director, (559) 455–5757. Funds Requested: $52,580. Total Project Cost: $83,440. To plan for the distribution of Radio Bilingue's 24-hour satellite programming service to the top 10 Latino markets in the U.S. using subcarrier (SCA) technology.

File No. 99183CTN, City of San Leandro, 835 E.14th Street San Leandro, CA 94577. Contact: Mr. Greg Park, Interim IS Manager, (510) 577–3393. Funds Requested: $41,000. Total Project Cost: $54,668. To assist the City of San Leandro, which is in California's Bay Area, to activate a government access channel on the local cable television system.

File No. 99198CRB, California State University-Northridge, 18111 Nordhoff Street Northridge, CA 91330–8312. Contact: Ms. Dolly Salazar, Dir. of Development KCSN, (818) 677–3090. Funds Requested: $31,545. Total Project Cost: $63,090. To improve public radio station KCSN–FM, operating on 88.9 MHz in Northridge, CA, by replacing analog reel-to-reel and cartridge tape machines with two digital audio workstations and four digital audio edit systems. The station serves a population of over 1.5 million people.

File No. 99206CTB, KQED, Inc., 2601 Mariposa Street San Francisco, CA 94110. Contact: Ms. Jayme Burke, Development Associate, (415) 553–2174. Funds Requested: $398,086. Total Project Cost: $796,173. To continue the conversion to digital broadcasting of KQED–DTV, operating on Digital Channel 30 in San Francisco, by purchasing a digital video server system to store and play multiple program streams for digital television multicasting. The station serves a population of 5.5 million people.

File No. 99214CRB, Redwood Community Radio, Inc., 1144 Redway Dr Redway, CA 95560. Contact: Mr. Simon Frech, Station Manager, (707) 923–2513. Funds Requested: $92,062. Total Project Cost: $122,750. To extend and improve the signal of KMUD–FM, 91.1 MHz in Redway, CA, by replacing the transmitter and the antenna system and installing a microwave STL. The station will also increase its broadcast power providing first public radio service to over 14,000 residents of Humboldt, northern Mendocino and western Trinity counties. In addition to the people receiving first service, KMUD currently serves almost 9,000 people and will add another 9,000 as a result of the increased coverage area.

File No. 99219CTB, San Diego State University Foundation, 5200 Campanile Drive San Diego, CA 92182. Contact: Ms. Susan Holloway, Director Admin. Services, (619) 594–2491. Funds Requested: $660,926. Total Project Cost: $1,321,852. To convert public station KPBS–TV, Channel 15 in San Diego, CA, to digital broadcasting on Channel 30 by purchasing a digital transmitter, digital microwave STL, digital encoding system, HDTV recorders, HDTV master control switcher processor and other essential master control equipment. The station serves a population of over 2.5 million people.

File No. 99230CTB, San Mateo County Community College District, 1700 W. Hillside Blvd. San Mateo, CA 94402. Contact: Ms. Marilyn Lawrence, General Manager, (650) 524–6905. Funds Requested: $1,223,325. Total Project Cost: $2,446,650. To convert public station KCSM–TV, Channel 60 in San Mateo, CA, to digital broadcast on Channel 59 by purchasing a digital transmitter, transmission line, antenna, STL and other equipment including a video file server and a compression/decompression system. The station serves a population of over 6.3 million people.

File No. 99232CRB, University of Southern California, 3716 South Hope Street Suite 26 Los Angeles, CA 90007. Contact: Ms. Brenda Pennell, General Manager, (213) 514–1450. Funds Requested: $267,144. Total Project Cost: $534,288. To improve public radio station KUSC–FM, operating on 91.5 MHz in Los Angeles, CA, by replacing the aging transmission systems of its repeater stations at KPSC–FM (88.5 MHz) in Palm Springs, KFAC–FM (88.7 MHz) in Santa Barbara, and KCPB–FM (91.1) in Thousand Oaks. The network of transmitters that re-broadcast the signal of KUSC in Los Angeles, serve nearly 1.9 million residents of Southern California.

Colorado

File No. 99036ICTN, National Technological University, 700 Centre Avenue Ft. Collins, CO 80526. Contact: Dr. Lionel Baldwin, President, (970) 495–6411. Funds Requested: $966,000. Total Project Cost: $4,578,000. To expand the distance learning service provided by National Technological University by converting 41 universities with MPEG–2 digital encoding equipment at their satellite uplinks. Conversion of the NTU system to MPEG–2 digital equipment will permit NTU to provide distance learning directly to small business and home viewers through the use of 90 cm antennas and standard digital equipment.

File No. 99046ICTN, Centennial Board of Cooperative Educational Services, 830 South Lincoln Street Longmont, CO 80501. Contact: Mr. David Biekert, Director of Technology Service, (303) 772–4420. Funds Requested: $323,783. Total Project Cost: $794,849. To extend the T–1-based distance learning system of the Centennial Board of Cooperative Educational Services (Centennial BOCES), Longmont, CO, to a number of school districts in Colorado's northeast quadrant. Project equipment would be located in the following high schools in the affected area: Longmont, Ft. Morgan, Frederick, Lyons, Erie, Berthoud, Estes Park, Johnstown, Briggsdale, Akron, Weldona, and Merino. The Centennial BOCES was formed by merging the former Northern Colorado BOCES and Weld BOCES.

File No. 99108CRB, Colorado State Board of Agriculture, 1000 Rim Drive Durango, CO 81301. Contact: Ms. Wynn Harris, Station Manager, (970) 247–7261. Funds Requested: $31,160. Total Project Cost: $47,035. To improve noncommerical FM radio station KDUR–FM, 91.9MHz, in Durango, by replacing its old, worn-out transmission

system including transmitter, processor, antenna and transmission line. Station will also replace a production console, cart machines, DAT machines, below standard mini-disc players and test equipment. KDUR–FM serves about 20,000 people.

File No. 99229CRB, Equal Representation of Media Advocacy, 528 9th Street Alamosa, CO 81101. Contact: Ms. Annajo (Aj) Sanchez, General Manager, (719) 589–9057. Funds Requested: $27,295. Total Project Cost: $36,394. To extend and improve public radio station KRZA–FM, 88.1 MHz, Alamosa, by repositioning the antenna, activating a translator and acquiring field production equipment. KRZA–FM serves about 75,000 people.

File No. 99246CTB, Rocky Mountain Public Broadcasting, 1089 Bannock Street Denver, CO 80204. Contact: Mr. James Morgese, Pres. & General Mgr., (303) 620–5662. Funds Requested: $1,371,738. Total Project Cost: $2,743,477. To convert public television station KRMA–TV, Ch. 6, Denver to digital broadcasting on Ch. 18, by purchasing a transmitter, antenna, transmission line, microwave interconnection equipment, test equipment and other associated equipment. KRMA–TV serves about 3.9 million people.

Connecticut

File No. 99063CTB, Connecticut Public Broadcasting Inc., 240 New Britain Avenue Hartford, CT 06106. Contact: Mr. James Whitsett, VP, Operations and Engineering, (860) 278–5310. Funds Requested: $743,434. Total Project Cost: $1,486,868. To convert public station WEDH–TV, Channel 24 in Hartford, CT, to digital broadcating on Channel 32 by purchasing a transmitter, antenna, transmission line, microwave STL, test and monitoring equipment. The station serves a population of more than 3 million people.

District of Columbia

File No. 99102ICTN, Association of Jesuit Colleges & Universities, 1 DuPont Circle, Suite 405 Washington, DC 200361110. Contact: Dr. William Husson, Dean of Professional Studies, (303) 458–1844. Funds Requested: $503,500. Total Project Cost: $1,263,500. To help the Association of Jesuit Colleges & Universities interconnect 19 of its member-institutions to form the Jesuit Distance Education Network (JDEN). The proposed network would consist of a video interconnection relying on Internet Protocol technologies to unite the merits of videoconferencing with the advantages of Internet-based learning. Internet Protocol video would enable the delivery of video over the Internet connectivity in a cost-effective manner.

File No. 99226CRB, Pacifica Foundation, 2390 Champlain Street NW Washington, DC 20009. Contact: Ms. Bessie Wash, General Manager, (202) 598–0999. Funds Requested: $45,732. Total Project Cost: $91,465. To improve the operation of public radio station WPFW, 89.3 MHz, Washington, DC, by replacing its transmitter.

File No. 99235CRN, Self Reliance Foundation, 518 C Street NE Washington, DC 20002. Contact: Mr. Sebastian Puente, Chief of Staff, (202) 547–7447. Funds Requested: $159,720. Total Project Cost: $319,440. To provide satellite downlink equipment to twenty non-commercial radio stations affiliated with the Self Reliance Foundation that wish to broadcast the Foundation's Hispanic-language programing.

File No. 99236PRN, Self Reliance Foundation, 518 C Street NE Washington, DC 20002. Contact: Mr. Sebastian Puente, Chief of Staff, (202) 547–7447. Funds Requested: $40,710. Total Project Cost: $81,420. To plan for the extension of the applicant's Spanish language radio programming to the ten U.S. cities with the largest concentration of Hispanics: Los Angeles, New York, Miami, San Francisco/San Jose, Chicago, Houston, San Antonio, Brownsville, Dallas, and San Diego.

Florida

File No. 99021CRB, University of Florida, 2208 Weimer Hall Gainesville, FL 32611. Contact: Mr. Henri Pensis, Station Manager, (352) 392–5200. Funds Requested: $25,591. Total Project Cost: $51,182. To replace an obsolete 17-year-old production studio console for public radio station WUFT(FM), which operates on 89.1 MHz in Gainesville, FL, and is licensed to the University of Florida.

File No. 99038CTB, University of Florida, 202 Weimer Hall Gainesville, FL 326118405. Contact: Mr. Richard Lehner, General Manager, (352) 392–5551. Funds Requested: $77,445. Total Project Cost: $154,890. To purchase a digital switcher, a digital router, and digital test equipment for public television station WUFT(TV), which operates on Ch. 5 in Gainesville, FL, and which is licensed to the University of Florida. The requested equipment would complete the modernization and digital conversion of WUFT(TV)'s master control area. The project would thus assist the station's effort to convert to digital technologies in a timely way.

File No. 99054CTB, The Board of Regents of Florida acting on behalf of the Florida State University, 1600 Red Barber Plaza Tallahassee, FL 32310. Contact: Mrs. Donna Landrum, Business Manager, (850) 487–3170. Funds Requested: $80,560. Total Project Cost: $161,120. To purchase seven digital tape machines to improve the master control and production operations of public television station WFSE(TV), which operates on Ch. 11 in Tallahasee and which is licensed to Florida State University. Three of the new tape machines would replace analog equivalents in WFSU(TV)'s editing suites. The remaining four digital machines would replace analog machines used for program playback and network delay in the master control on-air configuration. The requested equipment would substantially complete the station's digital conversion plans for its master control, production, and postproduction operations.

File No. 99058CTN, Sarasota County Board of County Commissioners, 1660 Ringling Boulevard Sarasota, FL 34236. Contact: Ms. Melissa Fritsch, Administrative Asst., (941) 951–5294. Funds Requested: $644,385. Total Project Cost: $859,180. To assist the Sarasota (FL) County Board of County Commissioners in activating the first government access channel on the County's cable television system. The project would purchase the equipment for a production studio, in addition to some test equipment. Eventually, the studio in question would be used to produce programming for a community access channel as well; the community access channel is also to be administered by the Board.

File No. 99083CTB, Community Communications, Inc., 11510 East Colonial Drive Orlando, FL 32817. Contact: Mr. Jose Fajardo, Vice President for Programming, (407) 273–2300. Funds Requested: $883,172. Total Project Cost: $1,766,345. To replace the 26-year-old transmitter, antenna, and transmission line at public television station WMFE(TV), which operates on Ch. 24 in Orlando, FL. The project would also purchase a nonlinear editing system for the station.

File No. 99099CTB, District Board of Trustees, Pensacola Junior College, 1000 College Boulevard Pensacola, FL 32504. Contact: Mr. Allan Pizzato, General Manager, (850) 484–1213. Funds Requested: $798,109. Total Project Cost: $3,246,218. To assist public television station WSRE(TV), Pensacola, FL, complete its conversion to digital transmission. Station WSRE(TV) operates on Ch. 23 for its analog transmission and will operate on Ch. 31 for its digital service. The station is licensed to Pensacola Junior College. The project would purchase diverse

digital transmission equipment; e.g., a transmitter, an antenna, a transmission line, an STL, and varied test equipment items. Station WSRE(TV) must move its tower site in order to broadcast in digital. The project thus also includes a one-time, $1 million lease payment for antenna space on a new, 2,000′ commercial tower. The lease would extend for a minimum of 40 years. The tower will be located approximately five miles from the station's present tower site.

File No. 99137PTB, Myth Slayer, Inc., 1015 NW 21st Avenue, #46 Gainesville, FL 32609. Contact: Ms. Gloria Rozier, President, (352) 337–9111. Funds Requested: $172,384. Total Project Cost: $208,144. To assist Myth Slayer, Inc. plan for the activation of a nonprofit low power television station that would serve the needs of minority groups, women, and children in Gainesville, FL.

File No. 99149CTB, State Board of Regents acting on behalf of the University of South Florida, 4202 Fowler Avenue SVC 0001 Tampa, FL 336620. Contact: Mr. William Buxton, Station Manager, (813) 974–4000. Funds Requested: $12,037. Total Project Cost: $24,074. To replace the transmitter remote control system of public television station WUSF(TV), which operates on Ch. 16 in Tampa, FL, and which is licensed to the University of South Florida. The present remote control system will be noncompliant with Year 2000 program language.

File No. 99171CTB, Florida Gulf Coast University acting for and in behalf of the State Board of Reg, 10501 FGCU BLVD Fort Myers, FL 33965. Contact: Mr. Kirk Lehtomaa, Station Manager, (941) 590–2300. Funds Requested: $654,999. Total Project Cost: $1,310,000. To replace a 17-year-old, obsolete transmitter for public television station WGCU(TV), which operates on Ch. 30 in Fort Myers, FL, and which is licensed to Florida Gulf Coast University. The project would also replace the station's antenna and transmission line.

File No. 99187CTB, Florida West Coast Public Broadcasting, Inc., 1300 North Boulevard Tampa, FL 33607. Contact: Ms. Elsie Garner, Sr. Vice Pres. & COO, (813) 254–9338. Funds Requested: $465,742. Total Project Cost: $931,485. To improve the program production capability of public television station WEDU(TV), which operates on Ch. 3 in the St. Petersburg/Tampa region of Florida. The project would purchase a high definition video production switcher, a high definition digital effects unit, high definition color monitors, and an edit controller system. The new switcher and effects unit would replace outdated items. The project would permit WEDU(TV) to make significant progress in converting its production capabilities to digital technology.

File No. 99195CRB, Board of Regents of Florida Acting for and on behalf of Florida State University, 1600 Red Barber Plaza Tallahassee, FL 32310. Contact: Mr. Andrew Hanus, Chief Engineer, (850) 487–3086. Funds Requested: $15,343. Total Project Cost: $30,686. To replace the master control and production control consoles at public radio stations WFSU(FM) and WFSQ(FM), Tallahassee, FL. Station WFSU(FM) is a news and information station and operates on 88.9 MHz. Station WFSQ(FM), a fine arts station, operates on 91.5 MHz. Both stations are licensed to Florida State University. The two stations share studio facilities and, together, provide the sole public radio service to over 580,000 listeners in greater Tallahasee.

File No. 99197CTB, Barry Telecommunications, Inc., 3401 South Congress Avenue Boynton Beach, FL 33426. Contact: Mr. Philip DiComo, VP of Development, (561) 737–8000. Funds Requested: $255,936. Total Project Cost: $511,872. To replace worn-out or obsolete studio equipment at public television station WXEL(TV), which operates on Ch. 42 in Boynton Beach, FL. The project would purchase video tape machines, a video server system, a nonlinear editor system, and diverse other associated items.

File No. 99209CRB, Florida Board of Regents for and on Behalf of the University of South Florida, University of South Florida Tampa, FL 33620. Contact: Dr. James Heck, General Manager, (813) 974–8665. Funds Requested: $32,912. Total Project Cost: $65,824. To improve the transmission and studio production capabilities of public radio station WUSF(FM), which operates on 89.7 MHz in Tampa, FL, and which is licensed to the University of South Florida. The project would purchase a digital exciter, a hot-standby studio-to-transmitter link, digital audio work stations, an ISDN codec, and portable minidisc recorders.

File No. 99210CTB, Barry Telecommunications, Inc., 3401 South Congress Avenue Boynton Beach, FL 33426. Contact: Mr. Philip DiComo, VP of Development, (561) 737–8000. Funds Requested: $262,099. Total Project Cost: $524,198. To replace three obsolete, worn-out, tube-type studio cameras with modern ''chip '' cameras at public television station WXEL(TV), which operates on Ch. 42 in Tampa, FL. The new cameras would be 16:9/4:3 switchable, standard definition digital-compatible and would thus advance WXEL(TV)'s digital conversion effort.

File No. 99212CRB, Barry Telecommunications, Inc., 3401 South Congress Avenue Boynton Beach, FL 33426. Contact: Mr. Philip DiComo, VP of Development, (561) 737–8000. Funds Requested: $83,407. Total Project Cost: $166,814. To extend the service area and improve the studio production facilities of public radio station WXEL(FM), which operates on 90.7 MHz in Tampa, FL. The project would modify the station's antenna, purchase an antenna line, and reinforce the present tower; this would allow the station's signal to reach an estimated 50,000 additional listeners in the rural areas of Palm Beach and Hendry Counties. This would represent the first public radio service to these listeners. In addition, the project would purchase replacement DAT recorders, a cart system, CD players, and microphones.

File No. 99218CTB, WJCT, Inc., 100 Festival Park Avenue Jacksonville, FL 32202. Contact: Mr. Rick Johnson, Sr Vice Pres. Broadcasting, (904) 358–6394. Funds Requested: $473,692. Total Project Cost: $947,385. To replace worn-out transmission equipment at public television station WJCT(TV), which operates on Ch. 7 in Jacksonville, FL. The project would purchase a new transmitter, microwave Studio-to-Transmitter Link, and diverse associated test equipment items. WJCT(TV) intends to retrofit this transmitter to digital when its analog operations must cease as of May 1, 2006. The purchase would thus provide WJCT(TV) with a reliable analog signal during the next few years and at the same time position the station for its eventual conversion to all-digital transmission.

File No. 99241CRB, University of Central Florida, Communications Building Room 13 Orlando, FL 32816. Contact: Ms. Kayonne Riley, Station Manager, (407) 823–5162. Funds Requested: $139,980. Total Project Cost: $279,960. To construct a new tower and install a new antenna system at public radio station WUCF(FM), which operates on 89.9 MHz in Orlando, FL, and which is licensed to the University of Central Florida. These improvements would alleviate radio frequency interference and permit WUCF(FM) to comply with nonionizing radiation standards required by the FCC and the ANSI.

File No. 99242CTB, School Board of Miami-Dade County Florida, 172 N.E. 15th Street Miami, FL 33132. Contact: Mrs. Laurel Long, Director of Finance Admin., (305) 995–2240. Funds Requested: $857,534. Total Project Cost: $1,715,068. To purchase a complete

digital transmission system for public television station WLRN(TV), which is licensed to The School Board of Miami-Dade County, FL, and thus allow the station to begin immediate digital operations. WLRN(TV) operates on Ch. 17 for its analog service and will operate on Ch. 18 for its digital broadcasting.

Georgia

File No. 99233CRB, Progressive United Communications, Inc., 316 N. River St. Claxton, GA 30417. Contact: Mrs. Paschell Mix, CEO/Owner, (912) 739–9252. Funds Requested: $86,250. Total Project Cost: $115,000. To improve the production facilities of WCLA–AM, 1470 KHz and WCLA–FM, 107.3 MHZ in Claxton, GA by purchasing an audio vault storage, audio console and related production equipment. WCLA serves 160,000 people in southeast Georgia.

Iowa

File No. 99010CRB, University of Northern Iowa, 324 Communication Arts Center Cedar Falls, IA 50614. Contact: Ms. Barbara Reid, Administrative Assistant, (319) 273–6325. Funds Requested: $906,984. Total Project Cost: $1,813,968. To improve the transmission reliability of public radio station KUNI, 90.9 MHz, Cedar Rapids, IA, by constructing a transmitter tower to replace one the station may have to vacate because the owner may need the tower capacity for converting itself to DTV. KUNI serves a population of about 1,213,130 through its primary transmission and through four translators that relay its signal in Des Moines, Dubuque, Davenport, and Eldridge, all in Iowa.

File No. 99011CRB, University of Northern Iowa, 324 Communications Arts Center Cedar Falls, IA 50614. Contact: Ms. Barbara Reid, Administrative Assistant, (319) 273–6325. Funds Requested: $10,711. Total Project Cost: $21,423. To improve the signal of public station KRNI(AM), 1010 KHz, Mason City, IA, by replacing its worn out and obsolete transmitter. The station repeats the programing of KUNI, 90.9 MHz, Cedar Falls, IA, and serves a population of about 95,000.

File No. 99015CRB, Iowa Radio Reading Information Service for the Blind and Print Handicapped, Inc., 100 East Euclid Ave. Des Moines, IA 50313. Contact: Ms. Sally Vander Linden, Executive Director, (515) 243–6833. Funds Requested: $25,272. Total Project Cost: $50,544. To extend the service area of Iowa Radio Reading Information Service, Des Moines. IA, by acquiring the necessary satellite up- and down-link equipment to enable IRIS to provide its service to Iowa City, Cedar Falls, and Sioux City, all Iowa. The project will also acquire a supply of the special receivers needed for the visually handicapped in those communities to utilize the service. About 1,000 visually handicapped persons will receive service in the added communities.

File No. 99020CRB, University of Northern Iowa, 324 Communication Arts Center Cedar Falls, IA 50614. Contact: Ms. Barbara Reid, Administrative Assistant, (319) 273–6325. Funds Requested: $20,008. Total Project Cost: $40,017. To extend the signal of public station KUNI, 90.9 MHz, Cedar Falls, IA, by constructing a repeater station on channel 208 (89.5 MHz) in Oskaloosa, IA. The new station will bring the first full-time public radio service to a population of about 14,979. It will repeat the programing of KUNI.

File No. 99039CTB, Iowa Public Broadcasting Board, 6450 Corporate Drive Johnston, IA 50131. Contact: Mr. Dennis Malloy, Dir. of Com. Relations & Dev., (515) 242–3106. Funds Requested: $223,922. Total Project Cost: $447,845. To improve the production capacity of Iowa Public Television, Johnston , IA, by replacing items of worn out and obsolete equipment, including tape recorders, a switcher, and associated equipment. Iowa PTV serves a statewide population of about 3,600,000. The equipment acquired will be digital compatible and assist in the ultimate conversion of Iowa PTV to digital television broadcasting.

File No. 99091CRB, University of Northern Iowa, 324 Communication Arts Center Cedar Falls, IA 50614. Contact: Ms. Barbara Reid, Administrative Assistant, (319) 273–6325. Funds Requested: $22,757. Total Project Cost: $45,514. To improve the signal reliability of public station KHKE, 89.5 MHz, Cedar Falls, IA, by replacing its worn out and obsolete 24-year-old transmitter. The station serves a population of about 191,207.

Idaho

File No. 99092CRB, Idaho State University, 921 South 8th Street Pocatello, ID 83209. Contact: Mr. Ernest Naftzger, Dean of Student Affairs, (208) 236–2688. Funds Requested: $33,771. Total Project Cost: $45,028. To complete public station KISU, Pocatello, ID, by acquiring satellite downlink equipment. The station provides the only public radio signal to about 13,678 persons.

File No. 99189CRB, Boise State University Foundation, Inc., 1910 University Drive Boise, ID 83725. Contact: Dr. James Paluzzi, General Manager, BSU Radio, (208) 426–3663. Funds Requested: $371,041. Total Project Cost: $742,082. To construct a new transmission tower for public stations KBSU–FM, 90.3 MHz, and KBSX, 91.5 MHz, both Boise, ID, in order to meet FCC mandates regarding public health and safety.

File No. 99202CRB, Idaho State Board of Education (Boise State University), BSU Radio/SMITC #213 Boise, ID 83725. Contact: Dr. James Paluzzi, General Manager, (208) 426–3663. Funds Requested: $268,750. Total Project Cost: $358,333. To extend the service of the Boise State University Radio Network, Boise, ID, by constructing a repeater station at 91.3 MHz in Jackpot, NV, to serve Elko County, NV, and Twin Falls, Cassia and Owyhee Counties, ID. The new station will bring the first public radio signal to about 1,534 persons. It will repeat the programing of station KBSX, Boise, ID, but will also carry programing intended just for its own listeners.

Illinois

File No. 99077CTB, Black Hawk College, 6600 34th Avenue Moline, IL 61265. Contact: Mr. Rick Best, General Manager, (309) 796–2424. Funds Requested: $164,790. Total Project Cost: $219,720. To improve the operation of public station WQPT, ch. 24, Moline, IL, by replacing its obsolete and worn out master control system, including a server and a digital routing switcher. The station serves a population of about 550,000.

File No. 99079CTB, Window to the World Communications, Inc., 5400 North St. Louis Avenue Chicago, IL 60625. Contact: Mr. Martin McLaughlin, Vice President Corporate Affa, (773) 509–5433. Funds Requested: $1,057,312. Total Project Cost: $2,114,624. To convert public station WTTW, ch. 11, Chicago, IL, to digital transmission on channel 47 by purchasing a transmitter and ancillary equipment, an antenna, STL, and test equipment. Tower modification is also included in the project. The station serves a population of about 10.5 million persons.

File No. 99084ICTN, Chicago Housing Authority, 4859 S. Wabash Avenue Chicago, IL 606151008. Contact: Ms. Zenobia Johnson-Black, Exec. Dir., Hayes FIC, (773) 285–0200. Funds Requested: $187,500. Total Project Cost: $250,000. To establish a video distance learning system that would interconnect The Chicago Housing Authority's Hayes Family Investment Center with three public housing developments and allow the Authority to transmit diverse instructional programming to their residents. The three participating developments would be Altgeld

Gardens, Cabrini-Green, and Henry Horner Homes. The programming would, in part, be targeted to assist the City's welfare-to-work effort and would emphasize pre-employment and job readiness skills training. More generally, the programming would also strive to increase the literacy levels and improve the information technology capabilities of the developments' residents. The project would build upon the Authority's experience with its computer learning effort.

File No. 99114CRB, Board of Trustees University of Illinois, 801 South Wright Street, 109 Cob Urbana, IL 61820. Contact: Mr. J.J. Kamerer, Director, Grants & Contract Ad, (217) 333–2187. Funds Requested: $45,000. Total Project Cost: $90,000. To improve the operation of WILL–AM, 580 KHz, and WILL–FM, 90.9 MHz, Champaign, IL, by replacing reel-to-reel and cartridge tape machine with a networked digital audio storage and delivery system. The stations serve a population of about 1,048,698.

File No. 99251CRB, Illinois State University, Old Union Building, Room 310, S Normal, IL 61790. Contact: Mr. Bruce Bergethon, General Manager, (309) 438–2393. Funds Requested: $40,000. Total Project Cost: $80,000. To improve the operation of public station WGLT, 89.1 MHz, Normal, IL, by replacing worn out and obsolete tape recording equipment with digital audio server system. The station serves a population of about 300,000.

Indiana

File No. 99061CTB, Michiana Public Broadcasting Corporation, 2300 Charger Blvd Elkhart, IN 46514. Contact: Ms. Trina Cutter, President/General Mgr., (219) 674–5961. Funds Requested: $362,370. Total Project Cost: $724,740. To improve the operation of public station WNIT, ch. 34, Elkhart, IN, by replacing obsolete and worn out cameras. The project will help the station's eventual transition to all-digital operation. WNIT serves a population of about 1,709,000.

File No. 99096CRN, City of Hobart Police Department, 200 Main Street Hobart, IN 46342. Contact: Mr. Ronald Taylor, Police Chief, (219) 942–1126. Funds Requested: $331,095. Total Project Cost: $438,289. To improve the public safety telecommunications system of the Hobart Police Department

File No. 99117CTB, Trustee of Indiana University, P.O. Box 1847 Bloomington, IN 47402. Contact: Mr. Barrie Zimmerman, Director, Operations & Engineer, (812) 855–2898. Funds Requested: $114,110. Total Project Cost: $228,220. To improve the operation of public station WTIU, ch. 30, Bloomington, IN, by replacing its worn out and obsolete video production switcher, an effects system, and video monitors. The project will help the station's eventual transition to all-digital operation. The station serves a population of about 490,000.

File No. 99180CRTB, Metropolitan Indianapolis Public Broadcasting, Inc., 1401 North Meridian Street, Indianapolis, IN 46202. Contact: Mr. Lloyd Wright, President & General Manager, (317) 636–2020. Funds Requested: $205,000. Total Project Cost: $410,000. To improve the signal reliability of public stations WFYI–TV, ch. 20, and WFYI–FM, 90.1 MHz, Indianapolis, IN, by replacing their failing, 20-year-old STL with a digital fiber-optic link. The stations serve a population of about 2 million.

Kansas

File No. 99009CTB, Smoky Hills Public Television Corp., 604 Elm Street Bunker Hill, KS 676260009. Contact: Mr. Lloyd Mintzmyer, Director of Engineering, (785) 483–6990. Funds Requested: $386,500. Total Project Cost: $773,000. To improve the facilites of three public TV stations, the main station (KOOD–TV, Ch. 9, in Bunker Hill), two repeater/satellite stations (KDCK–TV, Ch. 21, Dodge City, and KSWK–TV, Ch. 3, Lakin) and translators in western KS. Project would lease fiber optic to replace the failing analog microwave studio to multi-transmitter system. Project will also acquire ''last mile'' microwave equipment and associated satellite interconnection equipment. Stations currently serve about 365,000 people.

File No. 99022CTB, Kansas Public Telecommunications Service, Inc., 320 West 21st Street North Wichita, KS 67203. Contact: Mr. David McClintock, Director of Engineering, (316) 838–3090. Funds Requested: $118,735. Total Project Cost: $237,470. To improve public television station KPTS–TV, Ch. 8, in Wichita, by replacing station's old Umatic video recorders and analog studio-to-transmitter link. Project would acquire 5 digital tape recorders, a 10-year lease of fiber optic, 2 fiber optic encoders and decoders. Station serves about 588,000 people.

File No. 99024CRB, Hutchinson Community College, 815 N Walnut Suite 300 Hutchinson, KS 67501. Contact: Mr. David Horning, General Manager, (316) 665–3555. Funds Requested: $43,563. Total Project Cost: $87,126. To improve public radio station KHCC–FM, 90.1 MHz, in Hutchinson, by replacing the on-air console and main production console. Both units have been plagued with increasing outages and repair problems. KHCC–FM and its two repeater/satellite stations serve about 925,000 people.

File No. 99051CTB, Washburn University of Topeka, 1700 SW College Avenue Topeka, KS 66621. Contact: Mr. Robert Fidler, Director of Operations, (785) 231–1111. Funds Requested: $125,000. Total Project Cost: $250,000. To improve public television station KTWU–TV, Ch. 11, Topeka, by replacing its 45-year-old VHF antenna with a new antenna. Initially new antenna will be used as its NTSC antenna but will eventually become its DTV antenna. KTWU–TV serves about 1.26 million people.

File No. 99066CRB, Kanza Society, Inc., 210 N 7th St. Garden City, KS 67846. Contact: Mr. Brian Gibbons, Executive Director, (316) 275–7444. Funds Requested: $309,705. Total Project Cost: $412,940. To activate a new public radio satellite/repeater station on 89.5 MHz in Perryton-Spearman, TX. New 100 kilowatt station will repeat the signal of KANZ–FM, 91.1 MHz, Garden City, KS. Signal will be provided via a satellite downlink. New station will provide a first public radio signal to about 68,000 people in TX and OK.

File No. 99067CRB, Kanza Society, Inc., 210 N 7th Street Garden City, KS 67846. Contact: Mr. Brian Gibbons, Executive Director, (316) 275–7444. Funds Requested: $16,656. Total Project Cost: $33,312. To improve and upgrade the facilities of public radio FM translator, K242AL, 96.3 MHz, Hays, by relocating, replacing and upgrading the station to a Class A station (1,250 watts). Upgraded repeater/satellite station will broadcast on 91.7 MHz.

File No. 99089CRB, Wichita State University, 3317 E. 17th Street Wichita, KS 67208. Contact: Mr. Mark McCain, General Manager, (316) 978–6789. Funds Requested: $44,772. Total Project Cost: $89,544. To improve public radio station KMUW–FM, 89.1 MHz, Wichita, by replacing a 20-year-old satellite receive-only antenna and analog test equipment. Project will also replace and upgrade equipment in KMUW–FM's news production facility. KMUW–FM serves about 516,700 people.

Kentucky

File No. 99002CTB, Kentucky Authority for Educational Television, 600 Cooper Drive Lexington, KY 40502. Contact: Mrs. Virginia Fox, Executive Director, (606) 258–7000. Funds Requested: $699,371. Total Project Cost: $1,398,742. To improve the reliability of the signals of two public television stations in the Kentucky Educational Television system—WKSO, ch. 29,

Somerset, KY, and WKMR, ch. 38, Morehead, KY, by replacing 30 year old transmitters.

File No. 99053CTB, Western Kentucky University, 1 Big Red Way Bowling Green, KY 42101. Contact: Mr. Jerry Barnaby, Assistant Director, (502) 745–2400. Funds Requested: $86,544. Total Project Cost: $173,089. To improve the operation of public station WKYU–TV, ch. 24, Bowling Green, KY, by replacing origination equipment, including digital tape decks and cameras. The project will assist the station in its planned conversion to DTV. The station serves a population of about 250,000.

File No. 99064CRB, Eastern Kentucky University, 102 Perkins Building Richmond, KY 40475. Contact: Dr. Fred Kolloff, Director Media Resources, (606) 622–2474. Funds Requested: $139,928. Total Project Cost: $186,571. To extend the signal of public radio station WEKU, 88.9 MHz, Richmond, KY, by constructing a repeater station in Mt. Victory, KY, to bring the first public radio service to about 106,212 residents of central and southeastern Kentucky and northern Tennessee.

File No. 99184CRB, Kentucky Public Radio, 301 York Street Louisville, KY 40203. Contact: Ms. Kathi Ellis, Development Specialist, (502) 574–1848. Funds Requested: $253,085. Total Project Cost: $506,170. To augment the operational capability of Kentucky Public Radio, which operates WFPL 89.3 MHz, WUOL 90.5 MHz, and WFPK 91.8 MHz, in Louisville, KY, by acquiring various items of equipment for its new building, including fiber optic interfaces, a routing switcher, consoles, limiters, audio processors, speakers, headphones, microphones, microphone stands and mounts, digital audio editors, CD players, CD recorder, and digital audio work stations. The three stations serve a population of about 3,057,566.

File No. 99191CRB, Appalshop, Inc., 91 Madison Avenue, Whitesburg, KY 41858. Contact: Mr. Timothy Marema, Dir. of Devel.& Admin., (606) 633–0108. Funds Requested: $69,010. Total Project Cost: $93,010. To improve the operation of public station WMMT, 88.7 Mhz, Whitesburg, KY, by replacing worn out and obsolete items of production equipment, including audio consoles, cassette and DAT recorders, microphones, CD players, CD recorder, a telephone interface, and turntables plus its STL and a package of test equipment. The station serves a population of about 299,162.

Louisiana

File No. 99167CTB, Greater New Orleans Educational Television Foundation, 916 Navarre Avenue, New Orleans, LA 70124. Contact: Mr. Randall Feldman, President & General Manager, (504) 486–5511. Funds Requested: $265,000. Total Project Cost: $530,000. To improve public television station WYES–TV, Ch. 11, New Orleans, by replacing its transmission line, and acquiring a digital video effects machine and waveform monitors. In addition to making its current service more reliable, the new equipment will assist in the eventual conversion to digital television. Station serves about 1.8 million people. The area is also served by WLAE–TV, Ch. 32.

File No. 99186CTB, Educational Broadcasting Foundation, Inc., 2929 S. Carrollton Ave., New Orleans, LA 70118. Contact: Mr. John Pela, Station Manager, (504) 830–3709. Funds Requested: $49,150. Total Project Cost: $98,300. To improve public television station WLAE–TV, Ch. 32., in New Orleans by replacing obsolete master control origination equipment. New equipment includes 6 videotape machines and 3 digital waveform monitors. WLAE–TV serves about 1,163,000 people. The area is also served by WYES–TV.

File No. 99223ICTN, New Orleans Educational Telecommunications Consortium, 2 Canal St., New Orleans, LA 70130. Contact: Dr. Robert Lucas, Executive Director, (504) 524–0350. Funds Requested: $62,319. Total Project Cost: $124,638. To assist the New Orleans Educational Telecommunications Consortium (''NOETC, Inc'') to extend its instructional services to the Stennis Space Center, located in nearby Mississippi. The project would also establish a video classroom at Nunez Community College and connect that studio via microwave to NOETC, Inc.'s ITFS system. NOETC, Inc. is a consortium of eight post-secondary institutions located in New Orleans. The instructional programming to be transmitted to the Stennis Space Center would originate at The University of New Orleans, a consortium partner. The Nunez Community College equipment would allow course work emphasizing basic literacy and math skills to be transmitted to a presently unserved population in Plaquemine Parish.

File No. 99247CTB, Louisiana Educational Television Authority, 7733 Perkins, Baton Rouge, LA 70810. Contact: Mrs. Cynthia Rougeou, CAO, (225) 767–5660. Funds Requested: $225,000. Total Project Cost: $450,000. To improve the state's public television network by replacing 17-year-old video tape equipment in its telecommunications center in Baton Rouge. New equipment consists of 5 digital video tape recorders with monitoring, a digital video server and digital test equipment. Public television network serves about 1,082,000 people.

Massachusetts

File No. 99113CTB, WGBH Educational Foundation, 44 Hampden St., Springfield, MA 01103. Contact: Ms. Deborah Onslow, General Manager, (413) 781–2801. Funds Requested: $201,300. Total Project Cost: $402,600. To convert public station WGBY–TV, Channel 57 in Springfield, MA, to digital broadcasting on Channel 58 by purchasing and installing a digital transmitter, antenna, transmission line, STL and a small digital satellite receiver. The station serves a population of nearly 2.5 million residents of western Massachusetts and northern Connecticut.

File No. 99211CRB, Trustees of Boston University, 890 Commonwealth Avenue, Boston, MA 02215. Contact: Mr. Stephen Elman, Assistant General Manager, (617) 353–0909. Funds Requested: $223,256. Total Project Cost: $446,512. To improve public radio station WRNI–AM, 1290 KHz in Providence, RI, by replacing the obsolete and failing transmission system, increase power and build a local production studio. WRNI is part of Boston University's WBUR Group and its broadcast originates at WBUR–FM in Boston. WRNI–AM serves a population of over 250,000 residents of Rhode Island.

File No. 99216ICTN, Mount Wachusett Community College, 444 Green Street Gardner, MA 01440. Contact: Mr. Anthony Cherubini, Professor, (978) 632–6600. Funds Requested: $562,882. Total Project Cost: $750,509. To activate a Ku-band satellite project at the applicant's Telecommunications and Distance Learning Center. The applicant is partnering with the Wood Products Manufacturers Association to upgrade skills of the industries employees. Another partner in the project is Rural Housing Improvement, which assists low income clients to become self sufficient.

Maryland

File No. 99018CRB, University of Maryland Eastern Shore, Backbone Road Princess Anne, MD 21853. Contact: Mr. Anthony Hunt, General Manager, (410) 651–8001. Funds Requested: $70,743. Total Project Cost: $141,486. To

improve public radio station WESM–FM, operating on 91.3 MHz in Princess Anne, MD, by replacing a damaged transmitter, adding electrical protection and redundancy, upgrading the main production room, and acquiring remote recording equipment. The station serves a population of more than 142,000 residents of the southeast corner of Maryland, southern Delaware and northeastern Virginia.

File No. 99065CTB, Maryland Public Broadcasting Commission, 11767 Owings Mills Boulevard Owings Mills, MD 21117. Contact: Mr. Robert Sestili, Senior Vice President/CEO, (410) 581–4297. Funds Requested: $449,400. Total Project Cost: $898,800. To convert public station WMPT–TV, Channel 22 in Annapolis, MD, to digital broadcasting on Channel 42 by purchasing a transmitter, antenna, transmission line, monitoring and test equipment. The station serves a population of over 6.8 million people in the cities of Baltimore and Annapolis, and in North, Central and Southern Maryland.

File No. 99104CRB, Metropolitan Washington Ear, Inc., 35 University Boulevard East Silver Spring, MD 20901. Contact: Mrs. Nancy Knauss, Administrative Dir., (301) 681–6636. Funds Requested: $23,719. Total Project Cost: $31,625. To improve the services of the Washington Ear, the radio reading service in the Wahington DC metropolitan area, by replacing control room equipment including tape machines, PC-based automation equipment, mini-disc units and headsets. In addition, the project will purchase 50 closed-circuit radio receivers to lend to listeners free of charge. The Washington Ear serves a population of over 1,900 blind and visually impaired residents of Washington DC, Maryland and Virginia.

Maine

File No. 99158CTB, Maine Public Broadcasting Corporation, 65 Texas Avenue Bangor, ME 04401. Contact: Mr. Alexander Maxwell, Chief Technology Officer, (207) 941–1010. Funds Requested: $324,000. Total Project Cost: $648,000. To improve public television stations WMEM–TV, Channel 10 in Presque Isle and WMEB–TV, Channel 12 in Orono, Maine, by replacing failing and obsolete transmitters with digital-capable units. Maine Public Broadcasting serves a population of over 1.2 million people.

File No. 99173IPTN, Washington County Consortium for School Improvement, 10 Torrey Hall Machias, ME 04654. Contact: Ms. Gloria Jenkins, Director, (207) 255–1219. Funds Requested: $50,000. Total Project Cost: $118,625. To help the Washington County Consortium for School Improvement, Machias, Maine, plan the development of a distance learning system. The Consortium is composed of the 11 school districts in the County. Cooperating in the project would be the following: the University of Maine/Machias; Washington County Technical College; Coastal Washington County Institute of Technology; the Regional Medical Center at Lubec; St. Croix Regional Technical School; three American Indian elementary schools; a private middle/high school that provides educational services to a number of school districts; schools that serve the unorganized territories within the County; and the Maine State Department of Education.

Michigan

File No. 99048CTB, Board of Trustees of Michigan State University, 283 Communication Arts Building East Lansing, MI 48824. Contact: Mr. Steven Meuche, Director & General Manager, (517) 432–3120. Funds Requested: $330,325. Total Project Cost: $660,650. To improve the operation of public station WKAR–TV, ch. 23, East Lansing, MI, by replacing worn out and obsolete video tape recorders, video production switchers, and audio consoles. All new equipment will be digital-capable and aid the station's eventual conversion to digital broadcasting. The station serves a population of about 2,633,010.

File No. 99059CTB, Grand Valley State University, 301 W. Fulton Street Grand Rapids, MI 49504. Contact: Mr. Robert Lumbert, Director of Engineering, (616) 771–6739. Funds Requested: $417,425. Total Project Cost: $834,850. To complete the conversion of public station WGVU–TV, ch. 35, Grand Rapids, MI, to digital broadcasting on channel 11, by purchasing a transmitter, transmission line, remote control, an encoder, and test equipment. The station serves a population of about 1,060,425.

File No. 99123CTB, Detroit Educational Television Foundation, 7441 Second Avenue Detroit, MI 48202. Contact: Mr. Daniel Alpert, Senior VP & Station Manager, (313) 876–8102. Funds Requested: $579,402. Total Project Cost: $1,158,804. To convert public station WTVS, ch. 56, Detroit, MI, to digital broadcasting on channel 43, bringing the first DTV public broadcasting to about 4.6 million people. The project includes acquisition of DTV transmitter, STL, satellite demod for DTV feeds, encoder, a multiplexer, and related monitoring and test equipment.

File No. 99221CTB, Delta College, 1961 Delta Road University Center, MI 48710. Contact: Mr. Barry Baker, Dir. of Broadcasting/G.M., (517) 686–9346. Funds Requested: $114,940. Total Project Cost: $229,881. To improve the operation of public station WDCQ–TV, ch. 19, University Center, MI, by replacing worn out and obsolete cameras and video tape recorders. The new equipment will be digital-capable and aid the station's eventual conversion to digital broadcasting. The station serves a population of about 866,000.

File No. 99227CTB, Board of Control of Northern Michigan University, 1401 Presque Isle Avenue Marquette, MI 49855. Contact: Mr. Scott Seaman, General Manager, (906) 227–1300. Funds Requested: $135,000. Total Project Cost: $270,000. To improve the production capability of public station WNMU–TV, ch. 13, Marquette, MI, by replacing worn out and obsolete field and studio cameras. The new equipment will be digital-capable and aid the station's eventual conversion to digital broadcasting. The station serves a population of about 250,000.

Minnesota

File No. 99001CTB, Duluth-Superior Area Educational Television Corporation, 1202 East University Circle Duluth, MN 55811. Contact: Mr. Allen Harmon, President, (218) 724–8567. Funds Requested: $122,812. Total Project Cost: $163,750. This is a request for emergency funding to construct a tower in Grand Marais, MN, for the translator of public television station WDSE, Ch. 8, Duluth, MN. The new tower would replace the tower on which WDSE(TV) presently leases space for the translator. The present tower is in imminent danger of collapse. The project also seeks to replace the 18-year-old translator transmitter and its 31-year-old antenna. The new transmitter would increase the translator's power from 100 watts to 500 watts and the new antenna would be omnidirectional. The changes would result in an increase in the population served from 1,000 to 3,000.

File No. 99016CTB, Northern Minnesota Public Television., Inc., BSU Box 9 Bemidji, MN 56601. Contact: Mr. Bill Sanford, Director of Engineering, (218) 751–3407. Funds Requested: $195,840. Total Project Cost: $261,120. To improve the operation of public station KAWE, ch. 9, Bemidji, MN, by replacing worn out and obsolete video tape recorders and a character generator. The new equipment will be digital-capable and aid the station's eventual conversion to digital broadcasting. The

station's programing is repeated by KAWB, ch. 22, Brainerd, MN. Together the two stations serve a population of about 300,000.

File No. 99017CTB, Northern Minnesota Public Television, BSU Box 9 Bemidji, MN 56601. Contact: Mr. Bill Sanford, Director of Engineering, (218) 751–3407. Funds Requested: $54,600. Total Project Cost: $72,800. To improve the signal quality of public station KAWB, ch. 22, Brainerd, MN, by replacing its worn out and obsolete antenna. The station repeats the programing of station KAWE, ch. 9, Bemidji, MN. The new equipment will be digital-capable and aid the station's eventual conversion to digital broadcasting. The two stations serve a population of about 300,000.

File No. 99101CTB, West Central Minnesota Education Television Co., Inc., 120 West Schlieman Appleton, MN 56208. Contact: Mr. Ansel Doll, General Manager, (320) 289–2622. Funds Requested: $251,100. Total Project Cost: $334,800. To improve the operation of public station KWCM, ch. 10, Appleton, MN, by replacing worn out and obsolete video recorders and acquiring a video server. The new equipment will be digital-capable and aid the station's eventual conversion to digital broadcasting. The station serves a population of about 600,000.

File No. 99177CTB, Austin Independent School District No. 492, 2000 8th Avenue NW Austin, MN 55912. Contact: Mr. Richard Sailors, General Manager, (507) 433–0671. Funds Requested: $720,250. Total Project Cost: $1,263,596. To extend the signal of public station KSMQ, ch. 15, Austin, MN, and establish the first local origination facility by constructing a new station on channel 35 in Winona, MN. The new station will operate as a ''pass-through'' service of KSMQ programing except when originating local-interest programs. The new station will serve an estimated 152,000 people, providing about 12,000 of them with their first public television signal. All equipment at the new station will be digital-capable.

File No. 99200CRB, Fresh Air, Inc., 1808 Riverside Avenue Minneapolis, MN 55454. Contact: Ms. Denise Mayotte, General Manager, (612) 341–3144. Funds Requested: $53,120. Total Project Cost: $106,240. To improve the production capability of public station KFAI, 90.3 MHz, Minneapolis, MN, by replacing worn out and obsolete equipment, including audio consoles, distribution amplifiers, CD players, cassette decks, turntables, and an audio processor. The station serves a population of about 900,000.

File No. 99238CTB, Twin Cities Public Television, Inc., 172 East 4th Street, St. Paul, MN 55101. Contact: Mr. Bruce Jacobs, Chief Technologist, (651) 222–1717. Funds Requested: $997,998. Total Project Cost: $1,995,996. To convert public station KTCI, ch. 17, St. Paul, MN, to digital broadcasting on channel 16 by purchasing a transmitter, antenna, transmission line, a video server, satellite demod, format converter, channel automation, DTV multiplexer, encoders, and monitors plus ancillary items and test equipment. The station serves a population of about 3,125,000.

File No. 99252CRB, Minnesota Public Radio, 45 East 7th Street, St. Paul, MN 55101. Contact: Mr. Ron Hall, Development Assistant, (651) 290–1163. Funds Requested: $121,209. Total Project Cost: $242,418. To extend the coverage of Minnesota Public Radio, St. Paul, MN, by constructing two new public stations on 88.7 MHz and 89.7MHz in Grand Marais, MN. One of the two stations will carry Minnesota Public Radio's news service; the other, MPR's classical music service. The new stations will provide service to about 4,166.

Missouri

File No. 99044CTB, St. Louis Regional Educational and Public Television Commission, 3655 Olive Street, St. Louis, MO 63108. Contact: Mrs. Wilma Matta, VP & CFO, (314) 512–9000. Funds Requested: $1,237,214. Total Project Cost: $2,474,428. To convert public station KETC, ch. 9, St. Louis, MO, to digital broadcasting on channel 39, by purchasing a transmitter, antenna, encoder, satellite demod. up-converter, bit splicer, PSIP generator, spooler, and STL. The station serves a population of more than 3 million.

File No. 99112CTB, Ozarks Public Telecommunications, Inc., 821 North Washington, Springfield, MO 65802. Contact: Mr. Brent Moore, Director of Engineering, (417) 865–2100. Funds Requested: $58,000. Total Project Cost: $116,000. To improve the operations of public station KOZK, ch, 21, Springfield, MO, by acquiring equipment to automate its master control to allow for overnight delivery of college courses and additional general programing. The station serves a population of about 1.5 million.

File No. 99169CTB, Public Television 19, Inc., 125 East 31st Street, Kansas City, MO 64108. Contact: Ms. Brenda Williams, Grant Coordinator, (816) 756–3580. Funds Requested: $352,075. Total Project Cost: $704,150. To further the conversion of public television station KCPT(TV), Ch. 19, Kansas City, MO, to digital broadcasting on Ch. 18 by purchasing a dual-channel antenna, Studio-Transmitter Link, SD encoder, PSIP generator, off-air monitoring equipment, interconnection equipment, and test equipment. The station serves a population of about 1.8 million.

File No. 99228CRB, Curators of the University of Missouri for the University of Missouri-St. Louis, 8001 Natural Bridge Road, St. Louis, MO 63121. Contact: Ms. Patricia Bennett, Director & General Manager, (314) 516–5968. Funds Requested: $18,576. Total Project Cost: $37,153. To improve the production capability of public station KWMU, 90.7 MHz, St. Louis, MO, by replacing two worn out and obsolete audio consoles and acquiring added audio server capacity, DAT recorders, and a telephone hybrid. The station serves a population of about 2,442,200.

Montana

File No. 99116CRB, Board of Regents Montana University System, 330 Strand Union Building, Bozeman, MT 59717. Contact: Mr. Philip Charles, General Manager, (406) 994–6484. Funds Requested: $39,630. Total Project Cost: $62,130. To improve the transmission facilities of public radio station KGLT–FM, operating on 91.9 MHZ in Bozeman, by replacing the station's 24 year old antenna, transmission and STL system. The project would ensure continued service to 70,000 people and permit a future power increase to provide first public radio service to an additional 15,000 people.

North Carolina

File No. 99100ICTN, North Carolina School of Science and Mathematics, P.O. Box 2418, Durham, NC 27715. Contact: Ms. Peggy Manring, Head of Distance Learning, (919) 286–3366. Funds Requested: $397,935. Total Project Cost: $649,620. To develop a state-of-the-art multimedia distance learning classroom for the North Carolina School of Science and Mathematics, Durham. The project would permit the School to expand its current distance learning system by using a variety of technologies and delivery systems such as wireless networking, H.320, webcasting, video streaming, and time-delay satellite broadcasts. The North Carolina School of Science and Mathematics is a residential, statewide magnet school that provides 11th- and 12th-grade students with a comprehensive, free education focused on science, mathematics and technology.

File No. 99125CTB, University of North Carolina Center for Public Television, 10 TW Alexander Drive

Research Triangle Park, NC 27709. Contact: Ms. Meg Lu, Director of Admin., (919) 549–7154. Funds Requested: $307,455. Total Project Cost: $614,910. To improve the state's public television network by replacing seven 100-watt translators (Brevard, Burnsville, Hayesville, Lake Lure, Sparta, Spruce Pine and Murphy) and a 1-kilowatt translator at Canton. Project will also replace 1960's vintage microwave repeater equipment at Cane Mountain, Tarboro, Statesville, and Cowee, plus a digital ready hot standby will be installed at Joanna Bald. Project will replace 8 transmission equipment shelters. Network serves the entire state.

File No. 99126CRB, Board of Trustees of the University of North Carolina at Chapel Hill, CB #0915, Chapel Hill, NC 275990915. Contact: Mr. Thomas Davis, General Manager, (919) 966-5454. Funds Requested: $245,685. Total Project Cost: $327,580. To extend the service of public radio station WUNC(FM), Chapel Hill, NC, by constructing a repeater station operating on 88.9 MHz in Manteo. The station will have a small studio for local origination and will receive programming form WUNC via satellite interconnection. The repeater station will provide first public radio service to 74,073 people and additional service to 49,166 residents of eastern North Carolina and the Outer Banks.

File No. 99162CTB, Charlotte-Mecklenburg Public Broadcasting Authority, 3242 Commonwealth Avenue, Charlotte, NC 28205. Contact: Mr. Harold Bouton, President & CEO, (704) 372–2442. Funds Requested: $52,846. Total Project Cost: $105,692. To improve public television station WTVI–TV, Ch. 42, in Charlotte, by purchasing a digital video server to replace the labor and maintenance intensive videotapte machines. New equipment will be easily converted to digital television service when needed. WTVI–TV serves about 1.08 million people.

North Dakota

File No. 99157CTB, Prairie Public Broadcasting, Inc., 207 North 5th Street, Fargo, ND 58102. Contact: Mrs. Kathleen Pavelko, President & CEO, (701) 241–6900. Funds Requested: $1,188,258. Total Project Cost: $1,584,344. To convert public television station KBME–TV, Ch. 3, in Bismarck, to digital broadcasting on Ch. 22 by purchasing a full complement of digital dissemination, origination, interconnection, reception and test equipment. KBME–DT will also be used to demonstrate the use of digital broadband capacity for distance learning. KBME–DT will provide a first digital TV service to about 115,000 people.

File No. 99194CRTB, Prairie Public Broadcasting, Inc., 207 North 5th Street Fargo, ND 58102. Contact: Mrs. Kathleen Pavelko, President & CEO, (701) 241–6900. Funds Requested: $1,325,901. Total Project Cost: $1,767,868. To improve the state's public radio and television system by replacing its obsolete, worn-out, six-hop, 21-year-old, Fargo-to-Bismarck, ND analog microwave system. This replacement is part of the long-term digital transition plan for ND. Network currently serves about 790,300 people.

Nebraska

File No. 99004CTB, Board of Regents of the University of Nebraska, 6001 Dodge Street Omaha, NE 68182. Contact: Ms. Debra Aliano, General Manager, (402) 554–2516. Funds Requested: $69,816. Total Project Cost: $145,450. To improve public television station KYNE–TV, Ch. 26, in Omaha, by acquiring a digital video file server. The equipment will replace the current playback system which does not produce a fully broadcast quality signal. KYNE–TV serves about 696,000 people.

File No. 99007CRB, Board of Regents of the University of Nebraska, 6001 Dodge Street Omaha, NE 68182. Contact: Ms. Debra Aliano, General Manager, (402) 559–5866. Funds Requested: $23,664. Total Project Cost: $49,300. To improve public radio station KVNO–FM, 90.7 MHz, in Omaha by acquiring 2 digital audio consoles, a digital 8-track tape recorder, microphones and associated equipment. Current consoles are obsolete and worn-out. KVNO–FM serves about 607,000 people.

File No. 99094ICTN, Educational Service Unit 7, 2657 44th Avenue Columbus, NE 68601. Contact: Ms. Phyllis Brunken, Media/Technology Director, (402) 564–5753. Funds Requested: $563,076. Total Project Cost: $750,769. To establish a video distance learning system for the Educational Service Unit 7 (''ESU 7''), Columbus, Nebraska. The system would interconnect 11 school districts in a five-county area of eastern Nebraska. The counties are Butler, Colfax, Merrick, Platte and Polk. The system would also encompass Central Community College, which is in Columbus, and ESU 7 itself. The proposed system would be digital fiber-optic based, with the signal transmitted via T–1 telephone lines. Each participating school would receive either or both of two types of distance learning equipment: a dedicated two-way video classroom or desktop conferencing equipment.

File No. 99109ICTN, ADEC Corporation, C218 Animal Science Building Lincoln, NE 68583. Contact: Dr. Janet Poley, President/CEO, (402) 472–7000. Funds Requested: $454,180. Total Project Cost: $908,360. To extend the distance learning services of ADEC by purchasing a digital satellite uplink which will distribute 6 MCPC channel of programming. The uplink will aggregate programming from ADEC member universities and extend programming to previously unserved audiences. ADEC is a consortium of 55 land-grant institutions providing distance learning nationwide.

File No. 99156CRB, Nebraska Educational Telecommunications Commission, 1800 N 33 Street Lincoln, NE 68501. Contact: Mr. Rod Bates, Secretary, (402) 472–3611. Funds Requested: $81,300. Total Project Cost: $162,600. To improve and expand the coverage of public radio station KUCV–FM, 90.9 MHz, Lincoln by replacing the station's 20-year-old transmitter and antenna system. Project will change frequency to 91.1 MHz and increase station's power from 16.0 to 20.14 kilowatts. KUCV–FM currently serves about 268,544 people.

File No. 99190CTB, Nebraska Educational Telecommunications Commission, 1800 N 33 Street Lincoln, NE 685013111. Contact: Mr. Rod Bates, Secretary, (402) 472–3611. Funds Requested: $878,497. Total Project Cost: $1,756,994. To improve the state public television network by replacing worn-out and obsolete dissemination and origination equipment with digital or digital-compatible equipment. Network will acquire a non-linear edit system, studio/remote cameras, hard disk server system, and a remote control switcher. Equipment will be used in partnership with Central Educational Network (CEN). Network serves about 1.65 million people in Nebraska.

File No. 99201CRB, Nebraska Educational Telecommunications Commission, 1800 N 33 Street Lincoln, NE 685013111. Contact: Mr. Rod Bates, Secretary, (402) 472–3611. Funds Requested: $120,500. Total Project Cost: $241,000. To replace the antenna systems of four stations of the state's public radio network. New antennas will be installed at: KRNE–FM, 91.5 MHz, Merriman; KCNE–FM, 91.9 MHz, Chadron; KPNE–FM, 91.7 MHz, North Platte and KMNE–FM, 90.3 MHz, Bassett. Antennas have experienced longitudinal cracks and one of the stations (KRNE–FM) has already reduced power 40% to avoid permanent damage. The four stations serve about ⅓ of the state.

New Hampshire

File No. 99003CTB, University of New Hampshire, 268 Mast Road Durham, NH 03824. Contact: Mr. Robert Ross, Director of Engineering, (603) 868–7552. Funds Requested: $1,305,000. Total Project Cost: $2,610,000. To convert public station WENH–TV, Channel 11 in Durham, NH, to digital broadcasting on Channel 57 by purchasing and installing a transmitter, antenna transmission line, STL, encoder and test equipment. In addition, the project will acquire digital studio equipment, including a video server, router, still store, DVE and ENG kit. The station serves a population of over 1.1 million people.

File No. 99215CRB, New Hampshire Public Radio, Inc., 207 North Main Street Concord, NH 03301. Contact: Mr. Andrew Morrell, Program Director, (603) 228–8910. Funds Requested: $50,225. Total Project Cost: $100,450. To improve the broadcast quality of the state network by replacing the obsolete and failing transmitter at repeater station WEVH–FM, 91.3 MHz in Hanover, NH. The project will also replace recording and playback equipment at WEVO–FM, 89.1 MHz in Concord, including minidisc players and the audio Vault. New Hampshire Public Radio serves a population of over 900,000 people.

New Jersey

File No. 99052ICTN, Burlington County College, Pemberton-Browns Mills Rd. Pemberton, NJ 08068. Contact: Dr. Bernard Solomon, Director, Distance Learning at, (609) 894–9311. Funds Requested: $197,160. Total Project Cost: $394,320. To equip a new Telecommunications Center on the Mt. Laurel Campus of Burlington County College, Pemberton, NJ. The equipment would allow the College to interconnect with a consortium of academic institutions and thus expand distance learning to a large underserved population throughout southern New Jersey. In addition to Burlington County College, the consortium participants include the New Jersey Institute of Technology, The University of Medicine and Dentistry of New Jersey, Cumberland Community College, Ocean County College, Salem Community College, and Georgian Court College.

File No. 99110CTB, New Jersey Public Broadcasting Authority, 23 South Stockton Street Trenton, NJ 08625. Contact: Mr. William Schnorbus, Acting Director of Engineering, (609) 777–5162. Funds Requested: $796,750. Total Project Cost: $1,593,500. To convert public station WNJT–TV, Channel 52 in Trenton, NJ, to digital broadcast on Channel 43 by the purchase and installation of a digital transmitter, antenna, STL, combiner, encoder, video server and monitoring equipment. The station serves a population of over 9.8 million people.

File No. 99124CRB, New Jersey Public Broadcasting Authority, 25 South Stockton Street Trenton, NJ 08625. Contact: Mr. William Schnorbus, Acting Director of Engineering, (609) 777–5162. Funds Requested: $71,657. Total Project Cost: $95,543. To expand the state public radio network by constructing a new Class A station, WNJZ–FM in Cape May Courthouse, operating on 90.3 MHz, that will provide first public radio services to over 52,000 residents of Cape May County in southeastern New Jersey.

New Mexico

File No. 99019CTB, Regents of the University of New Mexico and Board of Education of the City of Al, 1130 University Blvd NE Albuquerque, NM 87102. Contact: Mr. Jon Cooper, General Manager, (505) 277–2121. Funds Requested: $202,428. Total Project Cost: $404,856. To improve KNME–TV, Ch. 5, Albuquerque by replacing analog studio routing switcher and analog video tape recorders with digital equipment. KNME–TV will also acquire satellite reception equipment which will allow the reception and display of PBS ATSC satellite transmissions. This equipment will assist in the digital conversion of the station which serves about 1,130,922 people.

File No. 99026CTB, Regents or the University of New Mexico and the Board of Education of the City of, 1130 University Blvd. N.E., Albuquerque, NM 87102. Contact: Mr. Jon Cooper, General Manager, (505) 277–2121. Funds Requested: $104,205. Total Project Cost: $208,410. To improve the translator facilities of public television station KNME–TV, Ch. 5, Albuquerque, by replacing and modifying translators at 12 sites. The frequencies of these translators must be ''displaced'' to lower frequency channels in order to comply with FCC mandates regarding the implementation of digital television. Sites affected are: Cimarron (K60AA), Gallup (K60BD), Grants (K67CR), Roy (K69CG), Las Vegas (K65BQ), Eagle Tail/Raton (K20CV), Red River (K03CZ), Mora (K31EO), Santa Rosa (K74BBO), Sheridan (K69CI), Wagon Mound (K68BO), and Chama (K69CH). Translators currently serve about 167,000 people.

File No. 99028CTB, Eastern New Mexico University, Station 52, Portales, NM 88130. Contact: Mr. Duane Ryan, Director of Broadcasting, (505) 562–2112. Funds Requested: $38,545. Total Project Cost: $77,090. To improve public television station KENW–TV, Ch. 3, Portales, by replacing three old UHF translators with solid state units and retuning an existing translator to a new channel. New translators will be in Carlsbad (K49ES), Forrest/McAlister (K34EZ) and Tucumcari (Ch. 32). The retuned translator is Ruidoso (K49EW). These changes are in compliance with FCC mandated channel displacement for all UHF translators operating on Ch. 60–69.

File No. 99029CTB, Eastern New Mexico University, Station 52, Portales, NM 88130. Contact: Mr. Duane Ryan, Director of Broadcasting, (505) 562–2112. Funds Requested: $272,450. Total Project Cost: $544,900. To improve public television station KENW–TV, Ch. 3, Portales, by replacing old camera systems and aquiring a video file server to replace one-inch video tape recorders. KENW–TV serves about 350,000 people.

File No. 99035CRB, Eastern New Mexico University, Station 52, Portales, NM 88130. Contact: Mr. Duane Ryan, Director of Broadcasting, (505) 562–2112. Funds Requested: $27,860. Total Project Cost: $40,480. To expand and improve the facilities of public radio station KENW–FM, 89.5 MHz, in Portales, by constructing new translators at Fort Sumner (K219DP—91.7 MHz) and Conchas Lake (K202CX—88.3 MHz). KNEW–FM will also replace its 1978 vintage audio processor. New translators will add a first public radio service to about 2,500 people.

File No. 99072CTB, Mescalero Apache Tribe, 101 Central (P.O. Box 176), Mescalero, NM 88340. Contact: Mr. Ferris Palmer, Administrator, (505) 671–4494. Funds Requested: $74,993. Total Project Cost: $99,990. To improve the facilities of public television translators KO2KR and KO2KQ, in Mescalero by acquiring a studio-to-transmitter link to interconnect both translators to efficiently present local programs. In addition, project will acquire basic origination equipment to facilitate the production of local programming beyond the minimum level previously available to the tribe. Stations serve about 3,000 people.

File No. 99080ICTN, Crownpoint Institute of Technology, Lower Point Road, Crownpoint, NM 87313. Contact: Mr. James Tutt, President, (505) 786–4102. Funds Requested: $522,545. Total Project Cost: $696,727. To bring Northern Arizona University's interactive television distance learning system—called NAUNet—to Crownpoint Institute of Technology, Crownpoint, New Mexico, which is

located in northwest NM at the extreme southeast of the Main Reservation of the Navajo Nation. Crownpoint Institute of Technology is a tribally-controlled two-year vocational and technical institution.

File No. 99093CRB, Regents of New Mexico State University, McFie Circle, Las Cruces, NM 88003. Contact: Mr. Colin Gromatzky, General Manager, (505) 646–4525. Funds Requested: $17,445. Total Project Cost: $34,890. To improve public radio station KRWG–FM, 90.7 MHz, Las Cruces, by replacing old, worn-out studio-to-transmitter link (STL) and audio processor with a digital STL and compatible digital processor. KRWG–FM serves about 263,000 people.

File No. 99111CRB, Santa Fe Community College, 6401 Richards Ave., Santa Fe, NM 87505. Contact: Mr. Barton Bond, Station Manager, (505) 428–1319. Funds Requested: $56,697. Total Project Cost: $113,394. To improve public radio station KSFR–FM, 90.7 MHz, Santa Fe, by acquiring a new antenna, studio-to-transmitter link converter, digital processor, monitor and exciter as well as a variety of digital origination equipment. In addition, KSFR–FM will acquire its first satellite downlink equipment. KSFR–FM serves about 100,000 people.

File No. 99207CRB, Board of Education of the City of Albuquerque, 2020 Coal SE Albuquerque, NM 87106. Contact: Mr. Michael Brasher, General Manager, (505) 242–7163. Funds Requested: $69,291. Total Project Cost: $92,388. To expand public radio station KANW–FM, 89.1 MHz, Albuquerque by replacing translators with protected repeater/satellite stations at the following sites: Espanola (K212AN— replaced by 91.1 MHz repeater), Grants (K216AN— replaced by 88.1 MHz repeater) and Santa Rosa (K220BH— replaced by 91.9 MHz repeater). Translator stations currently serve about 26,975 and new protected facilities will add first service to an additional 1,000 people.

Nevada

File No. 99134CTB, Clark County School District, 4210 Channel 10 Drive Las Vegas, NV 89119. Contact: Mr. Tom Axtell, General Manager, (702) 799–1010. Funds Requested: $340,857. Total Project Cost: $524,395. To improve public television station KLVX–TV, Ch. 10, in Las Vegas, by replacing origination equipment to improve the capabilities of the station. Main routing switcher, color monitors, pedestals and camera mounts, prompter mounts, video servers, and related origination equipment plus a small complement of test equipment will replace worn-out and obsolete equipment. KLVX–TV provides an educational and public television service to about 1.2 million people.

File No. 99136ICTN, Clark County School District, 4210 Channel 10 Drive Las Vegas, NV 89119. Contact: Mr. Tom Axtell, General Manager, (702) 799–1010. Funds Requested: $101,400. Total Project Cost: $156,000. To purchase equipment that will be part of the operation of four new channels of Instructional Television Fixed Service (ITFS) licensed to the Clark County School District and administered by Station KLVX(TV), which operates over-the-air on Ch. 10 in Las Vegas, NV. The project would purchase one Flexicart and eight logo generator/inserters.

File No. 99139CRB, Board of Regents/UCCSN/University of Nevada Las Vegas, P.O. Box 452010 Las Veqas, NV 891542010. Contact: Mr. Donald Fuller, Gen. Mgr., (702) 895–3877. Funds Requested: $88,825. Total Project Cost: $118,434. To improve public radio station KUNV–FM, 91.5 MHz, Las Vegas, by replacing its 20-year-old transmitter, antenna, and transmission line. Station serves about 1.3 million people.

File No. 99250CRB, Shoshone-Paiute Tribes of the Duck Valley Reservation, P.O. Box 219 Owyhee, NV 89832. Contact: Mr. Herman Atkins, Tribal Administrator, (775) 757–3211. Funds Requested: $233,723. Total Project Cost: $311,631. To activate a new noncommercial FM radio station on 88.5 MHz, in Owyhee. New station will carry the signal of KNBA–FM, Anchorage, Alaska and programming from the American Indian Radio on Satellite (AIROS) network . These programs will be delivered via satellite. Initially the station will have 4 hours/day of local programming. New station will provide a first noncommercial FM service to about 1,550 Native Americans.

New York

File No. 99005CTB, Public Broadcasting Council of Central New York, Inc., 506 Old Liverpool Road Syracuse, NY 13220. Contact: Mr. John Duffy, Chief Engineer, (315) 453–2424. Funds Requested: $75,000. Total Project Cost: $150,000. To improve public television station WCNY–TV, Channel 24 in Syracuse, NY, by replacing the master control video server. The station serves a population of over 1.7 million residents of central New York State.

File No. 99023CTB, St. Lawrence Valley Educational Television Council, Inc., 1056 Arsenal Street Watertown, NY 13601. Contact: Mr. Thomas Hanley, President/General Manager, (315) 782–3142. Funds Requested: $61,925. Total Project Cost: $123,850. To improve public television stations WPBS/WNPI–TV, Channels 16 and 18 in Watertown, NY, by replacing four obsolete one-inch videotape players with digital-based VTRs. The stations serve a population of over 1 million people.

File No. 99042CTB, Western New York Public Broadcasting Association, 140 Lower Terrace Buffalo, NY 14202. Contact: Mr. Richard Daly, Senior VP Broadcasting, (716) 845–7002. Funds Requested: $490,333. Total Project Cost: $980,667. To improve public television station WNED–TV, Channel 17 in Buffalo, NY, by upgrading to a digital router and replacing 14 one-inch and two ¾″ videotape machines, the production switcher and the linear editing switcher with digital units. The station serves a population of 1.6 million people.

File No. 99068CRB, Long Island University, Southampton College Southampton, NY 11968. Contact: Dr. Wallace Smith, General Manager, (516) 287–8295. Funds Requested: $153,682. Total Project Cost: $307,365. To improve public radio station WPBX–FM, 88.3 MHz in Southampton, NY, by replacing the damaged and unreliable transmitter and antenna. The station is relocating its transmission facilities to a new site. WPBX serves a population of 3.5 million residents of Long Island, and the southern region of Connecticut and Rhode Island.

File No. 99076CTB, Mountain Lake Public Telecommunications Council, One Sesame Street Plattsburgh, NY 12901. Contact: Mr. Howard Lowe, President and General Manager, (518) 563–9770. Funds Requested: $157,440. Total Project Cost: $209,920. To improve public television station WCFE–TV, Channel 57 in Plattsburgh, NY, by replacing the 12-year-old analog master control switcher with a digital switcher. The station serves a population of 341,000 people.

File No. 99105ICTN, Board of Cooperative Educational Services for the Sole Supervisory District of O, 179 County Route 64 Mexico, NY 13114. Contact: Mr. Frank House, Executive Director, (315) 963–4248. Funds Requested: $544,191. Total Project Cost: $725,588. To purchase equipment that would allow the Oswego County BOCES, Mexico, NY, to establish a distance learning network interconnecting 12 sites located throughout Oswego and Fulton Counties. The project would install video classrooms in nine public school districts, a BOCES site, the State University of New York College at

Oswego, and an outreach center of the Cornell Cooperative Extension. The interconnection will be achieved via dedicated T–1 high speed data lines interconnected with a fiber optic network.

File No. 99138CTB, Long Island Educational TV Council, Inc., Channel 21 Drive Plainview, NY 11803. Contact: Mr. Terrel Cass, President & General Manager, (516) 367–2100. Funds Requested: $493,303. Total Project Cost: $986,607. To improve public television station WLIW–TV, Channel 21 in Plainview, New York, by replacing the 21-year-old transmitter with a digital-ready transmitter and purchasing analog test equipment. The station serves approximately 5.1 million people in New York City, Westchester and Rockland counties, Long Island, New Jersey and Connecticut.

File No. 99174CTB, WXXI Public Broadcasting Council, 280 State Street Rochester, NY 14614. Contact: Mr. Norm Silverstein, President and CEO, (716) 325–7500. Funds Requested: $300,000. Total Project Cost: $600,000. To improve public television station WXXI–TV, Channel 21 in Rochester, NY, by replacing obsolete and unreliable master control and production equipment, including master control and production switchers, one-inch and ¾″ videotape machines, color monitors and test equipment. The station serves a population of 1.2 million people.

File No. 99213CRB, St. Lawrence University, St. Lawrence University Canton, NY 13617. Contact: Ms. Ellen Rocco, Station Manager, (315) 229–5356. Funds Requested: $71,912. Total Project Cost: $108,250. To expand the coverage area of WSLU–FM, 89.5 MHz in Canton, NY, by installing two transmitters and one translator to serve the communities of Morristown, Chateaugay and Old Forge. The new service will provide first public radio programming to about 30,000 residents of these communities. The project also includes the urgent replacement of two generators and obsolete recording equipment. WSLU currently serves a population of 450,000 people.

Ohio

File No. 99013CTB, Educational Television Association of Metropolitan Cleveland, 4300 Brookpark Road Cleveland, OH 44134. Contact: Mr. Jerrold Wareham, President & CEO, (216) 739–3850. Funds Requested: $47,750. Total Project Cost: $95,500. To replace the translator in Thompson, OH, of public television station WVIZ(TV); the latter broadcasts on Ch. 25 in Cleveland, OH. The present Thompson translator has been operating on Ch. 67; the new translator would operate on Ch. 63. The Federal Communications Commission recently required the Ch. 67 translator to shut down operations because the translator interfered with the signal of a full-power station that had moved its transmitter and increased its power. This situation makes the present proposal an emergency application. The project would restore public television service to nearly 47,000 residents of the translators' service area immediately to the east of Cleveland.

File No. 99014CTB, Ohio University, Athens, OH 45701. Contact: Mr. Paul Witkowski, Associate Director, (740) 593–4784. Funds Requested: $734,167. Total Project Cost: $1,468,335. To improve the transmission facilities of public television station WOUB–TV, operating on Ch. 20 in Athens, OH, by replacing an 18 year old transmitter with a digital compatible unit. The project would also purchase a wideband antenna and tower to enable future conversion of the station to digital broadcasting. The project will ensure continued service to approximately 700,000 people in eastern Ohio and adjoining areas of West Virginia.

File No. 99120CTB, Greater Dayton Public Television, Inc., 110 South Jefferson Street Dayton, OH 45402. Contact: Mr. David Fogarty, President & General Manager, (937) 220–1611. Funds Requested: $299,848. Total Project Cost: $599,696. To improve the facilities of public television station WPTD, operating on Ch. 16 in Dayton, by replacing three 12 year old studio cameras and a 15 year old routing switcher. The new equipment will be digital compatible and will assist the station in converting to digital broadcasting. The applicant serves 2.6 million people in southwest/west-central Ohio and adjacent areas in Indiana and Kentucky.

File No. 99152CRB, Kent State University, 1613 East Summit Street Kent, OH 44242. Contact: Dr. John Perry, Executive Director and General, (330) 672–3114. Funds Requested: $161,266. Total Project Cost: $215,022. To extend the service of public radio station WKSU(FM), Kent, Ohio by constructing an FM repeater station operating on 90.7 MHz in Norwalk, OH. The new station will provide first public radio service to 52,947 people in Erie, Lorian and Huron counties and additional service to 37,149 in northeast Ohio.

File No. 99153CRB, Kent State University, 1613 East Summit Street Kent, OH 44242. Contact: Mr. John Perry, Executive Director and General, (330) 672–3114. Funds Requested: $94,589. Total Project Cost: $155,635. To improve the program service of public radio station WKSU–FM, operating on 89.7 MHZ in Kent, Ohio, and is repeater stations in northeast Ohio by constructing a satellite interconnection system. The satellite interconnection system will deliver WKSU–FM programming to new stations proposed for Norwalk and Sandusky, which are the subject of PTFP applications 99152 and 99154. The interconnection will also improve reliability of program delivery to existing repeater stations WKSV, Thompson; WKRJ, New Philadelphia; and WKRW, Wooster and will permit the broadcast of programming tailored to each station's coverage area.

File No. 99154CRB, Kent State University, 1613 East Summit Street Kent, OH 44242. Contact: Dr. John Perry, Executive Director & General M, (330) 672–3114. Funds Requested: $225,546. Total Project Cost: $300,728. To extend the service of public radio station WKSU(FM), Kent, Ohio by constructing an FM repeater station operating on 88.5 MHz in Sandusky. The proposed repeater station will provide first public radio service to an estimated 112,000 people in Erie, Ottawa, Sandusky, Huron and Seneca counties in Northeast Ohio.

File No. 99155CRB, The WOSU Stations of The Ohio State University, 2400 Olentangy River Road Columbus, OH 43210. Contact: Mr. Sam Eiler, Radio Station Manager, (614) 292–9678. Funds Requested: $56,330. Total Project Cost: $112,660. To improve the production facilities of the WOSU public radio stations by purchasing an audio vault system. The audio vault will replace audio cart machines and will permit the introduction of local programming on the applicant's radio stations. WOSU serves 1.5 million people in central Ohio through broadcasts on public radio stations WOSU–FM, 89.7 MHz in Columbus; WOSB–FM, 91.1 MHz in Marion; WOSV–FM, 91.7 MHz in Mansfield; WOSE–FM, 91.1 MHz in Coshocton; and WOSP–FM, 91.5 MHz in Portsmouth.

File No. 99185CTB, Public Broadcasting Foundation of Northwest Ohio, 136 Huron Street Toledo, OH 43604. Contact: Mr. Daniel Niedzwiecki, Director of Engineering, (419) 243–3091. Funds Requested: $279,500. Total Project Cost: $559,000. To improve the facilities of public television station WGTE, operating on Ch. 30 in Toledo, by replacing three 12 year old studio cameras and a 12 year old production switcher. The new equipment will be

digital compatible and will assist the station in converting to digital broadcasting. The applicant serves 1.6 million people in northwest Ohio and adjacent areas in Michigan.

File No. 99192CTB, Educational Television Association of Metropolitan Cleveland, 4300 Brookpark Road, Cleveland, OH 44134. Contact: Mr. Jerrold Wareham, President & CEO, (216) 739–3850. Funds Requested: $47,750. Total Project Cost: $95,500. To improve the facilities of television translator station W64AK, operating on Ch. 64 in Ashtabula. The translator rebroadcasts public television station WVIZ, Cleveland. The project will replace a 25 year old antenna and transmitter with modern equipment which can be tuned to another frequency. (As a result of the FCC's digital television plan, Ch. 64 will eventually be assigned by the FCC for non-television uses.) The project will ensure continued public television service to 110,000 residents of Ashtabula and Lake Counties in northeast Ohio.

File No. 99199CRB, Public Broadcasting Foundation of Northwest Ohio, 136 Huron Street, Toledo, OH 43604. Contact: Mr. Daniel Niedzwiecki, Director of Engineering, (419) 243–3091. Funds Requested: $62,150. Total Project Cost: $124,300. To improve the facilities of public radio station WGTE–FM, operating on 91.3 MHZ in Toledo, OH, by purchasing digital production equipment including an audio console, audio server, CD, and DAT machines. The applicant provides public radio service to 1.2 million residents of northwest Ohio and adjacent areas of Michigan.

File No. 99203CTB, Ohio State University, 2400 Olentangy River Road, Columbus, OH 43210. Contact: Mr. Thomas Lahr, Engineering Manager, (614) 292–9678. Funds Requested: $83,875. Total Project Cost: $167,750. To improve the facilities of public television station WOSU–TV, operating on Ch. 34 in Columbus, by purchasing digital routing and audio switching equipment. The project will enable WOSU to continue its service to 1.6 residents of central Ohio and will assist in the station's conversion to digital broadcasting as required by the FCC.

File No. 99239ICTN, Columbus State Community College, 550 East Spring Street, Columbus, OH 43215. Contact: Dr. Kevin May, Admin. Distance Educ., (614) 287–2589. Funds Requested: $64,532. Total Project Cost: $94,532. To allow Columbus State Community College, Columbus, OH, to extend its video conferencing distance learning system to the rural and underserved populations in Union and Madison Counties. The project would have two primary educational objectives. First, it would increase the access of the Post Secondary Enrollment Option students and the adult re-entry students in these counties to diverse instructional programs, college courses, and continuing education. Second, the efforts of the College's Community Education Services/Workforce Development Division in support of entrepreneurial businesses would be made available there.

File No. 99243CRB, Cincinnati Classical Public Radio, Inc., 1223 Central Parkway, Cincinnati, OH 45214. Contact: Ms. Cathy Beltz-Williams, Business Manager, (513) 241–8282. Funds Requested: $47,356. Total Project Cost: $94,712. To improve the facilities of public radio station WGUC(FM), operating on 90.9 MHz in Cincinnati, OH by replacing a 16 year old transmitter. The project also will purchase a digital 950 MHz studio to transmitter link to replace a fiber optic interconnection. WGUC(FM) serves 1.7 million people in the Cincinnati metropolitan area in Ohio, Kentucky and Indiana.

File No. 99245CTB, Greater Cincinnati Television Education Foundation, 1223 Central Parkway Cincinnati, OH 45214. Contact: Mr. W. Wayne Godwin, President & General Mgr., (513) 381–4033. Funds Requested: $129,832. Total Project Cost: $324,581. To improve the production facilities of public television station WCET–TV, operating on Ch. 48 in Cincinnati, OH by replacing 11″ and ¾″ videotape recorders and audio cart machines with digital videorecorders and a digital audio server. The equipment will assist in the station's conversion to digital broadcasting and ensure continued service to 1.5 million people in the Cincinnati metropolitan area.

Oklahoma

File No. 99146CTB, Oklahoma Educational Television Authority, 7403 North Kelley Avenue, Oklahoma City, OK 73113. Contact: Mr. Malcolm Wall, Executive Director, (405) 848–8501. Funds Requested: $361,662. Total Project Cost: $723,324. To improve the state public television network's Tulsa news bureau/studio by replacing origination, test and other associated equipment. The 1982 studio provides local production from northeast Oklahoma. Productions are fed to the network for dissemination throughout the state system which serves about 2.96 million people.

Oregon

File No. 99074CTB, Oregon Public Broadcasting, 7140 SW Macadam Avenue Portland, OR 97219. Contact: Ms. Deborah Hinton, Sr. Vice President, (503) 293–4008. Funds Requested: $504,157. Total Project Cost: $1,008,314. To improve the facilities of KOPB–TV, operating on Ch. 10 in Portland, OR by purchasing a video server, digital routing switcher, 4 channel SDTV encoder and automation system. The project will assist in the conversion to digital television broadcasting by the applicant and will ensure continued public television service to 3 million residents of northwest Oregon and southern Washington State.

File No. 99141IPTN, School District No. 1 Multnomah County Oregon, P.O. Box 3107 Portland, OR 97208. Contact: Ms. Christine Poole-Jones, Administrator, (503) 916–3382. Funds Requested: $166,760. Total Project Cost: $208,622. To assist School District No. 1, Multnomah County, OR—popularly known as the Portland Public Schools—prepare a comprehensive, strategic long-range telecommunications plan. The project would allow the Portland Public Schools to analyze its existing telecommunications and distance learning technologies and, with this analysis as a base, to achieve the following: (a) outline strategies for consolidating existing technologies into a coordinated infrastructure; (b) provide a detailed blueprint for future technology acquisition and use; and (c) describe management, resource, implementation, and training requirements.

File No. 99217ICTN, North Clackamas School District, 14211 SE Johnson Road Milwaukie, OR 97267. Contact: Dr. Ronald Dexter, Director, Professional Tech., (503) 653–3813. Funds Requested: $658,000. Total Project Cost: $1,337,000. To improve the production facilities of the distance learning facility of the Owen Sabin Skills Center by constructing a new video studio. The applicant reaches over 300,000 people in Claxton County via cable access channel and serves additional viewers by satellite distribution.

Pennsylvania

File No. 99032CTB, Pennsylvania State University, 102 Wagner Building University Park, PA 168023899. Contact: Mr. William Speakman, Acting General Manager, (814) 865–3333. Funds Requested: $104,350. Total Project Cost: $208,700. To augment the digital production capability of public station WPSX, ch. 3, University Park, PA, by constructing a Fibre Channel

network to facilitate the production of interactive and enhanced program content. The station serves a population of about 1,365,677.

File No. 99033CRB, Pennsylvania State University, 102 Wagner Building University Park, PA 168023899. Contact: Mr. William Speakman, Acting General Manager, (814) 865–3333. Funds Requested: $15,744. Total Project Cost: $20,992. To extend the coverage of public radio station WPSU, 91.5 MHz, University Park, PA, by activating an FM translator at 102.5 MHz in Huntingdon, PA, to bring the first public radio signal to about 17,333 residents.

File No. 99060CRB, Northeastern Pennsylvania Educational Television Association, 70 Old Boston Road Pittston, PA 18640. Contact: Mr. A. William Kelly, President/CEO, (570) 601–1120. Funds Requested: $98,266. Total Project Cost: $196,532. To improve the signal of public station WVIA–FM, 89.9 MHz, Pittston, PA, by replacing its worn out and obsolete antenna and underpowered transmitter. The project will also activate an FM repeater at 89.7 MHz in Williamsport, PA. The new repeater will use the current transmitter from WVIA–FM in a situation in which its power will be adequate. The repeater will bring the first public radio signal to about 63,533 persons. WVIA–FM presently serves a population of more than one million.

File No. 99071CTB, Northeastern Pennsylvania Educational Television Association, 70 Old Boston Road Pittston, PA 18640. Contact: Mr. A. William Kelly, President/CEO, (570) 602–1120. Funds Requested: $226,745. Total Project Cost: $453,490. To improve the operation of public station WVIA–TV. ch. 44, Pittston, PA, by acquiring a digital file server and automation system. The station serves a population of more than one million.

File No. 99075CTB, Independence Public Media of Philadelphia, Inc., 6070 Ridqe Avenue Philadelphia, PA 19128. Contact: Ms. Sherri Culver, General Manager, (215) 483–3900. Funds Requested: $262,353. Total Project Cost: $349,805. To improve the operation of public station WYBE, ch. 35, Philadelphia, PA, by acquiring a digital file server and additional video tape recorders, and by replacing obsolete satellite downlink and studio demod. The station serves a population of 5,500,000.

File No. 99090CTB, WQED Pittsburgh, 4802 Fifth Avenue Pittsburgh, PA 15213. Contact: Mr. Jeffrey Rutkowski, Director, Administration, (412) 622–1312. Funds Requested: $969,915. Total Project Cost: $1,939,831. To improve the operation of public station WQED–TV, ch. 12, Pittsburgh, PA, by replacing worn out and obsolete items of equipment, including switcher, cart decks, editor, and ENG packages. All new equipment will be digitally compatible. The station serves a population of 3.25 million.

File No. 99143CTB, WHYY, Inc., 150 North Sixth Street Philadelphia, PA 19106. Contact: Mr. John Doran, Chief Engineer, (215) 351–1271. Funds Requested: $502,354. Total Project Cost: $1,004,708. To improve the operation of public station WHYY–TV, ch. 12, Philadelphia, PA, by replacing worn out and obsolete production equipment, including master control switcher, routing switcher, video server, encoder, monitoring, and test gear. All equipment will be digital-capable. The station serves a population of about 7,280,200.

File No. 99188CRB, WQED Pittsburgh, 4802 Fifth Avenue Pittsburgh, PA 15213. Contact: Mr. James Cunninqham, Station Manager, (412) 622–1541. Funds Requested: $68,951. Total Project Cost: $137,902. To improve the signal of public station WQED–FM, 89.3 MHz, Pittsburgh, PA, by replacing its worn out and obsolete antenna. The station serves a population of about 1,283,557.

File No. 99193IPTN, Crawford County Regional Alliance, 18257 Industrial Drive Meadville, PA 16335. Contact: Mrs. Maryann Martin, Chief Executive Officer, (814) 337–8200. Funds Requested: $75,000. Total Project Cost: $155,000. To assist the Crawford County Regional Alliance, Meadville, PA, to plan for the incorporation of distance learning and information technologies into its future Regional Training & Conference Center. The Alliance is an element of the Crawford County Development Corporation.

File No. 99224CRB, Public Broadcasting of Northwest Pennsylvania, Inc., 8425 Peach Street Erie, PA 16509. Contact: Ms. Thomas McLaren, Director of Radio, (814) 864–3001. Funds Requested: $14,253. Total Project Cost: $28,506. To improve the operation of public station WQLN–FM, 91.3 MHz, Erie, PA, by replacing worn out and obsolete logging and automation equipment. The station serves a population of about 427,300.

File No. 99225CTB, WITF, Inc., 1982 Locust Lane Harrisburg, PA 17105. Contact: Mr. Greg Poland, Senior VP & COO, (717) 236–6000. Funds Requested: $400,000. Total Project Cost: $2,225,000. To purchase the equipment required to allow public television station WITF(TV), Harrisburg, PA, to initiate digital television transmission. WITF(TV) broadcasts its analog signal on Ch. 33 and will transmit its digital service on Ch. 36.

File No. 99249CRB, Golden Triangle Radio Information Center, Inc., 2100 Wharton Street Pittsburgh, PA 15203. Contact: Mr. David Noble, General Manager, (412) 488–3944. Funds Requested: $37,931. Total Project Cost: $50,575. To improve the facilities of the Radio Information Service, a radio reading service in Southwestern Pennsylvania, by replacing the STL, the SCA Generator and an equalizer. The project will also purchase 350 SCA receivers to be donated to potential listeners. The Radio Information Service currently has 6,500 daily listeners.

Puerto Rico

File No. 99103CTB, Ana G. Mendez University System, State Road 176 KM 0.3 Cupey San Juan, PR 00928. Contact: Mr. Ariel Diaz, Chief Engineer, (787) 766–2600. Funds Requested: $346,125. Total Project Cost: $461,500. To replace the microwave system that interconnects public television station WMTJ(TV), which operates on Ch. 40 in San Juan, PR, to its satellite station, WQTO(TV), which operates on Ch. 26 in Ponce. Both stations are licensed to the Ana G. Mendez University System (AGMUS). The previous microwave system was irreparably damaged on September 21, 1998 by Hurricane Georges. For this reason, the proposal is considered to be an emergency application. Since the hurricane devasted the microwave, the interconnection has been accomplished by using the AGMUS Instructional Television Fixed Service equipment. This has resulted in a lower-quality public television signal in Ponce and a severe diminishing of the number of hours of instructional programming the University System is able to offer its learners in Ponce.

File No. 99121ICTN, Hispanic Educational Telecommunications System, Highway 1 Experimental Station Rio Piedras, PR 00927. Contact: Dr. Nitza Hernandez, Executive Director, (787) 250–0000. Funds Requested: $412,562. Total Project Cost: $825,125. To extend the distance learning services of the Hispanic Educational Telecommunications System (HETS) by constructing satellite facilities at the John Jay College of Criminal Justice in New York City, Miami Dade Community College in Miami, and Inter American University and the University of Scared Heart in San Juan, Puerto Rico. HETS is a consortium of nine colleges throughout the United States which link Hispanic college students.

File No. 99145ICTN, Ponce School of Medicine, P.O. Box 7004 Ponce, PR 00732. Contact: Mr. Ramon Torres-

Morales, VP of Business Affairs, (787) 848–4254. Funds Requested: $350,000. Total Project Cost: $580,229. To allow the Ponce School of Medicine, Ponce, PR, to extend medical education and training course work to three remote health care sites via video teleconferencing.

South Carolina

File No. 99040CTB, South Carolina Educational Television Commission, 1101 George Rogers Boulevard Columbia, SC 29201. Contact: Mr. Leslie Griffin, Vice President-Engineering, (803) 737–3486. Funds Requested: $364,036. Total Project Cost: $728,073. To improve the state public television network's telecommunications center by replacing worn-out and obsolete equipment. Equipment being acquired includes master control scheduling system, automation system, digital file server system, non-linear editing system and associated test equipment. Public TV network serves about 3.6 million people.

File No. 99150CRB, South Carolina Educational Television Commission, 1101 George Rogers Boulevard Columbia, SC 29201. Contact: Mr. Thomas Fowler, Vice President, Radio, (803) 737–3404. Funds Requested: $102,570. Total Project Cost: $213,080. To improve the facilities of the South Carolina Educational Radio network by constructing a C-band satellite system to interconnect the eight stations in the network. The satellite system will improve delivery of programing to the stations and will permit broadcast of programming directed at each station's local service area. The eight stations in the project are WEPR–FM, 90.1 MHz, Greenville; WNSC–FM, 88.9 MHz, Rock Hill; WLTR–FM, 91.3 MHz, Columbia; WRJA–FM, 88.1 MHz, Sumter; WHMC–MF, 90.1 MHz, Conway; WLJK–FM, 89.1 MHz, Aiken; WJWJ–MF, 89.9 MHz, Beaufort; and WSCI–FM, 89.3 MHz, Columbia. The applicant provides public radio service to 4.8 million people in South Carolina and adjacent areas of Georgia and North Carolina.

File No. 99159IPTN, South Carolina State Board for Technical and Comprehensive Education, 111 Executive Center Drive Columbia, SC 29210. Contact: Dr. Candace Gosnell, Associate Exec. Director, (803) 737–9321. Funds Requested: $49,363. Total Project Cost: $70,518. To assist the South Carolina State Board for Technical and Comprehensive Education (''the State Board''), Columbia, to plan how best to extend its present distance learning activities so as to reach learners who are presently inhibited by diverse barriers from full participation in higher education. The State Board administers a system of 16 State technical colleges, whose main campuses are interconnected by a T–1 based distance learning system featuring interactive compressed video. The project would develop a distance education implementation and management plan to guide the expansion of the State Board's telecommunication infrastructure to ensure that learners, wherever they may live in the State, would have access to high quality and affordable technical education.

File No. 99196ICTN, Tri-County Technical College, 7900 Highway 76 Pendleton, SC 29670. Contact: Ms. Tabatha Thompson, Director of Grants, (864) 646–8361. Funds Requested: $374,170. Total Project Cost: $498,893. To assist Tri-County Technical College, Pendleton, SC, to establish a distance learning network that would interconnect the College with six high schools in the College's service area. The College serves Anderson, Oconee, and Pickens Counties in northwestern South Carolina. The project, which would encompass two high schools in each of those counties, would have two objectives: (1) to deliver dual-credit instruction to high school juniors and seniors from College instructors; and (2) to permit the high schools to share courses among themselves.

South Dakota

File No. 99160CTB, South Dakota Board of Directors for Educational Telecommunications, Cherry & Dakota Streets Vermillion, SD 57069. Contact: Mr. Donald Forseth, Tech. Services Coordinator, (605) 677–5861. Funds Requested: $200,000. Total Project Cost: $400,000. To improve KUSD–TV, Ch. 3, in Vermillion, by replacing obsolete, worn-out audio/video router and videotape machines. The new equipment will support the eventual digital conversion of the state's public television system which serves about 800,000 people.

Tennessee

File No. 99037CRB, University of Tennessee at Chattanooga, DEPT 1151 Chattanooga, TN 37403. Contact: Dr. John McCormack, Director, (423) 755–4756. Funds Requested: $32,203. Total Project Cost: $64,407. To improve the facilities of public radio station WUTC–FM, operating on 88.1 MHz in Chattanooga, by purchasing digital audio origination/production equipment and a studio site auxiliary power generator. The project will purchase a Digital Audio Delivery System as part of the station's conversion to digital technology. WUTC–FM serves 1 million residents in the states of Tennessee, North Carolina, Georgia and Alabama.

File No. 99045CTB, East Tennessee Public Communications Corporation, 1611 E. Magnolia Avenue Knoxville, TN 37917. Contact: Mr. Jim Tindell, President/General Manager, (423) 595–0220. Funds Requested: $137,929. Total Project Cost: $275,858. To improve the facilities of public television stations WKOP, operating on Ch. 15 in Knoxville, TN and WSJK, operating on Ch. 2 in Sneedville, TN. The project will purchase three new digital studio/field cameras to replace 13 year old equipment used by both stations. The project will also replace a 16 year old transmitter remote control system required for the continued operation of WSJK. The applicant's stations serve 2 million people in East Tennessee and surrounding areas of North Carolina, Virginia, and Kentucky.

File No. 99127CTB, Greater Chattanooga Public Television Corporation, 4411 Amnicola Hwy Chattanooga, TN 37406. Contact: Mr. Victor Hogstrom, President/General Manager, (423) 629–0045. Funds Requested: $107,165. Total Project Cost: $214,330. To improve the production facilities of public television stations WTCI, operating on Ch. 45 in Chattanooga, TN by replacing obsolete studio production equipment. The project would purchase digital videotape recorders, a portable digital camera, a non-linear editing system and lighting equipment for the station' studio. The project will help ensure continued program service to 800,000 residents of Tennessee, Georgia and Alabama and will assist in the station's conversion to digital broadcasting.

File No. 99208ICTN, Board of Education of the Memphis City Schools, 2597 Avery Avenue Memphis, TN 38112. Contact: Ms. Mary Korff, Interim Grant Writer, (901) 325–5791. Funds Requested: $477,475. Total Project Cost: $954,951. To extend the distance learning network recently established by the Memphis City Schools to an additional 55 schools in the system. The network is based on Asynchronous Transfer Mode (ATM) transmission. The project would purchase the ATM equipment for each of the schools. It would also assist the school system to buy a Ku-Band satellite uplink. The proposal would represent one element of a multi-phase project the intent of which is to equip all the City's schools for distance learning. The goals are to extend the benefits of the City's educational offerings on a more equal basis to all the City's students and to provide easily accessible professional

development for the teachers. The uplink would allow the teachers to interact with national leaders in education and the school system's administrators to ''meet'' with specialists across the country to help resolve system problems.

File No. 99237CTB, Mid-South Public Communications Foundation, 900 Getwell Road Memphis, TN 38111. Contact: Mr. Michael LaBonia, President & CEO, (901) 458–2521. Funds Requested: $60,600. Total Project Cost: $121,200. To improve the production facilities of public television station WKNO–TV, operating on Ch. 10 in Memphis, TN, by replacing four 1'' videotape machines with digital units. The videotape machines will be used in the station's Master Control and will assist in the station's conversion to digital broadcasting. WKNO–TV provides service to 1.7 million people in west Tennessee and adjacent areas of Mississippi, Arkansas and Missouri.

Texas

File No. 99025CTB, Capital of Texas Public Telecommunications Council, 2504–B Whitis Austin, TX 78705. Contact: Ms. Mary Beth Rogers, CEO & President, (512) 471–5561. Funds Requested: $279,097. Total Project Cost: $558,195. To improve public television station KLRU–TV, Ch. 18, in Austin by replacing old origination equipment with 3 CCD studio-type camera systems, a digital video recorder and a component measurement set. KLRU–TV serves about 1.23 million people

File No. 99034CTB, South Texas Public Broadcasting System, Inc., 4455 South Padre Island Drive Corpus Christi, TX 78411. Contact: Mr. Don Dunlap, President & General Mgr., (512) 855–2213. Funds Requested: $422,963. Total Project Cost: $563,950. To improve public television station KEDT–TV, Ch. 16, in Corpus Christi by replacing and upgrading worn-out origination, interconnection and test equipment to begin digital conversion. Equipment includes a digital STL, digital monitors, non-linear digital editor, still store, digital router and various digital interface equipment, camera pedestals and heads, plus wireless transmitters and beltpacks. KEDT–TV also seeks a steerable 3.8 meter satellite dish to obtain educational programming. KEDT–TV serves about 560,000 people.

File No. 99047CTB, University of Houston, 4513 Cullen Boulevard Houston, TX 77004. Contact: Mr. Jeff Clarke, CEO & General Manager, (713) 749–8202. Funds Requested: $574,546. Total Project Cost: $1,436,365. To improve public television station KUHT–TV, Ch. 8, in Houston by making transmitter upgrades in conjunction with the conversion to DTV and adding digital test equipment. Project will also acquire studio cameras with lens and pedestals, studio lighting system, and an audio console. Equipment will be used in the digital conversion of the station and the move to a new telecommunications center. KUHT–TV serves about 4.5 million people.

File No. 99049CTB, Alamo Public Telecommunications Council, 501 Broadway San Antonio, TX 78215. Contact: Mr. Charles Vaughn, Sr. VP Telecommunications, (210) 270–9000. Funds Requested: $196,335. Total Project Cost: $392,670. To improve public television station KLRN–TV, Ch. 9, in San Antonio, by augmenting the station's facilities by acquiring digital routing equipment. Equipment will be used in its current NTSC broadcasts and eventually will be used in the Digital TV conversion. KLRN–TV serves about 2 million people.

File No. 99115ICTN, Dallas County Community College District, LeCroy Ctr. for Educ. Telecom. Dallas, TX 75243. Contact: Mrs. Pamela Quinn, Asst. Chancellor, Ed. Telecom, (972) 669–6550. Funds Requested: $317,498. Total Project Cost: $634,996. To provide two-way digital video distribution of instructional video to nine sites throughout Dallas County. Seven of these sites would be member-schools of the Dallas County Community College District: El Centro College (Dallas); Brookhaven College (Farmers Branch); Richland College (Dallas); Eastfield College (Mesquite); Cedar Valley College (Lancaster); Mountain View College (Dallas); and North Lake College (Irving). The remaining sites would be the Bill J. Priest Institute for Economic Development and the R. Jan LeCroy Center for Educational Telecommunications. The system would expand the applicant's current video capacity to over 700 classrooms and would allow for multi-site origination of video programming for distance education.

File No. 99131CTB, Brazos Valley Public Broadcasting Foundation, 500 Speight P.S. 7296 Waco, TX 76703. Contact: Mr. Kliff Kuehl, General Manager, (254) 710–3874. Funds Requested: $670,080. Total Project Cost: $893,442. To improve and extend the signal of public television station KCTF–TV, Ch. 34, in Waco, by replacing its faulty and highly unreliable analog transmitter with a dual-cavity transmitter, improved antenna and studio-to-transmitter (STL) link. Modifications will provide improved service plus provide first public television service to about 12,000 people. KCTF–TV currently serves about 201,000 people.

File No. 99147CRB, North Texas Public Broadcasting, Inc., 3000 Harry Hines Boulevard Dallas, TX 75201. Contact: Mr. Jeffrey Luchsinger, Station Manager, (214) 871–1390. Funds Requested: $64,000. Total Project Cost: $128,000. To improve public radio station KERA–FM, 90.1 MHz, in Dallas, by replacing its outdated and malfunctioning analog audio record/play equipment with a digital storage and automation system. KERA–FM serves about 3.9 million people.

File No. 99148ICTN, United Star Distance Learning Consortium, Inc., 3305 North 3rd Suite 307 Abilene, TX 79603. Contact: Ms. Glenda Mathis, Executive Director, (915) 672–9499. Funds Requested: $735,376. Total Project Cost: $1,470,752. To purchase equipment to support the expansion of the StarNet distance learning network. Digital satellite downlinks will be purchased for 700 schools in over 40 states. Equipment requested also includes a satellite uplink to be placed at Education Service Center Region 20 in San Antonio, TX, and digital encoders to be placed at Western Illinois University in Macomb, IL, and at the Agency for Public Telecommunications in Raleigh, NC.

File No. 99166CTB, North Texas Public Broadcasting, Inc., 3000 Harry Hines Boulevard Dallas, TX 75201. Contact: Ms. Cheryl Craigie, President & CEO, (214) 740–9210. Funds Requested: $830,400. Total Project Cost: $1,660,800. To convert public station KERA–TV, Ch. 13, in Dallas, to digital broadcasting on Ch. 14 by purchasing DTV transmitter, encoder, test equipment and start-up production equipment. Equipment will be used with existing DTV antenna system funded in 1998. Station serves about 5.2 million people.

File No. 99176ICTN, Texas State Technical College, 3801 Campus Dr. Waco, TX 76705. Contact: Ms. Greta Hecker, Coordin. Video Productions, (254) 867–3300. Funds Requested: $867,134. Total Project Cost: $867,134. To improve the video production capabilities of Texas State Technical College, Waco. The College transmits instructional programming via a dedicated educational access channel of the local cable television system.

File No. 99204CTB, El Paso Public Television Foundation, Inc., UTEP Campus Education Building El Paso, TX 79902. Contact: Mr. Craig Brush, President and G.M., (915) 747–6500. Funds Requested: $62,100. Total Project Cost: $82,800. To improve public television station KCOS–TV, Ch. 13, in

El Paso, by replacing its obsolete ¾″ umatic tape machine system with a digital video file server and related equipment. KCOS–TV serves about 700,000 people.

File No. 99222ICTN, Alamo Public Telecommunications Council, 501 Broadway San Antonio, TX 78215. Contact: Mr. Charles Vaughn, Sr. VP Telecommunications, (210) 270–9000. Funds Requested: $371,650. Total Project Cost: $743,300. To purchase diverse digital archiving and server equipment that would permit public television station KLRN (TV)—which operates on Ch. 9 in San Antonio, TX—and Education Service Center Region 20 (''ESC Region 20'')—also based in San Antonio—to activate an educational content delivery system. The materials disseminated by the proposed system would be transmitted over the T–1-based STARTNet system administered by ESC Region 20. Project equipment, especially the digital servers, would be located at both KLRN (TV) and ESC Region 20, as well as at the eight participating school districts located throughout their service area. The eight participating districts would be Floresville, Kerrville, Cotulla, Eagle Pass, Pleasanton, North East, Southside, and Judson Independent. Once implemented, the system would allow teachers to enjoy immediate access to reference works and other digital media stored on CD–ROM and DVD technologies. In addition, hundreds of hours of classroom programming would be accessible from the two main servers at KLRN (TV) and ESC Region 20. These two central participants would facilitate timely program delivery to teachers by making some of the educational materials available on demand at any time, and others readily available by appointment over the Wide Area Network which would be part of the system.

Utah

File No. 99073CTB, University of Utah, Office of Sponsored Projects Salt Lake City, UT 84102. Contact: Ms. Lynne Chronister, Director of Sponsored Projects, (801) 581–3008. Funds Requested: $461,460. Total Project Cost: $922,920. To improve public television stations KUED–TV, Ch. 7, Salt Lake City and KULC–TV, Ch. 9, Ogden/Salt Lake City, by replacing obsolete, DTV-incompatible equipment with digital equipment. New equipment includes automation equipment, digital file server and router which will be installed in the broadcast center. In addition, a new repeater station will be activated on Ch. 19 in Richfield to provide channel protection. Channel will initially broadcast in NTSC but will be converted to DTV at a later time. All equipment is part of a phased DTV conversion plan. Stations serve about 2,059,148 people.

File No. 99181CRB, Listeners Community Radio of Utah, Inc., 230 South 500 West Suite 105 Salt Lake City, UT 84101. Contact: Mr. John Bortel, Pres. and General Manager, (801) 363–1818. Funds Requested: $94,958. Total Project Cost: $189,916. To improve and extend the signal of noncommercial radio station KRCL–FM, 90.9 MHz, Salt Lake City, by replacing its 17-year-old transmitter, studio-to-transmitter link, a variety of old, obsolete origination equipment and acquiring a new satellite dish and spectrum analyzer. KRCL–FM serves about 1.4 million people.

Virginia

File No. 99106CTB, Hampton Roads Educational Telecommunications Association Incorporated, 5200 Hampton Boulevard Norfolk, VA 23508. Contact: Ms. Roberta Baker, Corporate Secretary, (757) 889–9400. Funds Requested: $600,554. Total Project Cost: $1,201,108. To convert public Station WHRO–TV, Channel 15 in Norfolk, VA, to digital broadcasting on Channel 16 by purchasing and installing a digital transmitter, antenna, transmission line, microwave STL and test equipment. The station serves a population of 1.5 million people.

File No. 99107CTB, Shenandoah Valley Educational Television Corporation, 298 Port Republic Road Harrisonburg, VA 22801. Contact: Mr. Maurice Bresnahan, President/General Manager, (540) 434–5391. Funds Requested: $227,417. Total Project Cost: $454,835. To improve public television station WVPT–TV, Channel 51 in Harrisonburg, VA, and to begin the station's conversion to digital broadcast, by replacing old and obsolete equipment with state-of-the-art digital equipment, including the routing switcher, master control switcher, sync generator, character generator and test equipment. The station serves a population of more than 475,000 people.

File No. 99163IPTN, Old Dominion University, Room 145 Norfolk, VA 23529. Contact: Dr. Anne Savage, Asso VP for Academic Affairs, (757) 683–5314. Funds Requested: $100,575. Total Project Cost: $134,100. To help Old Dominion University, Norfolk, VA, and Florida A&M University, Tallahassee, FL, to develop a cooperative plan to extend their respective distance learning networks to several Historically Black Colleges and Universities (HBCUs). (Florida A&M Univerity is an HBCU.) If implemented, the extended networks would serve a number of purposes: strengthen existing degree programs at the several participating institutions; expand the number of their degree programs; engage in workforce development in the regions of the recipient schools; and improve the technological capabilities of the participating institutions.

File No. 99175CTB, Greater Washington Educational Telecommunications Association, Inc., 2775 S. Quincy Street Arlinton, VA 22206. Contact: Mr. Lewis Zager, Vice President Tech., (703) 998–2637. Funds Requested: $1,219,565. Total Project Cost: $1,626,087. To continue the conversion to digital broadcasting of WETA–DTV, operating on Digital Channel 34 in Arlington, VA, by purchansing a high definition television camera, digital high definition editing equipment and digital test and measurement equipment. The station serves a population of more than 2.7 million people.

File No. 99231IPTN, Virginia Polytechnic Institute & State University, 1700 Pratt Drive Blacksburg, VA 24061. Contact: Dr. Andrea Kavanaugh, Director of Research, (540) 231–5488. Funds Requested: $101,916. Total Project Cost: $154,337. To help Virginia Polytechnic Institute & State University (''Virginia Tech''), Blacksburg, plan how to establish distance learning interconnections in rural Smyth and Floyd Counties, both in southwest Virginia. The new system would deliver diverse programing: high school courses (including Graduate Equivalency Degree programs) and health care education and training.

Virgin Islands

File No. 99095CTB, Virgin Islands Public Television System, P.O. Box 7879 Charlotte Amalie, VI 00801. Contact: Ms. Lori Elskoe, General Manager, (340) 774–3226. Funds Requested: $175,163. Total Project Cost: $233,550. To purchase portable production equipment to allow public television station WTJX (TV), Charlotte Amalie, Virgin Islands, to establish an electronic news gathering system. WTJX (TV) operates on Ch. 12 and brings the sole public television service to the American Virgin Islands. The project would permit WTJX (TV) to offer its first local news service to its viewers.

Vermont

File No. 99078CTN, Lyndon State College, 1001 College Road Lyndonville, VT 05851. Contact: Ms. Cynthia Baldwin, Professor CAS, (802) 626–

6256. Funds Requested: $213,705. Total Project Cost: $284,940. To replace and enhance studio equipment at the cable television access production studio at Lyndon State College, Lyndonville, VT. The College has been transmitting its programming over a dedicated channel of the local cable television system since 1980.

File No. 99240CTB, Vermont ETV Inc, 88 Ethan Allen Ave Colchester, VT 05446. Contact: Mr. Wayne Rosberg, Vice President, (802) 655–5276. Funds Requested: $623,675. Total Project Cost: $1,247,350. To convert public station WVTA–TV, Channel 41 in Colchester, VT, to digital broadcasting on Channel 24 by purchasing and installing a digital transmitter, antenna, transmission line, microwave STL, encoder and test equipment. The station serves a population of 750,000 people.

Washington

File No. 99012CTB, Spokane School District #81, 3911 S. Regal Street Spokane, WA 99223. Contact: Mr. Claude Kistler, General Manager, (509) 353–5777. Funds Requested: $144,847. Total Project Cost: $289,694. To improve public television station KSPS–TV, Channel 7 in Spokane, WA, by replacing one-inch and 3/4'' videotape machines with a digital video server and purchasing digital test equipment. The station serves a population of 1.3 million people.

File No. 99041CRB, Evergreen State College, College Activities Building 301 Olympia, WA 98505. Contact: Mr. Michael Huntsberger, General Manager, (360) 866–6000. Funds Requested: $77,576. Total Project Cost: $129,294. To expand and improve the facilities of KAOS–FM, operating on 89.3 MHz in Olympia, WA, by relocating and replacing the transmitter, the antenna, STL and related equipment. The station will also increase power providing first public radio services to over 36,000 people, for a total of about 62,000 additional listeners. KAOS–FM currently serves 80,000 people.

File No. 99050CRB, Washington State University, 382 Murrow Center Pullman, WA 99164. Contact: Mr. Dennis Haarsager, Associate VP & General Manager, (509) 335–6511. Funds Requested: $74,205. Total Project Cost: $98,940. To extend the services of the Northwest Public Radio Network by constructing a repeater station in Chehalis, operating on 88.9 MHz, serving rural western Washington and providing first public radio programming to over 62,000 residents of the area.

File No. 99119CTB, KCTS Television, 401 Mercer Street Seattle, WA 98109. Contact: Mr. Burnill Clark, President & CEO, (206) 443–6706. Funds Requested: $381,500. Total Project Cost: $763,000. To continue the conversion to digital broadcasting of KCTS–DTV, operating on Digital Channel 41 in Seattle, WA, by purchasing a digital routing switcher and a digital multichannel master control switcher. The station serves a population of over 3.4 million people.

File No. 99234CTB, Bates Technical College, 1101 Yakima Avenue South Tacoma, WA 98405. Contact: Ms. Debbie Emond, General Manager, (253) 596–1528. Funds Requested: $398,493. Total Project Cost: $531,324. To extend the broadcast signal of KBTC–TV, Channel 28 in Tacoma, WA, by activating a repeater station in Bellingham, operating on Channel 34, that will provide first public broadcasting television programming to over 175,000 residents of the north Puget Sound region of Washington State.

Wisconsin

File No. 99030IPTN, La Crosse Medical Health Science Consortium, Inc., 105 Graff Main Hall La Crosse, WI 54601. Contact: Dr. Martin Venneman, Executive Director, (608) 785–8218. Funds Requested: $125,400. Total Project Cost: $167,200. To help the La Crosse Medical Health Science Consortium, Inc. (LMHSC), La Crosse, WI, plan for the activation of a distance learning network. In this proposal, the LMHSC would develop detailed plans for the first phase of a two-stage, long-range plan to establish a regional telecommunications network of ''virtual'' Population Health Centers throughout the LMHSC's service area. The service area encompasses 22 counties in southwestern Wisconsin and parts of Minnesota and Iowa. The long-range plan's first phase would center on three Wisconsin communities: Black River Falls (Jackson Co.); Mauston (Juneau Co.); and Prairie du Chien (Crawford Co.). The LMHSC is a collaborative body comprising the University of Wisconsin/La Crosse, Western Wisconsin Technical College, Viterbo College, Gundersen Lutheran Medical Center, and Franciscan Skemp Healthcare.

File No. 99118CTB, Milwaukee Area Technical College District Board, 1036 North 8th Street Milwaukee, WI 53233. Contact: Mr. Bryce Combs, General Manager, (414) 297–7661. Funds Requested: $690,611. Total Project Cost: $1,381,223. To improve the transmission facilities of public television station WMVT–TV, operating on Ch. 36 in Milwaukee, by replacing the transmitter, antenna and transmission line. The project will ensure continued service to 2 million people and assist in the station's conversion to digital broadcasting.

File No. 99144CRB, Wisconsin Educational Communications Board, 3319 West Beltline Highway Madison, WI 537134296. Contact: Mr. Thomas Fletemeyer, Executive Director, (608) 264–9676. Funds Requested: $112,825. Total Project Cost: $225,650. To improve the broadcast facilities of Wisconsin Public Radio by replacing unreliable transmitters at WHLA–FM, 90.3 MHz in La Crosse and WPNE–FM, 89.3 MHz in Green Bay, Wisconsin. The state network serves a population of 1.6 million people.

File No. 99178CRB, Lac Courte Oreilles Ojibwe Public Broadcasting Corporation, 13386 W. Trepania Road Hayward, WI 54843. Contact: Ms. Camille Lacapa, Program Director, (715) 634–2100. Funds Requested: $99,881. Total Project Cost: $199,762. To improve public radio station WOJB–FM, 88.9 MHz in Hayward, WI, by replacing the damaged 16-year-old transmitter and purchasing test equipment. The project will also replace studio equipment with new DAT machines, CD players, a stereo generator, microphones, amplifiers and speakers. The station serves a population of 129,000 people.

File No. 99205CTB, Wisconsin Educational Communications Board, 3319 West Beltline Highway Madison, WI 537134296. Contact: Mr. Thomas Fletemeyer, Executive Director, (608) 264–9676. Funds Requested: $901,240. Total Project Cost: $1,802,480. To convert public station WHRM–TV, Channel 20 in Wausau, WI, to digital broadcasting on Digital Channel 24 by purchasing and installing a digital transmitter, antenna and transmission line, STL, encoder and test equipment. The station serves a population of 478,450.

West Virginia

File No. 99135PRB, Educated Communications Unlimited, 109 Glenwood Avenue Charleston, WV 25312. Contact: Ms. Lisa Miller, Director, (304) 345–7594. Funds Requested: $75,000. Total Project Cost: $75,000. To plan for the establishment of a public radio station serving the residents of Charleston, Huntington and Beckley, West Virginia.

File No. 99220CTB, West Virginia Educational Broadcasting Authority, 600 Capitol Street Charleston, WV 25301. Contact: Mr. Bill Acker, General Manager, (304) 558–3400. Funds Requested: $760,567. Total Project Cost: $1,521,134. To improve and upgrade the production capability of the State

Network by replacing the router switcher, a 30-year-old lighting system, the character generator and the editing system at the Network's news and public affairs production studio in Charleston, WV. In addition, the project will replace the current analog microwave interconnection system with a fiber-optic ATM system and purchase and install new character generators at the Huntington and Morgantown stations. The Network serves a population of over 1.8 million residents of West Virginia.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 99–9950 Filed 4–22–99; 8:45 am]

BILLING CODE 3510–60–P

Friday
April 23, 1999

Part III

Department of Justice

Office of Justice Programs

28 CFR Part 90

Grants to Combat Violent Crimes Against Women on Campuses; Proposed Rule

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 90

[OJP (OJP)–1206]

RIN 1121–AA49

Grants To Combat Violent Crimes Against Women on Campuses

AGENCY: Violence Against Women Office, Office of Justice Programs, Justice.

ACTION: Proposed rulemaking.

SUMMARY: The Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice, is publishing proposed regulations governing the implementation of Grants to Combat Violent Crimes Against Women on Campuses authorized by Title VIII, Part E, section 826 of the Higher Education Amendments of 1998. This authorization provides funds to institutions of higher education for two broad purposes: To develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, particularly domestic violence, sexual assault, and stalking and to develop, enlarge, and strengthen victim services in cases involving violent crimes against women on campuses.

As microcosms of the larger society, institutions of higher education harbor many of the same social conditions and forces that permit violence against women to occur outside the campus community. Sexism, male student support systems that validate and perpetuate violence against women, and institutional minimization of, or indifference to, violence against women can create a climate that is inhospitable to women. Therefore, the higher education community must address not only the actual incidents and consequences, but also the underlying causes of violence against women.

DATES: Comments will be received no later than 5:00 p.m. on May 24, 1999.

ADDRESSES: Comments may be sent to Preet Kang, Senior Associate, Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Preet Kang, Senior Associate, Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531. Telephone: (202) 307–6026.

SUPPLEMENTARY INFORMATION: The Violence Against Women Office (VAWO) of the Office of Justice Programs (OJP) proposes to amend the regulations governing the STOP Violence Against Women Formula and Discretionary Grants Program, found at 28 CFR Part 90, to comply with the amendments to the authorizing statutes, 42 U.S.C. 3796gg through 3796gg–5, enacted by the Violence Against Women Act, Title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, and Title VIII, Part E, section 826 of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1815 (1998).

The Higher Education Amendments of 1998 authorize Federal financial assistance to institutions of higher education to work individually or in consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution. Grant funds may be used to develop, implement, and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including sexual assault, stalking, and domestic violence; and to develop and strengthen victim services and prevention efforts.

Statement of the Problem

Violence against women on college and university campuses is a serious, widespread problem. More than half of all stalking victims are between 18–29 years old, according to the National Violence Against Women Survey sponsored by the National Institute of Justice (NIJ) and the Centers for Disease Control and Prevention.[1] Similarly, National Crime Victimization Survey (NCVS) data indicate that more than 52 percent of all rape/sexual assault victims are females younger than age 25.[2] Although these figures are for the population as a whole, they are especially significant for the campus community in its efforts to recognize and address violent crimes against women, given the typical age of the campus populace. Further, results of several studies indicate that among college students, the average prevalence rate for nonsexual dating violence is 32 percent.[3]

Sexual assault is the second most common violent crime committed on college campuses, according to a national survey of 3,472 students at 12 randomly selected sites around the country.[4] This 1995 study also revealed that:

- Most of the perpetrators of sexual victimization are fellow students known to the victims;
- More sexual victimizations occur on-campus than off-campus;
- Half of the off-campus sexual victimizations occur in the victims' residence and an additional one-third occur in off-campus student housing, such as fraternities;
- Most of the victims of sexual assaults are full-time students, with about one-third of them being freshmen between 17–19 years old; and
- Almost 81 percent of the on-campus and 84 percent of the off-campus sexual assaults are not reported to police.

Consistent with the findings of this survey, numerous other studies have also revealed that sexual assaults, as well as other forms of violence against women, are seriously underreported generally and on campuses, indicating that the problem is even more acute than the available data suggest. Victims cite a number of reasons for not reporting the violence, including considering the matter to be private, being unaware or unclear that the violent behavior was in fact criminal, being embarrassed, fearing reprisals, and in some instances relenting to peer pressure, especially when the perpetrator is a prominent member of the campus community, such as an athlete.

One of the most frequent factors cited for violence against women on campus is substance abuse, particularly alcohol abuse, which is disproportionately high among college students. A survey of 89,874 students at 171 institutions of higher education revealed that alcohol was involved in 74 percent of the sexual assaults.[5] Another study conducted by the Harvard School of Public Health indicates that ''non-binge drinking women living on campuses with high levels of binge drinking had almost twice the risk of experiencing unwanted

[1] ''Stalking and Domestic Violence,'' Attorney General's Third Annual Report to Congress under the Violence Against Women Act, Office of Justice Programs, Violence Against Women Grants Office, (Washington, DC: U.S. Department of Justice, July 1998), p. 10.

[2] U.S. Department of Justice, Bureau of Justice Statistics, ''Age Patterns of Victims of Serious Violent Crime,'' September 1997, NCJ–162031.

[3] ''Fact Sheet on Dating Violence,'' Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, January 1998, p. 1.

[4] Bonnie Fisher, John J. Sloan, III, and Francis T. Cullen, ''Final Report: Understanding Crime Victimization Among College Students: Implications for Crime Prevention,'' Funded through National Institute of Justice Grant No. 93–IJ–CX–0049, 1995, p. 65.

[5] Presley, C.A., Meilman, P.W., Cashin, J.R., Leichliter, J.S., ''Alcohol and Drugs on American College Campuses: Issues of Violence, A Report to College Presidents,'' Core Institute Monograph, Southern Illinois University, Carbondale, IL, p. 4.

sexual advances as their counterparts at lower drinking-level schools.'' [6]

While alcohol may be an important, and all too frequent, exacerbating factor in violence against women in the campus community, alcohol consumption cannot be viewed as a causative factor of these crimes. Ultimately, the responsibility for the criminal actions rests with perpetrators, who must be held accountable. Unfortunately, many male students continue to hold beliefs and attitudes, about gender roles, often supported by their male peers, that result in the physical and sexual abuse of women, whether or not alcohol is involved.

Recently, cases have been reported in which perpetrators have used drugs to subdue their victims prior to the sexual assault. These drugs, such as Rohypnol and GHB, can be easily slipped into drinks and consumed by unsuspecting victims. Within 15 to 30 minutes of ingestion, the drugs may produce effects ranging from drowsiness, impaired memory or judgement, loss of motor skills, and dizziness to loss of consciousness. These effects are further magnified when the drugs are mixed with alcohol and can be potentially lethal. Victims often do not remember the attack itself but wake up knowing that something is wrong. They may have hazy memories of waking up for a few seconds during the assault and then losing consciousness again. For these reasons, an assault may not be reported to the police for several days, if at all, and victims may have difficulty testifying in court about the assault.

Unlike their counterparts in the larger community, female students victimized by fellow students often face additional challenges in a ''closed'' campus environment. For instance, stalking victims may find it difficult to escape their tormentors because the stalker may have a seemingly ''legitimate'' reason for remaining in contact with or proximity to the victim (e.g., attending class or studying in the library). Similarly, the fear and anguish suffered by rape victims may continue because they attend the same classes or live in the same dormitory as their rapists. Even changing class schedules or living arrangements may not eliminate the threat of encountering the perpetrator on campus, assuming such options are available without the victim incurring any academic disadvantage or further financial penalties and emotional hardship.

[6] Henry Wechsler, Bryn Austin, and William DeJong, ''Secondary Effects of Binge Drinking on College Campuses,'' The Higher Education Center for Alcohol and Other Drug Prevention Bulletin, February 1996, p. 4.

Historically, institutions of higher education generally have handled crimes of violence against women through closed administrative procedures or processes rather than initiating criminal proceedings through the local law enforcement agency. However, this approach, where it is used in lieu of a report to local law enforcement, sends a message to victims, perpetrators, and the entire campus community that violence against women is not criminal behavior. Quite simply, an administrative response trivializes the seriousness of these crimes. When campus administrators fail to respond adequately, they perpetuate the acceptance and continuation of violence against women and may also encourage the escalation of such behaviors.

Institutions of higher education are in a unique position to educate young men and women about violence against women, and to help shape attitudes that students will carry with them long after they leave. The campus community can create large-scale social change by adopting policies and protocols that treat violence against women as a serious offense and by developing victim services and programs that make victim safety, offender accountability and prevention of such crimes a high priority. Through their policies, protocols, and actions, colleges and universities can demonstrate to every student that violence against women in any shape or form will not be tolerated and that sexual assault, stalking, and domestic violence are serious crimes, requiring legal action. Should such violence and abuse occur, appropriate steps should be taken to ensure victim safety and offender accountability both through internal administrative disciplinary processes and through the criminal justice system. Violence against women should be treated with the same gravity as any other criminal justice matter, whether it occurs on a campus, on the streets, or in private homes.

Effective Responses to Combat Violence Against Women on Campuses

The cornerstone of any effective strategy for addressing violence against women must include the development of a coordinated, multidisciplinary response involving the entire campus community, including victim service providers, campus security, faculty, staff, administrators, offices of the dean of students, women's centers, the athletic department, student groups, fraternity and sorority life coordinators, health care professionals, and campus clergy. In addition, this comprehensive effort must involve the larger community in which the institution is located by developing partnerships with community-based victim service providers, victim advocates, local law enforcement and prosecution agencies and other criminal justice officials. A comprehensive, coordinated approach not only provides enhanced victim safety and offender accountability, but also includes prevention efforts to address the underlying causes of violence against women. Implementation of such coordinated strategies sends a strong message that acts of violence against women are serious criminal offenses and that ending violence against women requires the involvement of the entire campus and broader community.

Elements of a coordinated, multidisciplinary response include:

- Enlisting the full support and commitment of the entire campus leadership of the higher education institution, including the president or chancellor. This commitment can be demonstrated by establishing and strengthening campus policies and protocols; consistently implementing these policies; vigorously responding to victimization; publicly condemning all forms of violence against women; and actively communicating expectations about appropriate conduct. For instance, the president of the University of Virginia wrote a letter condemning acquaintance rape, along with a discussion of what constitutes acquaintance rape.[7] Both the letter and the discussion were published in the college newspaper.
- Emphasizing that sexual assault, stalking, and domestic violence are serious crimes and encouraging victims to report these crimes to criminal justice authorities. Higher education institutions, as a matter of policy, should routinely provide information about the criminal and civil justice options available to victims, with guidance on how to access these systems (e.g., providing information cards that list addresses and telephone numbers of sexual assault and domestic violence units in the local police department and the prosecutor's office). Victims should be provided assistance with obtaining services from criminal justice agencies (for example, transportation to the police department or the court.)
- Developing formal written policies and protocols specifically for

[7] ''Preventing Alcohol-Related Problems on Campus: Acquaintance Rape, A Guide for Program Coordinators,'' The Higher Education Center for Alcohol and Other Drug Prevention, (Newton, MA, 1997), p. 5–7.

responding to sexual assault, stalking, and domestic violence, emphasizing victim safety and confidentiality, as well as meaningful offender accountability. These policies and protocols must be formulated in collaboration with community and campus experts on violence against women to ensure that the needs of victims are met and that perpetrators are held accountable.

These protocols should provide clear guidance to campus officials on specific procedures for handling incidents of sexual assault, stalking and domestic violence, including who victims should notify on campus, how victims should make a report, the specific procedures to be followed once a report is made, and how officials should work with victims on the issue of notifying local law enforcement agencies to report the crime. The protocols must make clear that sexual assault, stalking, and domestic violence are crimes, that victims must be provided full information on how to report these crimes to local law enforcement, and that officials must not dissuade victims from reporting these crimes to local law enforcement. Training should be provided to all relevant persons in positions likely to respond to, or have authority over those responding to, violent crimes against women.

These policies and protocols must be widely disseminated to the campus community. Written materials should be developed for dissemination by the office of the dean of students, explaining the protocols and procedures as well as how victims can contact local law enforcement. These materials should also explain when a report will be filed with an internal disciplinary board, how the board operates, how long it will take to review and take action on such a report, the victim's and perpetrator's rights before the board, the range of sanctions or disciplinary actions possible, and any other relevant information.

- Developing comprehensive, appropriate victim services for all students[8] and campus employees[9], including underserved campus populations. To accomplish this goal, institutions of higher education must forge strong, meaningful partnerships with community-based victim service providers, victim advocates, and local law enforcement authorities to enhance collaboration and coordination of resources so that victims receive services tailored to their specific safety needs and perpetrators are held accountable through the criminal and civil justice system. These partnerships have the added benefit of ensuring that the higher education institution's decisionmaking is informed by the realities and experiences of the larger community.
- Reviewing and revising, if necessary, the student and employee codes of conduct and policies to ensure that incidents involving violence against women are treated as serious offenses, with strong consequences. These codes of conduct should be distributed to every new student and employee entering the institution. Institutions should explore other means of disseminating this information as widely as possible, including posting the code on an institution's website, sending it through e-mail, and posting excerpts on student and employee bulletin boards throughout the campus.
- Working in collaboration with campus and community-based victim advocates and victim service providers to develop training programs and materials (e.g., brochures and stickers with campus and local hotline numbers) for students and campus employees that explain the causes and consequences of violence against women. This training should include basic information and precise definitions of sexual assault, domestic violence, and stalking so that everyone understands what actions constitute each of these crimes, that these crimes are serious, and that offenders will face severe criminal sanctions. Information must be provided about both the internal institutional and external legal sanctions against perpetrators; common myths surrounding violence against women; why different victims may have very different responses to the same crime; the importance of gathering evidence promptly after a crime has been committed; the role of drugs and alcohol as contributory factors, including Rohypnol, GHB, and other drugs used by rapists; maintenance of victim confidentiality; available campus and community resources and how to access them; safety planning; how peers can support victims and hold offenders accountable; campus policies and protocols addressing violence against women; and any mandatory reporting policies and laws. The training should also include a discussion of the underlying causes, such as social attitudes, beliefs, and conditions that allow violence against women to exist in our society. These education programs should be made an integral component of orientation sessions for all first year students and other new students on campus and be mandatory for all campus employees.
- Formulating audience-specific training and awareness campaigns and developing resources to reach out effectively to student groups, such as athletes, fraternities, sororities, student groups representing diverse communities, first year students, and other new students. Materials should be tailored to the specific audiences being addressed. Members of these student groups should be recruited as trainers and spokespersons on issues related to violence against women. These individuals should receive rigorous training on the underlying causes of such violence.
- Developing ongoing, innovative public outreach campaigns to raise awareness and reinforce continually the information provided during the training. Possible opportunities for this ongoing training could include the periodic meetings convened by resident assistants for dormitory residents, and special events in conjunction with sexual assault and domestic violence awareness months. As part of this outreach campaign, the campus and local community media, such as the campus radio and television stations, could be used to disseminate information about violence against women, including how to identify signs of abuse, the legal rights of victims, availability of resources for victims, and sanctions for perpetrators.
- Developing strategies for preventing violence against women on campuses through education programs and media campaigns. These efforts should be designed to change the social norms, and attitudes that support and perpetuate violence against women.
- Evaluating the campus infrastructure for safety and security and the quality and availability of resources such as escort services after dark, shuttles, and extra lighting. This undertaking, however, should be only one element of a larger effort to address the problem comprehensively. As studies indicate, most women are victimized in private spaces, such as houses or apartments, by people they know. Therefore, by themselves, physical security measures have only a limited impact.

Campus sexual assault, stalking, and domestic violence are serious crimes requiring swift, forceful and coordinated responses from the higher education

[8] For the purposes of this Grant Program, students include both full- and part-time students enrolled at an institution of higher education.

[9] For the purposes of this Grant Program, employees include full-and part-time permanent faculty, staff, and administrators, as well as temporary and contract employees (e.g., visiting professors who are on sabbatical from other institutions for an extended time), and contractors whose primary work duties are on campus or at a location that is affiliated with the institution.

community. These responses must be sensitive to victims' needs and safety and must hold offenders accountable for their criminal actions through the criminal justice system and, as a supplement but not a substitute, through internal administrative disciplinary processes. Pursuing criminal charges enables victims of violence against women to use the criminal justice system to enhance their safety and potentially deter future abuse. These intervention efforts, however, must be combined with prevention strategies that seek to change the underlying campus culture and social norms that explicitly or implicitly support violent and abusive behavior against women.

Fiscal Year 1999 Grants To Combat Violent Crimes Against Women on Campuses

Consistent with the vision guiding all of the efforts supported through the Violence Against Women Act (VAWA), the Grants to Combat Violent Crimes Against Women on Campuses are designed to encourage the higher education community to adopt comprehensive, multidisciplinary strategies for preventing, detecting, and stopping violence against women, particularly sexual assault, stalking, and domestic violence. Addressing and ending violence against women is the entire community's responsibility. Institutions of higher education, working in partnership with the communities in which they are located, must adopt coordinated, campus-wide and community-wide efforts for responding to sexual assault, stalking, and domestic violence. Accordingly, all applicants for these grants are strongly encouraged to form consortia consisting of campus personnel, such as the athletic department and the women's center; student organizations, such as fraternities and sororities; groups working with diverse communities; campus housing officials, including student residence hall assistants; campus administrators, such as the institution's president and the dean of students; campus disciplinary boards; security personnel such as campus police and local law enforcement; and on-campus and community-based victim service providers; prosecutors; and judicial personnel to shape and guide grant-funded efforts. This multidisciplinary approach is intended to create strategies that are responsive to victims, bring perpetrators to justice *and* change the underlying campus climate to make it inhospitable to violence and abuse against women in all shapes and forms.

For Fiscal Year 1999, Congress appropriated $10 million to the Department of Justice to fight violent crimes against women on campuses across the country. These funds will be awarded competitively for the following broad purposes:

1. To provide personnel, training, technical assistance, data collection, and other equipment to increase arrests, investigations, and adjudication of persons committing violent crimes against women on campus;
2. To train campus administrators, campus security personnel, and campus disciplinary or judicial boards to identify and respond more effectively to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;
3. To implement and operate education programs for prevention of violent crimes against women;
4. To develop, expand, or strengthen support services programs, including medical or psychological counseling, for victims of sexual offense crimes;
5. To create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action;
6. To develop and implement more effective campus policies, protocols, orders, and services to prevent, identify, and respond to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;
7. To develop, install, and expand data collection and communication systems, including computerized systems, linking campus security to the local law enforcement for the purposes of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions with respect to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;
8. To develop, enlarge, or strengthen victim service programs for the campus and to improve delivery of victim services on campus;
9. To provide capital improvements (including improved lighting and communications facilities but excluding the construction of buildings) on campuses to address violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence; and
10. To support improved coordination among campus administrators, campus security personnel, and local law enforcement to reduce violent crimes against women on campus.

Distribution of Grant Funds

The Higher Education Amendments of 1998 call on the Attorney General to award the Grants to Combat Violent Crimes Against Women on Campuses on a competitive basis. Every effort will be made to ensure the equitable participation of private and public institutions of higher education in activities supported through this Grant Program and the equitable geographic distribution of grants under this section among the various regions of the country.

Eligibility Requirements

To be eligible to receive grant funds under this Program, all grant applicants must be in compliance with the campus crime reporting requirements set forth in 20 U.S.C. 1092 (f) as amended by Public Law 105–244, 112 Stat. 1581, section 486(e) (1998).

This section requires in part that all institutions of higher education collect crime statistics and information about any campus security policies for their respective campuses. The information must be compiled in an annual security report and disseminated to all current students and employees, and, upon request, to any applicant for enrollment or employment. The annual security report must contain information regarding campus security policies and campus crime statistics. (See Exhibit A at the end of this document for relevant provisions of the Campus Security Act of 1990, as amended by Public Law 105–244, 112 Stat. 1741, section 486 (e) of the Higher Education Amendments of 1998.)

FERPA Requirements

To be eligible for this Grant Program, institutions of higher education must certify that they have developed policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended by Public Law 105–244, 112 Stat. 1835, section 951 of the Higher Education Amendments of 1998. (See Exhibit B at the end of this document for an excerpt of this section.) Under FERPA and if permissible under State law, an institution of higher education may disclose to law enforcement agencies the name of the student who is an alleged perpetrator of any crime of violence or a nonforcible sex offense, as well as his or her offense and any sanctions imposed upon him or her as a result of campus disciplinary proceedings conducted by the institution. FERPA permits such disclosure only after a student has been found to have been in violation of the

institution's rules or policies. Moreover, FERPA, as amended by Section 951 of the Higher Education Amendments of 1998, prohibits such disclosures by institutions of higher education unless the victim(s) and/or witness(es) provide their written consent.

To be eligible for this Grant Program, grantees are required to disclose to law enforcement information permitted under FERPA provided that it is consistent with State law, but only if the victim requests or agrees to the disclosure. Victims' consent to disclosure is necessary because their safety, confidentiality, and privacy could be compromised.

In addition, the Violence Against Women Office of the Office of Justice Programs will require all institutions of higher education applying for grant funds to certify that they have, or plan to develop within 60 days of receipt of grant funds, written policies prohibiting the disclosure of a victim's or a witness' name, address, telephone number, or any other identifying information without the prior voluntary written consent of the victim or witness. All applicants will be required to forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs with their grant application, or if no such policies have been developed, institutions must include written assurances in their grant application that within 60 days of receipt of a grant award, they will develop written policies and forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs. Institutions must also certify that these policies were developed in close collaboration with campus-based or community-based victim service programs.

Application Requirements

In their applications, all grant applicants must:

- describe the need for grant funds and a plan for implementation of any of the 10 purposes areas. Higher Education Amendments of 1998, section 826 (b), 20 U.S.C. 1152;
- describe how campus authorities shall consult and coordinate with nonprofit and other victim service programs both on campus and in the local community, including sexual assault and domestic violence victim service programs;
- describe the characteristics of the population being served, including type of campus, demographics of the population, and the number of students;
- provide measurable goals and expected results from the use of grant funds; and
- provide assurances that Federal funds made available under this section shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds, be made available by the institution for the 10 purpose areas set forth in section 826 (b) of the Higher Education Amendments of 1998. 20 U.S.C. 1152.

Other Requirements

OJP will require all applicants seeking funds for capital improvements to combine these efforts with a broader approach to addressing violence against women, consisting of some combination of the following: victim service provision or formation of a task force whose members include representatives of the institution's administration, the athletic department, student organizations such as the fraternities and sororities, the women's center, the health center, faculty and staff. While security strategies such as increased lighting and alarms are important, to be fully effective they must be part of a broader coordinated community response that addresses the underlying causes of violence against women. All applicants also will be required to enter into partnerships with nonprofit, nongovernmental victim service providers through formal memoranda of understanding (MOU) clearly describing the responsibilities of each partner.

Reporting Requirements

In addition to semi-annual progress reports, all institutions of higher education receiving a grant through this Program are required to submit annual performance reports to the Violence Against Women Office in the Office of Justice Programs. Funding shall be suspended if an institution fails to submit an annual performance report.

Upon completion of the grant period, the institution shall be required to file a performance report with the Violence Against Women Office of the Office of Justice Programs, Violence Against Women Office, and the U.S. Department of Education's Safe and Drug-Free Schools Program, explaining the activities carried out and assessing the effectiveness of those activities in achieving the purposes of the Program.

Request for Comments

In an effort to fulfill the letter, as well as the spirit of Title VIII, Part E, Section 826 of the Higher Education Amendments of 1998, the Violence Against Women Office of the Office of Justice Programs seeks comments on all aspects of this Program, consistent with the statutory limitations. Comments are being sought on a broad range of issues, including but not limited to the topics below.

- The Violence Against Women Office of the Office of Justice Programs is seeking comments on any other priority areas that should be considered in addition to the statutory purpose areas identified in § 90.102 of Subpart E of the regulation set out in the following pages.
- For the purposes of this Program, the Violence Against Women Office of the Office of Justice Programs is seeking comments on whether there are any special needs of diverse campuses with underserved populations that should be considered.
- For the purposes of this Program, victims are eligible for assistance provided through grant-funded programs if they qualify for the types of services provided through rape crisis centers, campus women's centers, battered women's shelters, sexual assault and domestic violence programs, including campus counseling support and victim advocate organizations, campus health centers, and other campus victim service providers, consistent with section 826(b)(4), (5) and (8) of the Higher Education Amendments of 1998. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether this scope of eligibility adequately covers the types of services needed by victims.
- For the purposes of this Program, section 826(f) of the Higher Education Amendments of 1998 defines the term ''victim services'' to mean a nonprofit, nongovernmental organization that assists domestic violence or sexual assault victims, including campus women's centers, rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, including campus counseling support and victim advocate organizations with domestic violence, stalking, and sexual assault programs, whether or not organized and staffed by students. This statutory definition excludes victim service providers, including women's centers, rape crisis centers and other sexual assault and domestic violence programs that are established and operated by public institutions of higher education. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether and/or how the exclusion of programs established and operated by public institutions will affect the effectiveness of this Program.
- For the purposes of this Grant Program, the Violence Against Women Office of the Office of Justice Programs

is defining ''students'' to include both full- and part-time students enrolled at an institution of higher education; and ''employees'' of the institution to include full- and part-time faculty, staff, and administrators, as well as temporary and contract employees such as visiting professors, and contractors whose primary work duties are on campus or at a location that is affiliated with the institution. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not these definitions adequately cover all persons on campuses.

- For the purposes of this Grant Program, ''campus-community members'' is defined as including all campus students and employees as defined above. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not the scope of the definition of campus-community members adequately encompasses the types of victimizations against women likely to occur in a campus environment.
- For the purposes of this Grant Program, victims are eligible for services provided through grant funds if they are students or employees (as defined above) at the institution. Victims are also eligible for services provided through grant funds if the victimization took place within the campus community as defined above. In addition, victims are eligible for grant-funded services if they are victimized by perpetrators who are students, faculty, staff, administrators or affiliated in some manner with an entity that is officially recognized by the institution of higher education, such as fraternities and sororities. Victims are also eligible for grant-funded services if the victimization occurred at events associated with campus life, such as educational activities, meetings, and social gatherings sponsored by an institution of higher education or a group affiliated with an institution of higher education. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not the eligibility criteria for grant-funded services adequately covers all types of victims affiliated with institutions of higher education.
- For the purposes of this Grant Program, victim services include, but are not limited to, 24-hour hotlines; development of safety plans with the victim; transportation to hospitals, medical appointments, police stations, prosecutor's offices, court hearings, and on- and off-campus service agencies; intervention with professors, employers, creditors, and landlords; relocation to another on-campus housing facility; provision of new locks and other security devices; provision of a new, unlisted telephone number and e-mail address; provision of services to victims with disabilities; provision of language interpretation services; orientation to the criminal justice and the institution's administrative disciplinary systems; written information about the institution's administrative disciplinary systems and criminal justice systems and options; escort to court, the administrative disciplinary hearings, and medical appointments; victim notification regarding offender release, case status and outcome; assistance with preparation of victim impact statements and restitution claims; assistance with insurance and other compensation claims; referrals to off-campus counseling; arrangements for and referrals to on-campus counseling; and assistance with a transfer to another institution of higher education if the victim chooses. For the purposes of this Grant Program, ''victim services'' excludes mediation between the victim and the offender, and any counseling or other support services for the perpetrator. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not the scope of the proposed grant-funded services adequately covers the needs of victims of sexual assault, stalking, and domestic violence.
- For the purposes of this Grant Program, institutions of higher education would be required to provide equal information about both the administrative disciplinary process and the criminal and civil justice process to victims, if available. In no case should less information be provided about the criminal and civil justice process than about the internal institutional administrative disciplinary process in an effort to influence the victim to pursue university adjudication of violent crimes against women. If applicable, victims should be provided with information about pursuing the matter through both the criminal and civil justice systems and the institution's administrative disciplinary process simultaneously. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not this requirement adequately ensures that victims receive information about options to seek redress and hold the perpetrator accountable through not only internal administrative disciplinary processes, but also through the criminal and civil justice systems.
- For the purposes of this Grant Program, institutions of higher education would be required to establish specific penalties for specific crimes, if not already in place (for example, mandatory permanent expulsion for criminal justice system convictions or a finding of guilt by the campus administrative disciplinary board for crimes of domestic violence, stalking, and sexual assault). Institutions of higher education also would have to develop means for entering permanent notations on the permanent student records or employee records of offenders. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not these requirements will assist in holding offenders accountable adequately.
- For the purposes of this Grant Program, institutions of higher education would be required to encourage victims to report sexual assault, domestic violence, and stalking to local law enforcement authorities and hold offenders accountable through the criminal and civil justice systems. Institutions must make every effort to facilitate victims' access to the criminal justice system by providing information about options; an explanation of how the criminal justice system operates; telephone numbers of appropriate law enforcement and legal agencies; and transportation to police stations, prosecutor's offices, and the courts. The Violence Against Women Office of the Office of Justice Programs is seeking comments on whether or not these requirements would provide adequate information to victims to enable them to make informed decisions about their options to use the criminal and civil justice systems.
- For the purposes of this Grant Program, Congress appropriated $10 million. To maximize the impact of these limited funds, the Violence Against Women Office of the Office of Justice Programs is seeking comments on whether the most effective use of these funds would be to support a limited number (e.g., 10 to 15) of carefully selected demonstration projects, or more numerous, smaller grants to a larger number of institutions of higher education.

Administrative Requirements

Executive Order 12866

This proposed regulation has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The

Office of Justice Programs has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation 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 rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The Grants to Combat Violence Against Women on Campuses will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to institutions of higher education, not small entities, and the economic impact is limited to the Office of Justice Programs' appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in the proposed regulation has been submitted to and approved by the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 90

Colleges and universities, Crime, Grant programs—Indians, Grant programs—law, Grant programs—women, Reporting and recordkeeping requirements, Women.

For the reasons set forth in the preamble, 28 CFR Chapter I is proposed to be amended as follows:

PART 90—VIOLENCE AGAINST WOMEN

1. The authority for part 90 is revised to read as follows:

Authority: 42 U.S.C. 3711 *et seq.*; Sec. 826, part E, title VIII, Pub. L. 105–244, 112 Stat. 1815.

2. Part 90 is amended by adding a new Subpart E to read as follows:

Subpart E—Grants to Combat Violent Crimes Against Women on Campuses

Sec.

Subpart E—Grants To Combat Violent Crimes Against Women on Campuses

§ 90.100 What is the scope of the grant program?

This subpart implements the Higher Education Amendments of 1998, Part E, Section 826 (Pub. L. 105–244, 112 Stat. 1815), which authorizes Federal financial assistance to institutions of higher education to work individually or in consortia consisting of campus personnel, student organizations, campus administrators, security personnel, and regional crisis centers affiliated with the institution for two broad purposes: to develop, implement, and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including sexual assault, stalking, and domestic violence and to develop, enlarge, and strengthen support services for victims of sexual assault, stalking, and domestic violence.

§ 90.101 What definitions apply for the grant program?

For the purposes of this subpart, the following definitions apply:

(a) *Domestic violence* includes acts or threats of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against a victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

(b) *Institution of higher education* is defined to include an educational institution in any State that admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate; is legally authorized within such State to provide a program of education beyond secondary education; provides an educational program for which the institution has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. Section 101, Public Law 105–244, 20 U.S.C. 1001.

(c) *Sexual assault* means any conduct proscribed by chapter 109A of Title 18, United States Code, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States or in a Federal prison, including both assaults committed by offenders who are strangers to the victim and assaults committed by offenders who are known or related by blood or marriage to the victim.

(d) *Victim services* means a nonprofit, nongovernmental organization that assists domestic violence or sexual assault victims, including campus women's centers, rape crisis centers, battered women's shelters, and other sexual assault or domestic violence programs, including campus counseling support and victim advocate organizations with domestic violence, stalking, and sexual assault programs, whether or not organized and staffed by students.

§ 90.102 What are the purposes of the grant program?

The purposes of the grant program in this subpart are:

(a) To provide personnel, training, technical assistance, data collection, and other equipment to increase arrests, investigations, and adjudication of persons committing violent crimes against women on campus;

(b) To train campus administrators, campus security personnel, and campus disciplinary or judicial boards to more effectively identify and respond to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;

(c) To implement and operate education programs for prevention of violent crimes against women;

(d) To develop, expand, or strengthen support services programs, including medical or psychological counseling, for victims of sexual offense crimes;

(e) To create, disseminate, or otherwise provide assistance and information about victims' options on and off campus to bring disciplinary or other legal action;

(f) To develop and implement more effective campus policies, protocols, orders, and services to prevent, identify, and respond to violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence;

(g) To develop, install, and expand data collection and communication systems, including computerized systems, linking campus security to the local law enforcement for the purposes of identifying and tracking arrests, protection orders, violations of protection orders, prosecutions, and convictions with respect to violent crimes against women on campus, including sexual assault, stalking, and domestic violence;

(h) To develop, enlarge, or strengthen victim service programs for the campus and to improve delivery of victim services on campus;

(i) To provide capital improvements (including improved lighting and communications facilities but excluding the construction of buildings) on campuses to address violent crimes against women on campus, including the crimes of sexual assault, stalking, and domestic violence; and

(j) To support improved coordination among campus administrators, campus security personnel, and local law enforcement to reduce violent crimes against women on campus.

§ 90.103 What are the eligibility requirements for the grant program?

(a) Eligible grantees are institutions of higher education that are in compliance with the campus crime reporting requirements as set forth in section 486(e) of the Higher Education Amendments of 1998, as amended, Public Law 105–244, 112 Stat. 1741, 20 U.S.C. 1092(f).

(b) To be eligible for this Grant Program, such institutions of higher education referred to in paragraph (a) of this section must:

(1) Collect crime statistics and information about any campus security policies for their respective campuses, and compile such data in an annual security report and disseminate it to all current students and employees, and, upon request, to any applicant for enrollment or employment;

(2) Include in all annual security reports referred to in paragraph (b)(1) of this section information regarding campus security policies and campus crime statistics;

(3) Certify that they have developed and carry out policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended by Section 951 of the Higher Education Amendments of 1998 (under FERPA and if permissible under State law, an institution of higher education may disclose to law enforcement agencies the name of the student who is an alleged perpetrator of any crime of violence or a nonforcible sex offense, as well as his or her offense and any sanctions imposed upon him or her as a result of campus disciplinary proceedings conducted by the institution. FERPA permits such disclosure only after a student has been found to have been in violation of the institution's rules or policies. Moreover, FERPA, as amended by Section 951 of the Higher Education Amendments of 1998, prohibits such disclosures by institutions of higher education unless the victim(s) and/or witness(es) provide their written consent.);

(4) Disclose to law enforcement information permitted under FERPA provided that it is consistent with State law, but only if the victim requests or agrees to the disclosure;

(5) Certify that they have, or plan to develop within 60 days of receipt of grant funds, written policies prohibiting the disclosure of a victim's or a witness' name, address, telephone number, or any other identifying information without the prior voluntary written consent of the victim or witness;

(6) Forward copies of policies referred to in paragraph (b)(4) of this section to the Violence Against Women Office of the Office of Justice Programs with their grant applications, or if no such policies have been developed, must include written assurances in their grant application that within 60 days of receipt of a grant award, they will develop written policies and forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs;

(7) Certify that policies referred to in paragraph (b)(4) of this section have been developed in close collaboration with campus-based or community-based victim service programs; and

(8) Enter into partnerships with nonprofit, nongovernmental victim service providers through formal memoranda of understanding (MOU) clearly describing the responsibilities of each partner.

§ 90.104 What must the grant program application contain?

(a) *Format.* Applications from institutions of higher education must be submitted on Standard Form 424, Application for Federal Assistance, at a time designated by the Violence Against Women Office of the Office of Justice Programs. The Violence Against Women Office of the Office of Justice Programs will develop and disseminate to institutions of higher education and other interested parties a complete Application Kit, which will include a Standard Form 424, a list of assurances to which applicants must agree, and additional guidance on how to prepare and submit an application for grants under this Subpart. Complete application kits will be available from: The Violence Against Women Office, Office of Justice Programs, 810 Seventh Street, N.W., Washington, D.C. 20531. Telephone: (202) 307–6026.

(b) *Programs.* Applications must set forth programs and projects that meet the purposes and criteria of the Grants to Combat Violent Crimes Against Women on Campuses set out in §§ 90.102 and 90.103.

(c) *Requirements.* Applicants in their applications must, at a minimum:

(1) Describe the need for grant funds and a plan for implementation of any of the 10 purpose areas set forth in section 826 (b) of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1816 (20 U.S.C. 1152);

(2) Describe how campus authorities shall consult and coordinate with nonprofit and other victim service programs, including sexual assault and domestic violence victim service programs;

(3) Describe the characteristics of the population being served, including type of campus, demographics of the population, and the number of students;

(4) Provide measurable goals and expected results from the use of grant funds;

(5) Provide assurances that Federal funds made available under this section shall be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of Federal funds, be made available by the institution for the 10 purposes as set forth in section 826 (b) of the Higher Education Amendments of 1998, Pub. L. 105–244, 112 Stat. 1816 (20 U.S.C. 1152);

(6) Identify the agency or office or groups of agencies or offices responsible for carrying out the Program; and

(7) Include documentation from nonprofit, nongovernmental sexual assault and domestic violence victims' programs demonstrating their participation in developing the application, and explain how these groups will be involved in the development and implementation of the project.

(d) *Certifications.* (1) Each institution of higher education applying for grant funds must be in compliance with the eligibility requirements set out in § 90.103.

(2) Each institution of higher education applying for grant funds must certify that it has developed policies consistent with the requirements of the Amendment to the Family Educational Rights and Privacy Act (FERPA) of 1974, at Section 951 of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1835.

(3) Each institution of higher education applying for grant funds must certify that it has, or plans to develop within 60 days of receipt of grant funds, written policies prohibiting the disclosure of a victim's or a witness' name, address, telephone number, or any other identifying information without the prior voluntary written consent of the victim or witness.

(4) Each institution of higher education applying for grant funds is required to forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs with their grant application, or if no such policies have been developed, institutions must include written assurances in their grant application that within 60 days of receipt of a grant award, they will develop written policies and forward copies of these policies to the Violence Against Women Office of the Office of Justice Programs.

(5) Each institution of higher education applying for grant funds must certify that policies referred to in paragraph (d)(4) of this section have been developed in close collaboration with campus-based or community-based victim service programs.

(6) Each institution of higher education applying for grant funds must certify that all the information contained in the application is correct. All submissions will be treated as a material representation of fact upon which reliance will be placed, and any false or incomplete representation may result in suspension or termination of funding, recovery of funds provided, and civil and/or criminal sanctions.

§ 90.105 What are the review criteria for grant program applications?

(a) *Equitable participation and geographic distribution.* In accordance with Section 826(a)(3) of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1816, every effort shall be made to ensure:

(1) The equitable participation of private and public institutions of higher education in the activities assisted under this subpart; and

(2) The equitable geographic distribution of grants funded through this subpart among the various regions of the United States.

(b) *Additional review criteria.* Priority shall be given to applicants that demonstrate a commitment to developing strong collaborative models for developing services that are victim-centered; policies, protocols and penalties that hold offenders accountable; and programs that educate the entire campus community about how to end and prevent violence against women through systemic change. Commitment may be demonstrated in a number of ways including: clear communication from the institution's top leadership that strong responses to and prevention of violence against women is a priority; development and vigorous enforcement of campus policies and adherence to local laws addressing violence against women; creation of coordinated, multidisciplinary task forces that include at a minimum both campus and community-based victim service providers and campus security personnel and local law enforcement; innovative approaches to educating the entire campus community, including faculty, staff, administration, and students; provision of training and education programs to campus security personnel, others in positions of authority, and campus victim service providers; development of resource materials and information on violence against women; and innovative dissemination strategies for communicating information about the identification of violence against women, its underlying causes, and the consequences of committing violent crimes against women.

(c) *Intergovernmental review.* This grant program is covered by Executive Order 12372, Intergovernmental Review of Federal Programs (3 CFR, 1982 Comp., p. 197), and implementing regulations at 28 CFR Part 30. A copy of the application submitted to the Violence Against Women Office of the Office of Justice Programs should also be submitted at the same time to the State's Single Point of Contact, if there is a Single Point of Contact.

§ 90.106 What are the grantee reporting requirements for the grant program?

(a) *Semi-annual progress reports and annual performance reports.* Each grantee receiving funds under this subpart shall submit semi-annual progress reports and an annual performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office). Funding shall be suspended if a grantee fails to submit an annual performance report.

(b) Final performance report. Upon completion of the grant period, the institution shall be required to file a final performance report to the Attorney General (Office of Justice Programs, Violence Against Women Office) and the Secretary of Education (U.S. Department of Education's Safe and Drug Free Schools Program) explaining the activities carried out under this Subpart along with an assessment of the effectiveness of those activities in achieving the purposes set forth previously.

Note: The following exhibits will not appear in the Code of Federal Regulations.

Exhibit A to Preamble—Excerpts From Section 204 of the Student Right-to-Know and Campus Security Act, as Amended by Section 486(f) of the Higher Education Amendments of 1998

Relevant sections of the campus crime reporting requirements set forth in the Student Right-To-Know and Campus Security Act, as amended by the section 486(e) of the Higher Education Amendments of 1998, 20 U.S.C. 1092(f),[1] mandate the following:

(f) Disclosure of campus security policy and campus crime statistics

(1) Each eligible institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall on August 1, 1991, begin to collect the following information with respect to campus crime statistics and campus security policies of that institution, and beginning September 1, 1992, and each year thereafter,

[1] Note: The official version of section 486(e) of Public Law 105–244 appears at 112 Stat. 1742.

prepare, publish, and distribute, through appropriate publications or mailings, to all current students and employees, and to any applicant for enrollment or employment upon request, an annual security report containing at least the following information with respect to the campus security policies and campus crime statistics of that institution:

(A) A statement of current campus policies regarding procedures and facilities for students and others to report criminal actions or other emergencies occurring on campus and policies concerning the institution's response to such reports.

(B) A statement of current policies concerning security and access to campus facilities, including campus residences, and security considerations used in the maintenance of campus facilities.

(C) A statement of current policies concerning campus law enforcement, including—

(i) the enforcement authority of security personnel, including their working relationship with State and local police agencies; and

(ii) policies which encourage accurate and prompt reporting of all crimes to the campus police and the appropriate police agencies.

(D) A description of the type and frequency of programs designed to inform students and employees about campus security procedures and practices and to encourage students and employees to be responsible for their own security and the security of others.

(E) A description of programs designed to inform students and employees about the prevention of crimes.

(F) Statistics concerning the occurrence on campus, in or on noncampus buildings or property, and on public property during the most recent calendar year, and during the 2 preceding calendar years for which data are available—

(i) Of the following criminal offenses reported to campus security authorities or local police agencies:

(I) murder;
(II) sex offenses, forcible or nonforcible;
(III) robbery;
(IV) aggravated assault;
(V) burglary;
(VI) motor vehicle theft;
(VII) manslaughter;
(VIII) arson; and
(IX) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations, and weapons possession; and

(ii) Of the crimes described in subclauses (I) through (VIII) of clause (i), and other crimes involving bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim that are reported to campus security authorities or local police agencies, which data shall be collected and reported according to category of prejudice.

(G) A statement of policy concerning the monitoring and recording through local police agencies of criminal activity at off-campus student organizations which are recognized by the institution and that are engaged in by students attending the institution, including those student organizations with off-campus housing facilities.

(H) A statement of policy regarding the possession, use, and sale of alcoholic beverages and enforcement of State underage drinking laws and a statement of policy regarding the possession, use, and sale of illegal drugs and enforcement of Federal and State drug laws and a description of any drug or alcohol abuse education programs as required under Section 1011i of this title.

(2) Nothing in this subsection shall be construed to authorize the Secretary to require particular policies, procedures, or practices by institutions of higher education with respect to campus crimes or campus security.

(3) Each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall make timely reports to the campus community on crimes considered to be a threat to other students and employees described in paragraph (1)(F) that are reported to campus security or local law police agencies. Such reports shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences.

(4)(A) Each institution participating in any program under this subchapter [20 U.S.C.A. 1070 *et seq.*] and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. 2751 *et seq.*] that maintains a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording all crimes reported to such police or security department, including—

(i) The nature, date, time, and general location of each crime; and

(ii) The disposition of the complaint, if known.

(B)(i) All entries that are required pursuant to this paragraph shall, except where disclosure of such information is prohibited by law or such disclosure would jeopardize the confidentiality of the victim, be open to public inspection within two business days of the initial report being made to the department or a campus security authority.

(ii) If new information about an entry into a log becomes available to a police or security department, then the new information shall be recorded in the log not later than two business days after the information becomes available to the police or security department.

(iii) If there is clear and convincing evidence that the release of such information would jeopardize an ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until that damage is no longer likely to occur from the release of such information.

(5) On an annual basis, each institution participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 [42 U.S.C.A. 2751 *et seq.*] shall submit to the Secretary a copy of the statistics required to be made available under paragraph (1)(F). The Secretary shall—

(A) Review such statistics and report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on campus crime statistics by September 1, 2000;

(B) Make copies of the statistics submitted to the Secretary available to the public; and

(C) In coordination with representatives of institutions of higher education, identify exemplary campus security policies, procedures, and practices and disseminate information concerning those policies, procedures, and practices that have proven effective in the reduction of campus crime.

(6)(A) In this subsection:

(i) The term ''campus'' means—

(I) Any building or property owned or controlled by an institution of higher education within the same reasonably contiguous geographic area of the institution and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, including residence halls; and

(II) Property within the same reasonably contiguous geographic area of the institution that is owned by the institution but controlled by another person, is used by students, and supports institutional purposes (such as a food or other retail vendor).

(ii) The term ''noncampus building or property'' means—

(I) Any building or property owned or controlled by a student organization recognized by the institution; and

(II) Any building or property (other than a branch campus) owned or controlled by an institution of higher education that is used in direct support of, or in relation to, the institution's educational purposes, is used by students, and is not within the same reasonably contiguous geographic area of the institution.

(iii) The term ''public property'' means all public property that is within the same reasonably contiguous geographic area of the institution, such as a sidewalk, a street, other thoroughfare, or parking facility, and is adjacent to a facility owned or controlled by the institution, if the facility is used by the institution in direct support of, or in a manner related to the institution's educational purposes.

(B) In cases where branch campuses of an institution of higher education, schools within an institution of higher education, or administrative divisions within an institution are not within a reasonably contiguous geographic area, such entities shall be considered separate campuses for purposes of the reporting requirements of this section.

(7) The statistics described in paragraph (1)(F) shall be compiled in accordance with the definitions used in the uniform crime reporting system of the Department of Justice, Federal Bureau of Investigation, and the modifications in such definitions as implemented pursuant to the Hate Crime Statistics Act. Such statistics shall not identify victims of crimes or persons accused of crimes.

(8)(A) Each institution of higher education participating in any program under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall develop and distribute as part of the report described in paragraph (1) a statement of policy regarding—

(i) Such institution's campus sexual assault programs, which shall be aimed at prevention of sex offenses; and

(ii) The procedures followed once a sex offense has occurred.

(B) The policy described in subparagraph (A) shall address the following areas:

(i) Education programs to promote the awareness of rape, acquaintance rape, and other sex offenses.

(ii) Possible sanctions to be imposed following the final determination of an on-campus disciplinary procedure regarding rape, acquaintance rape, or other sex offenses, forcible or nonforcible.

(iii) Procedures students should follow if a sex offense occurs, including who should be contacted, the importance of preserving evidence as may be necessary to the proof of criminal sexual assault, and to whom the alleged offense should be reported.

(iv) Procedures for on-campus disciplinary action in cases of alleged sexual assault, which shall include a clear statement that—

(I) The accuser and the accused are entitled to the same opportunities to have others present during a campus disciplinary proceeding; and

(II) Both the accuser and the accused shall be informed of the outcome of any campus disciplinary proceeding brought alleging a sexual assault.

(v) Informing students of their options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses.

(vi) Notification of students of existing counseling, mental health or student services for victims of sexual assault, both on campus and in the community.

(vii) Notification of students of options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available.

(C) Nothing in this paragraph shall be construed to confer a private right of action upon any person to enforce the provisions of this paragraph.

(9) The Secretary shall provide technical assistance in complying with the provisions of this section to an institution of higher education who requests such assistance.

(10) Nothing in this Section shall be construed to require the reporting or disclosure of privileged information.

(11) The Secretary shall report to the appropriate committees of Congress each institution of higher education that the Secretary determines is not in compliance with the reporting requirements of this subsection.

(12) For purposes of reporting the statistics with respect to crimes described in paragraph (1)(F), an institution of higher education shall distinguish, by means of separate categories, any criminal offenses that occur—

(A) on campus;

(B) in or on a noncampus building or property;

(C) on public property; and

(D) in dormitories or other residential facilities for students on campus.

(13) Upon a determination pursuant to section 1094(c)(3)(B) of this title that an institution of higher education has substantially misrepresented the number, location, or nature of the crimes required to be reported under this Subsection, the Secretary shall impose a civil penalty upon the institution in the same amount and pursuant to the same procedures as a civil penalty is imposed under section 1094(c)(3)(B) of this title.

(14) (A) Nothing in this Subsection may be construed to—

(i) Create a cause of action against any institution of higher education or any employee of such an institution for any civil liability; or

(ii) Establish any standard of care.

(B) Notwithstanding any other provision of law, evidence regarding compliance or noncompliance with this subsection shall not be admissible as evidence in any proceeding of any court, agency, board, or other entity, except with respect to an action to enforce this subsection.

* * * * *

Exhibit B to Preamble—Excerpts From the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g(b), as Amended by Section 951 of the Higher Education Amendments of 1998

Relevant sections of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g(b), as amended by Section 951 of the Higher Education Amendments of 1998, 112 Stat. 1835,[1] state the following:

* * * * *

''(B) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing the final results of any disciplinary proceeding conducted by such institution against a student who is an alleged perpetrator of any crime of violence (as that term is defined in Section 16 of Title 18, United States Code), or a nonforcible sex offense, if the institution determines as a result of that disciplinary proceeding that the student committed a violation of the institution's rules or policies with respect to such crime or offense.

''(C) For the purpose of this paragraph, the final results of any disciplinary proceeding—

''(i) Shall include only the name of the student, the violation committed, and any sanction imposed by the institution on that student; and

''(ii) May include the name of any other student, such as a victim or witness, only with the written consent of that other student.''.

* * * * *

Dated: April 15, 1999.

Laurie Robinson,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 99–9949 Filed 4–22–99; 8:45 am]

BILLING CODE 4410–18–P

[1] **Note:** The official version of section 951 of Public Law 105–244 appears at 112 Stat. 1835.

Friday
April 23, 1999

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1216

Peanut Promotion, Research, and Information Order; Referendum Procedures; Proposed Rule and Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–98–703–FR]

Peanut Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) is favored by a majority of the producers voting in the referendum. These procedures will also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The Order is being published in a separate document. This program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: This final rule is effective April 24, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop 0244, Washington, D.C. 20250–0244; telephone toll free (888) 720–9917, or facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: A referendum will be conducted among eligible peanut producers to determine whether the issuance of the proposed Peanut Promotion, Research, and Information Order (Order) (7 CFR Part 1216) is favored by a majority of persons voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (Pub. L. 104–427, 7 U.S.C. 7401–7425). The Order is being published separately in this issue of the **Federal Register**.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall be the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has examined the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of Section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an Order to be conducted either prior to its going into effect or within three years after assessments first begin under the Order. The American Farm Bureau Federation (proponent) has recommended that the Secretary conduct a referendum in which the Order must be approved by a majority of those persons voting. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This rule establishes the procedures under which producers may vote on whether they want a peanut promotion, research, and information program to be implemented. This action will add a new subpart which establishes procedures to conduct the initial referendum and future referenda. The subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

There are approximately 25,000 producers and 57 handlers of peanuts who would be subject to the program. Most producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR § 121.601], and most of the handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. The farm value of peanuts in 1997 reached $932 million. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, and based on the Census data for these nine states, 36 percent of the peanut-producing counties in the United States had 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992.

Of these, 15,914 were located in the nine primary peanut-producing states.

Three main types of peanuts are grown in the United States: Florunners, Virginia, and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region used to grow two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as ''ballpark'' peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to USDA's Foreign Agricultural Service, exports of U.S. peanuts (including peanut meal, oil, and peanut butter) totaled 880 million in-shell equivalent pounds in 1997, with a value of $285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was in-shell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. In-shell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million in-shell equivalent pounds of peanuts and processed peanuts (including oil and peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of $73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (in-shell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—are shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (in-shell equivalent basis). In-shell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

According to the ''Agricultural Statistics Report'' published by USDA, during the 1995–96 season, the average annual production per domestic producer was approximately 144,228 pounds of peanuts. Peanuts produced during these growing seasons provided average annual gross sales of $42,222 per peanut producer. The value of the 1995–96 crop was approximately $1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

This rule provides the procedures under which peanut producers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply. There are approximately 25,000 producers who will be eligible to vote in the first referendum.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this rule are designed to minimize the burden on producers. This rule provides for a ballot to be used by eligible producers in voting in the referendum. The estimated annual cost of providing the information by an estimated 25,000 producers would be $12,500 or $0.50 per producer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department also will accept ballots sent by facsimile (fax) machine. A pilot of this method was conducted during a recent referendum for another program. A fax machine was dedicated to the receipt of ballots. All ballots received in this manner were stored in the memory of the machine until the end of the voting period. Due to the large number of voters expected in the referendum on the proposed peanut program, USDA may use more than one such machine, providing voters in different states with different fax numbers in order to avoid exceeding the memory of the machine. Further, the Department would provide easy access to information for potential voters through a toll-free telephone line.

While other peanut programs have been implemented by the government, USDA has not identified any relevant federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Final Regulatory Flexibility Analysis regarding the impact of this rule on small entities. The results of this analysis have found that there would be no adverse effect on the small entities.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) which implement the Paperwork Reduction

Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, were submitted to OMB and have been approved under OMB control number 0581–0093.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each producer.

Respondents: Producers.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 1,250 hours.

The estimated annual cost of providing the information by an estimated 25,000 producers would be $12,500 or $0.50 per producer.

The ballot will be added to the other information collections approved for use under OMB Number 0581–0093.

In the proposed rule published on November 6, 1998 comments were invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

By the January 5, 1999, deadline for comments on information collections associated with this rule, no comments were received.

Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion Orders. The American Farm Bureau Federation (proponent), working in cooperation with 20 state and regional industry organizations from the peanut-producing states, has requested the establishment of a Peanut Promotion, Research, and Information Order (Order) pursuant to the Act. The Order will provide for the development and financing of an effective and coordinated program of promotion, research, and information for peanuts. The program would be funded by an assessment levied on producers (to be collected by handlers) at a rate of 1 percent of the total value of all farmers stock peanuts. When peanuts are placed under loan, a deduction from the producer's loan draft equal to 1 percent of the price support value would be made and submitted to the Board by an area marketing association. Once peanuts are sold for disposition from a loan, the association would remit the balance of the assessment to the Board. In the Order, peanuts are defined as the seeds of the legume arachis hypogaea, including both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible peanut producers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an Order to be conducted either prior to its going into effect or within three years after assessments first begin under the Order. According to the rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved by a majority of producers voting in the referendum, which will be held before the program is implemented.

The rule establishes the procedures under which producers may vote on whether they want the peanut promotion, research, and information program to be implemented. There are approximately 25,000 eligible voters.

This rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

A proposed rule on the Order was published in the November 6, 1998, issue of the **Federal Register** (63 FR 59893). On the same date, a proposed rule was published on the referendum procedures (63 FR 59907). As stated above, the comment period on the information collection requirements associated with this rule ended on January 5, 1999, and no comments were received on the information collection requirements. The comment period on the substance of the referendum procedures ended on January 5, 1999. Three comments were received on the procedures. Two commenters felt that the referendum period should be a least three weeks and one urged that the referendum be conducted in March or April. In addition, two comments were received on the proposed Order that stated that the referendum should be conducted no later than June 1, 1999. As is common practice, the representative period will be established in the referendum Order which is being published with the proposed Order. The referendum Order also establishes the voting period and identifies the referendum agents. The Department has established a three week voting period, but the referendum will be conducted in May. The proposed Order and referendum Order will be published separately in this issue of the **Federal Register**.

Two comments were received about § 1216.102 (c) which address how votes are to be cast. Both commentors expressed concern about how the Department would supervise the voting to provide that only eligible producers cast ballots. To ensure that only eligible producers cast ballots, information obtained from the Farm Service Agency (FSA) will be used to develop the mailing list that is generated to mail ballots to eligible producers. Also each commenter stated that voters should have the ability to hand deliver the ballots to local FSA offices. We deny the commentors' request to have hand delivery of the ballots to FSA offices. Conducting the referendum by mail will help ensure an accurate and precise count. This can be ensured by having one location for the delivery of the ballots which will allow for a daily monitoring of the process by the Agricultural Marketing Service's Office of Compliance and Analysis (OCA).

Two comments were received on § 1216.103 (2) (d) which addresses eligible persons' ability to receive a ballot. We deny this part of the comments concerning use of the local FSA offices. An FSA list of peanut producers will be used to determine eligible persons. As stated above, by conducting the referendum by mail an accurate and precise count can be determined by using one location for the

delivery of the ballots. In addition, any eligible voter that does not receive a ballot by mail may call the referendum agents as stated in the referendum Order which is being published with the proposed Order.

All ballot handling is done in the presence of an official from the OCA, and the referendum agents or the OCA official may request documentation from any or all voters. We believe this course of action addresses the commentors' concerns as well as allows for the timely tabulation of referendum results.

After consideration of all relevant material presented, it is found that this final rule is consistent with and will effectuate the purpose of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) A proposed rule with request for comments was published in the **Federal Register** and comments were received and they are addressed in this rule; (2) it is necessary to have these procedures in place in order to conduct the referendum in May 1999 prior to the beginning of the 1999 crop year; and (3) no useful purpose will be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7, Chapter XI of the Code of Federal Regulations is amended as follows:

1. Part 1216 is added to read as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—[Reserved]

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

Sec.

Authority: 7 U.S.C. 7401–7425.

Subpart A—[Reserved]

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

§ 1216.100 General.

Referenda to determine whether eligible peanut producers favor the issuance, amendment, suspension, or termination of a Peanut Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1216.101 Definitions.

The following definitions apply to this subpart:

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Order* means the Peanut Promotion, Research, and Information Order.

(c) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(d) *Representative period* means the period designated by the Secretary.

(e) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term ''partnership'' includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a peanut farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called ''joint ventures'' wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(f) *Eligible producer* means any person who is engaged in the production and sale of peanuts in the United States and who:

(1) Owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop;

(2) Rents peanut production facilities and equipment resulting in the ownership of all or a portion of the peanuts produced;

(3) Owns peanut production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the peanuts produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts who share the risk of loss and receive a share of the peanuts produced. No other acquisition of legal title to peanuts shall be deemed to result in persons becoming eligible producers.

§ 1216.102 Voting.

(a) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, or an administrator, executor, or trustee or an eligible producing entity may cast a ballot on behalf of such producer. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer, or an administrator, executive, or trustee of an eligible producing entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1216.103 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Peanut Promotion, Research, and Information Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1216.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1216.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1216.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1216.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: April 19, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–10135 Filed 4–22–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–98–702–PR 2]

Proposed Peanut Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum Order.

SUMMARY: This proposed rule would establish an industry-funded promotion, research, and information program for peanuts. A proposed program—the Peanut Promotion, Research, and Information Order (Order)—was submitted to U.S. Department of Agriculture (USDA or Department) by the American Farm Bureau Federation. Under the Order, peanut producers would pay an assessment of 1 percent of the price of farmers stock peanuts sold to first handlers. First handlers and marketing associations would remit the assessments to the proposed National Peanut Board (Board). The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act). In addition, the USDA is announcing that a referendum will be conducted among eligible peanut producers to determine whether they favor the implementation of the program.

DATES: In Order to be eligible to vote, peanut producers must have produced peanuts during the period from August 1, 1997, through July 30, 1998 (representative period). The voting period for the referendum will be May 24 through June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Daniel R. Williams II, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535-S, Washington, D.C. 20250–0244; telephone (202) 720–9916 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Public Law 104–127, enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within 2 years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for peanuts. A proposal was submitted by the American Farm Bureau Federation (proponent), working in cooperation with 20 state and regional peanut grower organizations representing the nine primary peanut-producing states and other states. The proponent has proposed that peanut producers approve the program in a referendum in advance of its implementation, and producer members would serve on the 10 member Board that would administer the program under USDA's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order.

While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. First handlers and area marketing associations—for peanuts placed under loan with the Commodity Credit Corporation (CCC) in the price support program administered for CCC by USDA's Farm Service Agency (FSA)—would collect and remit all assessments to the Board. Their responsibilities would include accurate recordkeeping and accounting of all peanuts purchased or contracted for, including the number of pounds handled, price paid to the producer, and when peanuts are purchased. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be retained for at least two years. These requirements are either already being conducted as a normal business practice or are required by other USDA peanut regulations. The added burden to first handlers and area marketing associations for a peanut promotion, research, and information program is therefore expected to be minimal.

There is also a minimal burden on producers. The burden relates to those producers who would seek nomination to serve on the Board and those who vote in referenda. In addition, the proposed Order would require producers to keep records and to provide information to the Board or the Secretary when requested. However, it is not anticipated that producers would be required to submit forms to the Board. Most likely, the information would be obtained through an audit of a producer's records to confirm information provided by a first handler or if a first handler did not file the required reports as part of the Board's compliance operation.

The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be $4,059.85 or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The Department would oversee program operations and, if the program is implemented, would conduct a referendum (1) every five years to determine whether peanut producers support continuation of the program, (2) at the request of the Board established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 25,000 producers and 57 first handlers of peanuts that would be subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). Most first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $5 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

According to USDA's National Agricultural Statistics Service (NASS), the nine major peanut-producing states in the United States account for 99 percent of the peanuts grown in this country. The combined production from these states totaled 3.5 billion pounds in 1997. The farm value of peanuts in 1997 reached $932 million. NASS reports that Georgia was the largest producer (38 percent of the total), followed by Texas (23 percent), Alabama (11 percent), North Carolina (9 percent), Florida (6 percent), Virginia (5 percent), Oklahoma (5 percent), New Mexico (1 percent), and South Carolina (1 percent). According to 1992 Census of Agriculture (Census) data, small amounts of peanuts were also grown in seven other states.

According to the proponent, based on Census data for these nine states, 36 percent of the peanut-producing counties in the United States acquired 35 percent or more of their total crop income from peanuts. Twenty-four percent of the counties had 50 percent or more of their crop income from peanuts. From a state perspective, 70 percent of the crop income in Alabama's peanut-producing counties is generated from peanuts. For Virginia, the percentage is 48 percent. In addition, 16,194 farms harvested peanuts in 1992. Of these, 15,914 were located in the nine primary peanut-producing states.

Three main types of peanuts are grown in the United States: Florunners, Virginia and Spanish. The southeast growing region grows mostly the medium-kernel Runner peanuts. The southwest growing region used to grow two-thirds Spanish and one-third Runner peanuts, but now more Runners than Spanish are grown. Virtually all of the Spanish peanut production is in Oklahoma and Texas. In the Virginia-Carolina region, mainly large-kernel Virginia peanuts are grown. New Mexico grows a fourth type of peanut, the Valencia.

Peanut manufacturers produce three principal peanut products: peanut butter, packaged nuts (including salted, unsalted, flavored, and honey-roasted nuts), and peanut candies. In most years, half of all peanuts produced in the United States for edible purposes are used to manufacture peanut butter. Packaged nuts account for almost one-third of all processed peanuts. Some of these (commonly referred to as ''ballpark'' peanuts) are roasted in the shell, while a much larger quantity is used as shelled peanuts packed as dry-roasted peanuts, salted peanuts, and salted mixed nuts. Some peanuts are ground to produce peanut granules and flour. Other peanuts are crushed to produce oil.

According to USDA's Foreign Agricultural Service, U.S. exports of peanuts (including peanut meal, oil, and peanut butter) totaled 880 million in-shell equivalent pounds in 1997, with a value of $285 million (U.S. point of departure for the foreign country). Of the total quantity, 60 percent was shelled peanuts used as nuts, 11 percent was blanched or otherwise prepared or preserved peanuts, 10 percent was in-shell peanuts, 7 percent was peanut butter, 4 percent was shelled oil stock peanuts, 4 percent was crude peanut oil, and 3 percent was refined peanut oil.

The major destinations for domestic shelled peanuts for use as nuts are Canada, Mexico, the United Kingdom, and the Netherlands. Blanched or otherwise prepared peanuts are sent mainly to Western Europe, especially the Netherlands, France, and Spain. In-shell peanuts are mainly exported to Canada and various countries in Western Europe. Peanut butter is sent to many countries, with the largest amounts going to Canada and Saudi Arabia. Peanut oil and oil stock peanuts are exported world-wide, but major destinations can vary from year to year.

Approximately 250 million in-shell equivalent pounds of peanuts and processed peanuts (including oil and peanut butter) were imported in 1997 with a combined value (f.o.b. country of origin) of $73 million. Most of the imports (45 percent) were shelled peanuts for use as nuts. The major U.S. supplier is Argentina, but several other countries export shelled peanuts to the United States, including Mexico, Nicaragua, and South Africa.

Peanut butter imports are also significant and accounted for about 32 percent of the total quantity of nuts (in-shell basis) imported in 1997. Most peanut butter imports come from Canada and Argentina. The other major import category—crude and refined peanut oil—are shipped mainly from Argentina and Nicaragua and account for approximately 18 percent of total imports (in-shell equivalent basis). In-shell peanuts, primarily from Mexico, accounted for nearly 3 percent of total imports in 1997. About 3 percent of total imports consisted of blanched or other processed peanuts, mainly from China. Imports of oil stock shelled peanuts were negligible.

Most peanuts produced in other countries are crushed for oil and protein meal. The United States is the main producer of peanuts used in such edible products as peanut butter, roasted peanuts, and peanut candies. Peanuts are one of the world's principal oilseeds, ranking fourth behind soybeans, cottonseed, and rapeseed. India and China usually account for half of the world's peanut production.

According to the ''Agricultural Statistics Report'' published by USDA, during the 1995–96 season, the average annual production per U.S. producer was 144,228 pounds of peanuts. Peanuts produced during these growing seasons provided average annual gross sales of $42,222 per peanut producer. The value of the 1995–96 crop was approximately $1.013 billion. During the same period, per capita consumption in the United States was 5.7 pounds of peanuts.

The Order would authorize a fixed assessment paid by producers (to be collected by first handlers) at a rate of 1 percent of the price paid for all farmers stock peanuts, regardless of whether the peanuts are sold commercially or placed under loan with CCC in the price support program administered for CCC by FSA.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. The proponent

has elected not to provide for exemptions for a de minimis amount regarding peanuts. Therefore, the term de minimis is not defined in the proposed Order, and a de minimis exemption is not included.

At the proposed rate of assessment of 1 percent of farm value, the Board would collect approximately $10 million annually, assuming 1 billion pounds of peanuts are produced. It is expected that the 1 percent rate of assessment would represent approximately 1 percent of producers' average return. In 1995–96, the average price for peanuts was $0.293 per pound.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed. If the program is implemented, the newly established Board would recommend to USDA regulations for the program.

In addition, the peanut industry would nominate producers to serve as members on the Board. The Board would recommend the assessment rate, programs and projects, a budget, and any other rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the peanut industry in accordance with the Act. Primary peanut-producing states are defined in the Order as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain 3-year average production of at least 10,000 tons of peanuts each. Minor peanut-producing states are defined in the Order as all peanut-producing states other than the primary peanut-producing states. Currently, the following states would be considered minor states: Arizona, California, Louisiana, Mississippi, and Tennessee.

Each primary producing state would have one member on the Board, and the minor peanut-producing states would be represented collectively by one member on the Board. Each member would have an alternate. Therefore, the Board would have 10 members and 10 alternates.

Proposed recordkeeping and reporting requirements for the peanut promotion, research, and information program would be designed to minimize the burden on first handlers. It is USDA's goal to collect as much information as possible from forms already submitted to another USDA agency. In addition, any information collection that could not occur through forms already in use would pose a minimal additional burden. The peanut promotion program would be designed to strengthen the position of peanuts in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for peanuts.

The estimated annual cost of providing the information to the proposed Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be $4,059.85, or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

With regard to alternatives to this proposed rule, the Act itself does provide for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an Order in Section 516 of the Act, and other sections provide for alternatives. For example, Section 514 of the Act provides for Orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an Order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an Order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the Order. An Order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, and others in the marketing chain as appropriate and importers, if importers are subject to assessment.

The proposal included provisions for both domestic and foreign market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect, with approval based upon a majority of those persons voting in a referendum.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, the proposed rule that was published in the **Federal Register** on November 6, 1998 (63 FR 59907) invited comments concerning the potential effects of the proposed Order. Concerning the information collection burden, one comment was received regarding the effect of the paperwork burden on first handlers. The concern of the commenter was that there would be significant administrative and financial burdens associated with collecting the information necessary to produce these reports and, finally, the production of the reports. The Department recognizes the burden that may be placed on first handlers due to the reports. In order to reduce this burden on first handlers, we modified § 1216.60 to eliminate the monthly requirement for first handlers to identify each producer, the address of the producer, and the date assessments were collected. However, we have also modified § 1216.61 *Books and records* to clarify what books and records first handlers and producers must maintain and make available to the Secretary and Board employees as necessary. This section now states that copies of FSA 1007 forms, the names and addresses of producers, and the date when assessments were collected must be maintained by first handler and producer. One purpose of this change is to help ensure that this information is available for enforcement purposes.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval and have been approved under OMB control number 0581–0093.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001.

Expiration Date of Approval: June 30, 1999.

OMB Number for other information collections: 0581–0093.

Expiration Date of Approval: November 30, 2000.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be the additional burden on producers of voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a final rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under this program, first handlers would be required to collect assessments from producers and file reports with and submit assessments to the Board. While the proposed Order would impose certain recordkeeping requirements on first handlers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability. The estimated annual cost of providing the information to the Board by an estimated 98 respondents (21 producers, 57 first handlers, and 20 producer organizations) would be $4,059.85, or $5.00 per producer, $66.05 per first handler, and $9.50 per producer organization.

The Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other peanut programs administered by the Department.

Most of the proposed forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such information can be supplied from the FSA Form 1007 without data processing equipment or outside technical expertise. FSA Form 1007 Inspection Certificate and Sales Memorandum is a standard form used within the peanut industry to collect peanut crop characteristics and value of the load from the producer to the first handler. This form will provide the information that would be needed in order to complete the first handlers form for the Board. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information monthly would coincide with normal industry business practices. Reporting other than monthly would impose an additional and unnecessary recordkeeping burden on first handlers. The timing and frequency of collecting information is intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports.

Information collection requirements that are included in this proposal include:

(1) *A background information form to be completed by candidates nominated by certified producer organizations for appointment to the Board.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each producer.

Respondents: Producers.

Estimated number of Respondents: 21 (average of 40 for initial nominations to the Board and approximately 12 respondents annually thereafter for each 3-year period).

Estimated number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 20 hours for the initial nominations to the board and 6 hours annually thereafter.

(2) *A monthly report by each first handler of peanuts.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per each first handler reporting on peanuts handled.

Respondents: First handlers.

Estimated number of Respondents: 57.

Estimated number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 342 hours.

(3) *Nomination information by which certified producer organizations would nominate producers for membership on the Board.*

Estimate of Burden: Public reporting burden for this collecting of information is estimated to average 0.5 hours per response.

Respondents: Certified producer organizations.

Estimated number of Respondents: 20.

Estimated number of Responses per Respondent: 1 per year.

Estimated Total Annual Burden on Respondents: 10 hours.

(4) *An application for peanut producer organizations for certification of eligibility to nominate Board members.*

Estimate of Burden: Public reporting for this collection of information is estimated to average 0.5 hours per response for each organization.

Respondents: Peanut producer organizations.

Estimated number of Respondents: 9.

Estimated number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 9 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: First handlers.

Estimated number of recordkeepers: 57.

Estimated total recordkeeping hours: 28.5 hours.

Comments were invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Information that is needed for recordkeeping would come from the FSA 1007 form. As stated earlier, this form is a standard form within the peanut industry and its use would result in no new training of personnel.

As discussed previously in the Regulatory Flexibility Analysis, one comment was received regarding the effect of the paperwork burden on first handlers. The concern of the commenter was that there would be significant administrative and financial burdens associated with collecting the information necessary to produce these reports and, finally, the production of the reports. The Department recognizes the burden that may be placed on first handlers due to the reports. In order to reduce this burden on first handlers, we have modified § 1216.60 to eliminate the monthly requirement for first handlers to identify the name and address of each producer and the date assessments were collected. However, we have also modified § 1216.61 *Books and records* to clarify what books and records that first handlers and producers must maintain and make available to the Secretary and Board employees. This section now states that

copies of FSA 1007 forms, the name and addresses of producers, and the date when assessments were collected must be maintained by the first handler and producer. The purpose of this change is to help ensure that this information is available for enforcement purposes.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion Orders. Section 516 of the Act provides permissive terms for Orders, and other sections provide for alternatives. For example, Section 514 of the Act provides for Orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an Order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports. In addition, Section 518 of the Act provides for referenda to ascertain approval of an Order to be conducted either prior to its going into effect or within 3 years after assessments first begin under the Order. The Order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for both domestic and foreign market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect and with approval based upon a majority of those persons voting in the referendum.

The Act provides for a number of optional provisions that allow the tailoring of Orders for different commodities.

The proponent, working in cooperation with 20 state and regional peanut industry organizations representing the nine primary peanut-producing states, has requested the establishment of a national peanut promotion, research, and information Order pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which includes a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal provides for the development and financing of an effective and coordinated program of research, promotion, and information for peanuts. The purpose of the program is to strengthen the position of peanuts in domestic and foreign markets, and to develop, maintain, and expand markets for peanuts.

The program would not become effective until approved by peanut producers in a referendum to be conducted by USDA. Section 518 of the Act provides for the Department (1) to conduct an initial referendum, preceding a proposed Order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed Order, pending the conduct of a referendum, among persons subject to assessments, within 3 years after assessments first begin.

In accordance with Section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) approval by a majority of those persons voting; (2) approval by persons voting who represent a majority of the volume of the commodity covered by the program; or (3) approval by a majority of the persons voting who also represent a majority of the volume of the commodity produced, handled, or imported by the persons voting.

The proponent proposes that the Department conduct an initial referendum preceding the proposed Order's effective date and that approval of the Order be determined by a simple majority of the producers voting.

In accordance with the Act, the Department would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) not later than 7 years after assessments first begin under the Order; or (2) at the request of the board established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted every 5 years to determine if producers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

The proponent states that the United States Congress has established a number of programs since the early 1930's to support and stabilize farm prices and income and to adjust production in 1934. In 1949, a revised system of marketing quotas and acreage allotments for peanuts began. Since then, Congress has amended and changed the peanut program a number of times, with the latest changes made to the peanut title in 1996 with the passage of the Federal Agriculture Improvement and Reform (FAIR) Act. The new program retains its price support and supply management elements while operating at no cost to the government other than administrative expenses common to all price support programs. The new program also lowers the loan rate for quota peanuts from $678 per ton to $610 per ton and freezes that price for the life of the program, through 2002. In addition, the quota level, which the Secretary could not set below 1.35 million tons prior to passage of the FAIR Act, has been reduced to equal the anticipated domestic demand for peanuts.

The proponent has identified a number of market and production factors that suggest the need for a national research, promotion, and information program for peanuts. The most basic problem affecting peanut marketing is a drop in demand caused by negative health perceptions of peanuts' fat content, competition from other snack foods, and lack of awareness among young people.

In addition, the proponent cites other factors. Government purchases of peanut butter are down. If purchases return to historic heights, purchases will still not be enough to reverse supply/demand trends. Also, a 1997 Gallup survey revealed that 87 percent of all consumers are peanut users, while 13 percent did not consume any peanuts in the past year. Per capita consumption of peanuts has been decreasing. It appears now that demand trends have bottomed out and are starting to rise. National promotion could bolster this trend.

The same survey indicated that the percent of peanut non-users is increasing, as is the percent of young people not consuming peanuts or peanut products. Thirty-five percent of all consumers surveyed indicated they did not consume any snack peanuts, and more than 40 percent thought peanuts contained cholesterol when, in fact, peanuts contain none.

The proponent also states that 26 percent of all consumers did not consume any peanut butter in 1997. Peanut butter could be an affordable

alternative for low-income consumers in comparison to other sandwich options, but fewer and fewer low income consumers are using peanut butter as an alternative.

In addition, in 1996, the farm value of U.S. peanuts fell below $1 billion, to $970 million, for the first time since 1982.

Further, the domestic industry is facing increased competition in the United States and abroad from lower-priced peanuts produced in other countries. The value of peanuts and peanut products imported into the United States exceeded $100 million in 1996.

All of these factors have led the domestic peanut industry to seek a national promotion program to find ways to further increase the consumption of U.S. peanuts.

Section 516(f) of the Act allows an Order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the Order. The program would not assess imports.

The assessment levied on domestically produced peanuts will be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Board. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that the Secretary may provide credits of assessments for generic and branded activities. The proponent did not elect to propose credits for generic or branded activities. Therefore, the terms ''generic activities'' and ''branded activities'' are not defined in the Order, and credits for assessments on generic and branded activities would not be made.

First handlers will be responsible for the collection of assessments from the producer and payment to the Promotion Board. First handlers will be required to maintain records for each producer for whom peanuts are handled, including peanuts produced by the first handler. In addition, first handlers will be required to file reports regarding the collection, payment, or remittance of the assessments.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements will be kept confidential by all officers, employees, and agents of the Department and of the Board. However, this information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an Order if the statements do not identify the information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for the Department to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by a majority of the producers voting for approval in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) every 5 years after the program is in effect, (2) at the request of the Board established under the Order, or (3) when requested by 10 percent or more of peanut producers covered by the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed Order provide for the establishment of a Board to administer the program under USDA supervision. The proponent's proposal provides for a 10-member National Peanut Board.

To ensure fair and equitable representation of the peanut industry on the Board, the Act requires membership on the Board to reflect the geographical distribution of the production of peanuts. To that end, this proposal provides that each primary peanut-producing state will be represented on the Board by one producer member and alternate and that the minor peanut-producing states will be represented collectively by one at-large producer member and alternate. Based on current information on production in the various states, the Order defines the primary peanut-producing states as Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, provided that these states maintain three-year average production of at least 10,000 tons of peanuts.

Upon implementation of the Order and pursuant to the Act, the Board will at least once in each five-year period, but not more frequently than once in each three-year period, review the geographical distribution of peanuts in the United States and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of the Board.

Members and alternates would serve for three-year terms, except that the members and alternates appointed to the initial Board would serve proportionately for two-, three-, and four-year terms. No member or alternate would serve more than two consecutive three-year terms.

The Department received an entire proposed Order from the American Farm Bureau Federation on June 15, 1998.

Prior to publication, the Department modified the proponent's proposal to make it consistent with the Act, other similar national research and promotion programs, and other Federal peanut programs administered by the Department; for consistency throughout the text; and for clarity.

In the definitions and throughout the text of the Order, ''farmer stock peanuts'' was changed to ''farmers stock peanuts'' for consistency with industry use and existing regulations.

A definition for ''first handler'' was added for consistency with similar national research and promotion programs, and subsequent sections were renumbered accordingly.

The definition of ''information'' was rewritten to include activities designed to enhance peanuts' image, to add definitions of ''consumer information'' and ''producer information,'' and to conform with the Act.

The definition of ''quota peanuts'' was rewritten to reference 7 CFR Part 729.

In § 1216.41 (Nominations), the phrase ''qualified nominating organizations'' was changed to read ''certified nominating organizations'' for consistency with the text.

In addition, § 1216.50 (h) was revised to be consistent with the Act. Paragraph (e)(5) *Limitation on spending* of § 515 of the Act states that a Board ''may not expend for administration (except for reimbursements to the Secretary . . .)'' an amount that exceeds 15 percent of the Board's income during any fiscal year. The proposal submitted set a more stringent limitation of 10 percent and stated that administrative expenses included reimbursement to the Secretary. The Order may set the more stringent limitation of 10 percent because that amount is less than the 15 percent provided in the Act. However, the Order may not provide that

reimbursements to the Secretary are covered by the limitation on spending.

Other minor changes which did not materially affect the text were made for consistency. For instance, in the definitions, ''additional peanuts are . . .'' was changed to read ''additional peanuts means . . .'' As another example, in sections containing only one paragraph, the paragraph designation was removed. Minor grammatical changes also were made.

The proponent also submitted ''Subpart B—Voting Procedures and Approval of the Peanut Promotion, Research, and Information Order.'' This proposed subpart was revised and included as § 1216.81 of the proposed Order.

A proposed rule seeking comments on the national research and promotion program for peanuts was published on November 6, 1998 in the **Federal Register** [63 FR 59893]. Comments were invited on the entire proposal with the deadline for comments on January 5, 1999. Fourteen comments were received. Comments were received from 10 peanut producers associations or growers associations, two manufacturer associations, one manufacturer, and one peanut producer. Four commenters simply stated that they supported the proposal and/or recommended that USDA conduct the referendum as early in Spring 1999 as possible. The other comments are discussed below.

Two comments were submitted about § 1216.03 which defines area marketing associations. Each felt that the statement in § 1216.03 that area marketing associations will assist in the collection of assessments conflicted with the assessment provisions in § 1216.51(h). To correct this we have accepted their solution of changing the word ''will'' to ''may'' in § 1216.03.

One comment noted that § 1216.06 includes peanuts for crushing for exportation and asked if peanuts for domestic crushing were covered by the proposed Order. In response, § 1216.11 *Handle* includes peanuts for domestic crushing.

One comment was received about § 1216.18 which defines peanut producer organizations eligible for receipt of check-off funds. The commenter felt that any peanut producer organization that is involved in lobbying activities should not be eligible for receipt of check-off funds. We do not find merit in this comment. Any peanut producer organization that receives funds will only be eligible for the funds after meeting the certification as outlined in § 1216.70 and will be prohibited from using Board funds for lobbying, pursuant to § 1216.49.

A comment was submitted about § 1216.23 which defines quota peanuts. The commenter felt that this definition should provide for the assessment of peanuts that are not marketed and held back in storage. We disagree and believe that the term does not need further clarification in the proposed Order. Section 1216.51 *Assessments* outlines which peanuts are to be assessed and how to handle farmers stock peanuts. In addition, § 1216.11 defines handle. The intent of this Order is only to assess peanuts that enter the current of commerce.

A comment was received on § 1216.24 which defines research as any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production. The commenter felt that this section allowed for research to justify the continued existence of the FSA peanut program. We don't find merit in this comment. The research as outlined is performed to increase the marketability of peanuts and not justify other peanut programs.

A comment was submitted on § 1216.41 which outlines the nomination procedures. The commenter felt that the nomination procedures should be clarified to indicate that all peanut producers eligible to serve on the Board would participate in the nomination process. We have accepted the comment and revised the third sentence in § 1216.41 (a) to read: ''The nominees shall be chosen at an open meeting by election among peanut producers eligible to serve on the Board.''

In addition, we have adopted the following recommendations made by the same commenter and revised § 1216.41 to require (1) widespread announcements in addition to public notice to all growers; (2) 30 day advanced notice prior to a nomination meeting; and (3) USDA personnel to be present to oversee and to verify eligibility and count ballots. The commenter also requested USDA to conduct the nomination meeting for the initial Board appointments. However, by having USDA personnel present at the initial meeting, we do not find it necessary for USDA to hold the initial grower meetings for nominations. Therefore, that part of the comment is denied. In addition, this commenter wished for pre-addressed ballots to be issued at nomination meetings and a list of persons eligible to vote at the open nominations meeting be issued upon entrance to said meetings. These comments are denied. USDA's role in these meetings is to oversee the process and not set the procedures of the meetings.

A comment was received in respect to § 1216.48(j) which outlines the powers and duties of the National Peanut Board. The commenter questioned why the Board would act as intermediary between the Secretary and any producer or first handler, especially when there is no first handler member on the Board. It is true that there is no handler member on the Board. However, handlers would be collecting the assessments under the program and remitting them to the Board. Therefore, a handler's first point of contact regarding the requirements of the program would be the staff of the Board. This does not preclude any first handler from contacting the Secretary. Therefore, this comment is denied.

One comment was received about § 1216.49. This section deals with the prohibited activities of the Board, employees, and agents of the Board. The commenter felt that this section should be modified using stronger language to ensure that funds are not used for other activities other than promotion, research and consumer/producer information. We deny this comment. This language is consistent with other National Promotion Programs and has prohibited improper activities.

Three comments were received about § 1216.50(h). This section limits the amount the Board may spend on administration, maintenance, and functioning in any fiscal year to no more than 10 percent of assessments. Two comments recommended lowering this to 5 percent of the assessments. The third comment recommended maintaining the 10 percent requirement. The first two comments are denied. Although 10 percent is stated in the proposed Order, the Board may in fact operate below that rate, but to mandate this amount could restrict the Board in its daily operations.

Five comments were received on § 1216.50(i) which addresses budget and expenses. Each commenter had concerns that the use of the words ''quota peanuts'' to describe the peanuts that would be assessed was too narrow in scope. We accept their comments and have revised § 1216.50(i) to state that the allocation of funds would be based on the assessments collected from all peanuts.

Two comments about § 1216.50(i) were received addressing the allocation of the assessments. The commenters recommended that this provision be revised to ensure that no less than 80 percent of the Board's funds are used in

national programs. We believe that this comment has merit. To reduce the possibility of having more than the 20 percent of the Board's funds spent on state or regional research, we have revised § 1216.50(i) to state that the Board shall allocate, to the extent practicable, no less than 80 percent of the assessments to national and regional promotion, research, and information and no more than 20 percent to state or regional research.

Two comments were received about § 1216.50(k) which provided for assessments collected from the gross sales of contract export additional peanuts to be provided to a primary contractor for the promotion and related research of export peanuts. Each commenter felt that assessments collected from contract export additional peanuts would not share the burden of research at the state and regional level. We don't find merit in these comments. We feel that § 1216.50(k) provides for either market or production research to be conducted. Research that is done for export peanuts does overlap with research for domestic peanuts. In addition, § 1216.50(l) provides the Board with the flexibility to change how funds are used in § 1216.50(k). Therefore, this comment is denied.

One comment stated that half of the financial burden should be shifted to handlers, whereas § 1216.51(a) specifies that assessments will be paid by producers. This comment is denied. The proponent group, which was comprised of producers, recommended only a producer assessment.

One comment was received concerning the language of the Act and payment of assessments. The commenter questioned whether the Act's assessment language covered only handler paid type programs. The Act authorizes producer assessment type programs as provided in this proposal. We do not find merit in this comment.

A comment was received in regard to § 1216.51(b) which deals with the collection of the assessments. The commenter believed that the words ''. . . peanuts owned by the first handler . . .'' is vague and subject to interpretation. We agree with this comment and have changed § 1216.51(b) to read: ''. . . peanuts produced by the first handler . . .''

Three comments were received on § 1216.51(c) which sets the assessment rate. The commenters wished to change the basis of the assessments to either a per ton basis or a percent of the support price. We do not find merit in these comments. This proposal was submitted by producer groups which recommended the assessments be collected on a percent of the price paid (the ''value of segment'' on FSA 1007). They maintain this is the most equitable system. If assessments were based on the number of tons, an inequity would exist because of the variation in prices paid for different types and qualities of peanuts. Also, there would have to be at least two assessment rates: one for quota peanuts and one for contract export additional peanuts. Basing the assessment on the price paid allows the program to have one assessment rate that is applied equally to all peanuts. If the assessment were based on the support price, the proposed Order would have to be revised if the support program is changed or eliminated. For example, if the support price is lowered, the promotion program assessment would need to be raised to compensate for the loss in income in order to assure continuity in the Board's programs. Basing assessments on the price paid would provide continuity in funding for a national program, regardless of the changes in or the existence of the support program. Therefore, these comments are denied.

In addition, a comment was submitted about the use of the words ''price paid'' in § 1216.51(c). The commenter felt that the use of the words ''price paid'' can be subject to interpretation. We have accepted this comment and added the following language to § 1216.51(c): Price paid shall mean the value of segment on the FSA 1007 form.

One comment requested clarification of who is responsible for collection assessments on peanuts when the immediate buyback is used. In response, § 1216.51(d) states that area marketing associations shall remit assessments to the Board on all peanuts placed under loan, which would have included buyback peanuts.

Two comments were submitted on § 1216.51(f) which addresses late payments. The commenters requested confirmation that late payments of assessments should be subject to penalties in the form of interest and not any damages that may have been incurred from the late payment. In response, it should be noted that § 1216.51(f) only provides for late payment charges in the form of interest on the outstanding balance due as recommended by the commenters. Therefore no change to this section is made.

Three comments were submitted on the Board having the ability to raise or lower the rate of assessment with the approval of the Secretary. The concern was that the Board could raise the rate without a producer referendum. In order to assure that producers have the ability to vote on the raising of the assessment rate, a new § 1216.51(i) has been added to the Order. This section would require a producer referendum in addition to notice and comment rulemaking when the Board recommends raising the assessment rate. Further, the Act provides for this action.

One comment was submitted on § 1216.60 which addresses the reports that first handlers must submit at the time monthly assessments are paid. The commenter felt there would be significant administrative and financial burdens associated with preparing these reports. The Department recognizes the burden that may be placed on first handlers. In order to reduce this burden on first handlers, we have changed § 1216.60 to eliminate the requirement to identify each producer, the address of the producer, and the date assessments were collected. In addition, § 1216.60 has been re-worded to correspond with the change in § 1216.51(c) which now defines the price paid as the entry in the value of segment section on the FSA 1007 form as recommended by the commenter. Also, we have added a new § 1216.60(b) to clarify when first handlers are to submit monthly reports and assessments.

We also have modified § 1216.61 *Books and records* to clarify what books and records that first handlers and producers must maintain and make available to the Secretary and Board employees. This section now states that copies of FSA 1007 forms, the names and addresses of producers, and the date when assessments were collected must be maintained by the first handler and producer. The purpose of this change is to help ensure that this information is available for enforcement purposes.

A comment was submitted on § 1216.62 which deals with confidential treatment. The commenter stated that this section does not provide adequate safeguards for the confidentiality of proprietary information. We disagree with this comment. This confidentiality provision is common to other similar national programs and has prevented any improper release of information. Therefore, we deem it sufficient in this Order. In addition, the Act states that any person who willfully violates this provision shall be subject, on conviction, to a fine of not more $1,000 or to imprisonment for not more than 1 year, or both.

Nonetheless, to address the commenter's concern, the modification to § 1216.61 *Books and Records* clarifies that only the Secretary and agents and employees of the Board (not

Board members) will have access to first handlers' and producers' records.

Three comments were submitted on § 1216.81(b), formerly § 1216.80(b), which outlines the implementation of the Order. Each commenter felt that this section was unclear and may contradict the definition of producer in § 1216.21. We concur with these comments. Therefore, in order to assure a clear understanding of the implementation provisions, we have inserted in § 1216.81(b) a reference to the definition of producer in § 1216.21.

Comments were submitted on § 1216.87 *Amendments,* formerly § 1216.86. The comments were in favor of requiring a referendum especially when increasing the assessment. As indicated above, we agree that there should be a referendum before the assessment rate is raised. However, we deny the comment because the addition of § 1216.51(i) addresses the need of a referendum to raise the assessment rate.

In summary, § 1216.03, § 1216.41, § 1216.50(i), § 1216.51(b), § 1216.51(c), § 1216.51(i), § 1216.60(a), § 1216.60(b), § 1216.60(c), § 1216.60(d), § 1216.61, and § 1216.81(b) have been revised as a result of comments received. Other changes to the proposed rule made by AMS are noted and discussed below.

Section 1216.03 was revised to use the word ''may'' instead of ''will'' in describing the role of an area marketing association in collecting assessments.

Section 1216.08 was added by AMS to provide a definition for the Department's Farm Service Agency. This will provide clarity to the proposed Order. Section of the Order have been renumbered accordingly.

Section 1216.41 was revised to ensure that the nominating process is open to all peanut producers. This was accomplished by adding new subsections (d) and (e).

Section 1216.50(i) was revised to change ''quota peanuts'' to ''all peanuts'' available. In addition, language was added to provide at least 80 percent of the assessments for national programs.

Section 1216.50(j) was modified by AMS. The language ''and approved'' was removed from this section. AMS felt that this language was repetitive and unnecessary.

Section 1216.50(k) was modified by AMS. The language ''to an appropriate organization approved by the Secretary as the primary contractor'' was removed from this section. This will provide flexibility to the Board.

Section 1216.51(b) was revised for clarification by changing ''owned'' to ''produced''. Section 1216.51(i) was revised to include the following language: Price paid is the value of segment entry on the FSA 1007 form. A new sub-section (i) was added to § 1216.51 to require a producer referendum on raising the assessment rate.

Section 1216.60 was revised to reduce the burden that was placed on first handlers. In order to accomplish this, sub-sections (a) and (b) were re-written.

Section 1216.61 was revised to state that copies of FSA 1007 forms, the names and addresses of producers, and the date when assessments were collected must be maintained by first handlers and producers.

A new § 1216.80 *Right of the Secretary* was added to provide conformity with existing programs. This section was added by AMS for consistency with similar National Research and Promotion Programs, and subsequent sections were renumbered accordingly.

Section 1216.81(b) was revised to prevent any contradiction with § 1216.21 by citing § 1216.21 in § 1216.81(b).

Other minor changes which did not materially affect the text of the Order were made for clarity.

The Order is summarized as follows: Sections 1216.01 through 1216.29 of the proposed Order define certain terms, such as peanuts, minor peanut-producing states, primary peanut-producing states, producer, and quota peanuts, which are used in the proposed Order.

Sections 1216.40 through 1216.49 include provisions relating to the Board establishment and membership, nominations, selections and acceptance, term of office, vacancies, alternate members, and compensation and reimbursement; procedures for conducting Board business; and powers and duties of the Board, which is the governing body authorized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about peanuts, subject to oversight by the Secretary. These sections also include maintenance of books and records by the Board and prohibited activities of the Board, its employees, and agents.

In order to ensure support throughout the production area for all Board votes, § 1216.46(b) provides that all Board members' votes would be weighted by the value of production represented by each member. The votes of members from primary peanut-producing states would represent their respective states' three-year running average of total gross farm income derived from all peanut sales. The votes of the at-large Board member would equal the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income from all peanut sales. Any Board action would require the concurring votes of members collectively representing more than 50 percent of the total U.S. gross farm income derived from all peanut sales plus an additional two votes from other Board members, provided a minimum of five members concur. Therefore, regardless of the volume voted by the members, no Board action would be approved unless at least five members voted in favor of it. Similarly, if five members vote in favor of a motion and those five members do not represent more than 50 percent of the total U.S. gross farm income derived from all peanut sales, the motion would not be approved.

Sections 1216.50 through 1216.55 would cover budget review and approval; authorize the collection of assessments; use of assessments, including reimbursement of necessary expenses incurred by the Board for the performance of its duties, including expenses incurred for the Department's oversight responsibilities; specify who pays the assessment and how; authorize the imposition of a late-payment charge on past-due assessments; address programs, plans, and projects; require the Board to conduct periodically an independent review of its overall program; specify a program operating reserve; and cover the investment of assessment funds.

There will be an assessment rate of 1 percent of the price paid for all farmers stock peanuts sold. Peanut producers may sell their peanuts commercially or put them in a government loan program. For peanuts sold commercially, the first handler would remit the assessment to the Board. The assessment would be 1 percent of the price paid for the peanuts. Under a loan program administered by FSA, a peanut producer also has the option of delivering the peanuts to an area marketing association and receiving payment for the peanuts from CCC. If the peanut promotion program is implemented, the area association would deduct 1 percent of the payment from the producer's proceeds and remit that amount to the Board as the producer's initial assessment payment on the peanuts. After the association sells the peanuts, the area association reimburses CCC the amount of the payment to the producer and deducts its expenses from the selling price. If the peanut promotion program is implemented and if there is any profit from the sale of the peanuts,

the association would deduct 1 percent of the profit, remit that amount to the Board to pay the producer's assessment, and pay the balance to the producer.

The Board may raise or lower the rate of assessment with the approval of the Secretary and a producer referendum.

The federal debt collection procedures referenced in § 1216.51(g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by AMS (60 FR 12533, March 7, 1995).

Sections 1216.60 through 1206.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Section 1216.70 describes the certification requirements for peanut-producer organizations to be eligible to nominate Board members and submit requests for funds from the Board.

Sections 1216.80 through 1216.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; address personal liability, separability, and amendments; and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

The Department has determined that this Order is consistent with and will effectuate the purposes of the Act.

For the Order to become effective, the Order must be approved by a simple majority of peanut producers voting in a referendum.

Referendum Order

It is hereby directed that a referendum be conducted among peanut producers to determine whether they favor implementation of the Peanut Promotion, Research, and Consumer Information Order.

The referendum shall be conducted from May 24 through June 11, 1999. Ballots will be mailed to all known eligible peanut producers on or before May 17, 1999. Eligible voters who do not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1 (888) 720–9917. All ballots will be subject to verification. Ballots must be received by the referendum agents no later than June 11, 1999, to be counted.

Daniel R. Williams II and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop 0244, Washington, D.C. 20250–0244, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum. The Procedure for the Conduct of Referenda in Connection with the Peanut Promotion, Research, and Consumer Information Order, 7 CFR 1216.101–1216.107, which is being published separately in this issue of the **Federal Register**, shall be used to conduct the referendum.

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

1. The authority citation for part 1216 continues to read as follows:

Authority: 7401–7425.

2. Subpart A is added to part 1216 to read as follows:

Subpart A—Peanut Promotion, Research, and Information Order

Definitions

Sec.

National Peanut Board

Expenses and Assessments

Reports, Books, and Records

Certification of Peanut Producer Organizations

Miscellaneous

Subpart A—Peanut Promotion, Research, and Information Order

Definitions

§ 1216.01 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Public Law 104–127, 110 Stat. 1029), or any amendments thereto.

§ 1216.02 Additional peanuts.

Additional peanuts means peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

§ 1216.03 Area marketing association.

Area marketing association means an association selected and approved by the Secretary to conduct activities under regulations of the Department's Farm Service Agency. Under an inter agency agreement, area marketing associations may assist in the collection of assessments under this subpart. The approved area marketing associations and the areas served by such associations are as follows:

(a) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the states of Alabama, Florida, Georgia,

Mississippi, and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(b) *Peanut Growers Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the states of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(c) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the southwestern area consisting of the states of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming, and all other territories of the United States not listed in paragraph (a) or (b) of this section.

§ 1216.04 Board.

Board means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40.

§ 1216.05 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

§ 1216.06 Contract export additional peanuts.

Contract export additional peanuts are additional peanuts for exportation, including peanuts for crushing for exportation, for which a contract has been entered into between a first handler and a producer.

§ 1216.07 Department.

Department means the U.S. Department of Agriculture.

§ 1216.08 Farm Service Agency.

Farm Service Agency or FSA means the U.S. Department of Agriculture's Farm Service Agency.

§ 1216.09 Farmers stock peanuts.

Farmers stock peanuts means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

§ 1216.10 First handler.

First handler means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

§ 1216.11 Fiscal year.

Fiscal year is synonymous with crop year and means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

§ 1216.12 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning in-shell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned in-shell or shelled peanuts, or other activity causing peanuts to enter the current of commerce: *Provided,* that this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and *Provided further,* that this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 1216.13 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information,* which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information,* which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

§ 1216.14 Market.

Market means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

§ 1216.16 Order.

Order means an Order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1216.17 Part and subpart.

Part means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental Orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1216.18 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both in-shell and shelled peanuts other than those marketed by the producer in green form for consumption as boiled peanuts.

§ 1216.19 Peanut producer organization.

Peanut producer organization means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, ''peanut producer organization'' means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

§ 1216.20 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Florida, Georgia, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, *Provided,* these states maintain three-year average production of at least 10,000 tons of peanuts.

§ 1216.22 Producer.

Producer means any person engaged in the production and sale of peanuts and who owns, or shares the ownership and risk of loss of the crop. This does not include quota holders who do not share in the risk of loss of the crop.

§ 1216.23 Promotion.

Promotion means any action taken by the National Peanut Board under this Order, including paid advertising, to present a favorable image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

§ 1216.24 Quota peanuts.

Quota peanuts means peanuts which are:

(a) Eligible for domestic edible uses; and

(b) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of 7 CFR Part 729 and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

§ 1216.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

§ 1216.26 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1216.27 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an Order during a particular period of time specified in the rule.

§ 1216.28 State.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1216.29 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an Order beginning on a date certain specified in the rule.

§ 1216.30 United States.

United States means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

National Peanut Board

§ 1216.40 Establishment and membership.

(a) Establishment of a National Peanut Board. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 10 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) Nine members and alternates. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) Adjustment of membership. At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) to the Secretary to continue without change, or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and each alternate member. The nominees shall be elected at an open meeting among peanut producers eligible to serve on the Board. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue the call for nominations by March 1 of each year.

(d) The nomination meeting shall be announced 30 days in advance:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as deemed advisable.

(e) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations representing minor peanut-producing states.

§ 1216.43 Term of office.

All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(a) Those members serving initial terms of two or four years may serve one successive three-year term.

(b) Any successor serving one year or less may serve two consecutive three-year terms.

§ 1216.44 Vacancies.

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40.

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that state or at-large member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1216.46 Procedure.

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

§ 1216.47 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1216.48 Powers and duties of the National Peanut Board.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Board, and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate;

(d) To employ persons, other than the members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

(3) The Secretary may audit the records of the contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1216.50;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

(l) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and

projects designed to provide maximum benefits to the peanut industry.

§ 1216.49 Prohibited activities.

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

Expenses and Assessments

§ 1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

(d) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, no less than 80 percent of the assessments collected on all peanuts available for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practicable, no more than 20 percent of assessments collected on all peanuts available for any fiscal year for use in state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata share of funds available for that state as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be allocated by the Board for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraphs (i), (j), and (k) of this section, with the approval of the Secretary.

§ 1216.51 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of 1 percent of the price paid for all farmers stock peanuts sold. Price paid is the value of segment entry on the FSA 1007 form.

(d) For peanuts placed under loan with the Department's Commodity Credit Corporation, each area marketing association shall remit to the Board the following:

(1) One (1) percent of the initial price paid for either quota or additional peanuts no more than 60 days after the last day of the month in which the peanuts were placed under loan; and

(2) One (1) percent of the profit from the sale of the peanuts within 60 days after the final day of the area association's fiscal year.

(e) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(i) The assessment rate may not be increased unless the new rate is

approved by a referendum among eligible producers.

§ 1216.52 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

§ 1216.53 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

§ 1216.54 Operating reserve.

The Board shall establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in a reserve so established; *Provided*, that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

§ 1216.55 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

Reports, Books, and Records

§ 1216.60 Reports.

(a) Each producer and first handler subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(1) Number of pounds of peanuts produced or handled;

(2) Price paid to producers (entry in value of segment section on the FSA 1007 form); and

(3) Total assessments collected.

(b) First Handlers shall submit monthly reports to the Board. These reports shall accompany the payment of the collected assessments and shall be due 60 days after the last day of the month in which the peanuts were marketed.

§ 1216.61 Books and records.

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the Secretary and employees and agents of the Board such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall include but are not limited to the following: copies of FSA 1007 forms, the names and address of producers, and the date the assessments were collected. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1216.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members, producers, importers, exporters, or handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person; and

(b) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

Certification of Peanut Producer Organizations

§ 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to the Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut

producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of total such active membership accounted for by producers, a map showing the peanut-producing counties in such state in which the organization has members, the volume of peanuts produced in each such county, the number of peanut producers in each such county, and the size of the organization's active peanut producer membership in each such county;

(3) The extent to which the peanut producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

Miscellaneous

§ 1216.80 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1216.81 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers as defined in § 1216.21 voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

§ 1216.82 Suspension and termination.

(a) The Secretary shall suspend or terminate this subpart or a provision thereof if the Secretary finds that this subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored by persons voting in a referendum conducted pursuant to the Act.

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1216.83 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than three of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to the Order;

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested in the Board or the trustees pursuant to the Order.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to § 1216.70, in the interest of continuing peanut promotion, research, and information programs.

§ 1216.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder; or

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any other persons, with respect to any such violation.

§ 1216.85 Personal liability.

No member or alternate member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

§ 1216.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the

applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1216.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1216.82 shall apply to determine disposition of all such property.

Dated: April 19, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–10134 Filed 4–22–99; 8:45 am]

BILLING CODE 3410–02–P

Friday
April 23, 1999

Part V

Department of Justice

Bureau of Prisons

28 CFR Parts 506 and 540

Inmate Commissary Account Deposit Procedures; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 506 and 540

[BOP–1091–P]

RIN 1120–AA86

Inmate Commissary Account Deposit Procedures

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its regulations on how an inmate may receive funds from family, friends, and other sources. Under current regulation, funds intended for any inmate's use are included in correspondence sent to the inmate or left with staff as part of visiting. Staff at the institution arrange for the deposit of these funds into the inmate's account. Under the proposed regulations, funds from family, friends, or other sources will no longer be sent to the inmate but will instead be sent directly to a centralized inmate commissary account in the form of a money order for receipt and posting. Any funds sent by family or friends to the inmate's location will not be accepted and will be rejected and returned to the sender provided there is an adequate return address. This amendment is intended to provide for the more efficient processing of inmate funds.

DATES: Comments due by June 22, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to add new regulations (28 CFR part 506) pertaining to inmate deposits and to make conforming amendments to its regulation on inmate correspondence (28 CFR 540.23). The current provisions in § 540.23 were published in the **Federal Register** on October 1, 1985 (50 FR 40109).

Current provisions on general correspondence allow an inmate, upon completing the appropriate form, to receive funds through the mail from family or friends or, upon approval of the Warden, from other persons for crediting to the inmate's trust fund account. Current provisions on visiting provide that the Warden may allow a visitor to leave money with a designated staff member for deposit in the inmate's commissary account. Institution staff are responsible for processing these funds. The Bureau is proposing that all inmate funds from family and friends be sent directly to a centralized inmate commissary account. The deposit must be in the form of a money order and the envelope must not contain any enclosures intended for delivery to the inmate as any enclosure is subject to disposal. Personal checks are not acceptable, but will be returned provided the check has adequate return address information. Funds received from other sources such as tax refunds, dividends from stocks, or state benefits will be forwarded for deposit to the centralized inmate commissary account.

The Bureau currently manages its inmate accounting functions in a completely de-centralized fashion. Each institution operates separately and distinctly from one another, although each is performing virtually identical functions. For example, posting mail room collections to inmate accounts, making daily trips to the bank to deposit collections, establishing inmate accounts each time an inmate arrives at their current location, and transferring funds between institutions. The Bureau believes that having a centralized inmate commissary account will benefit the inmate by allowing them immediate access to their funds. Also, the centralized inmate commissary account will eliminate redundant work efforts, allow institutions complete access to detailed inmate account history, remove personal liability from institution staff related to handling of inmate funds, and enhance Bureau security by allowing centralized reporting and comparisons of sources of incoming funds and destination of outgoing funds across all institutions. The tremendous growth of the number of Bureau facilities coupled with new computer networking technology have made the current method of managing inmate funds outdated, inefficient, and costly.

The Bureau will test deposit procedures under a centralized inmate commissary account at a limited number of institutions. The inmates at the institutions selected for the test project will be notified individually of the procedures to follow and will be provided assistance in notifying family and friends of these same procedures. Information gathered from the test project will be used in conjunction with comments received from the public in evaluating any final rule.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

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

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534, 202–514–6655.

List of Subjects in 28 CFR Parts 506 and 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(o), a new part 506 is proposed to be added to 28 CFR, chapter V, subchapter A, and part 540 in 28 CFR, chapter V, subchapter C is proposed to be amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

1. Part 506 is added to read as follows:

PART 506—INMATE COMMISSARY ACCOUNT

Sec.
506.1 Background.
506.2 Deposit procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 31 U.S.C. 1321; 28 CFR 0.95–0.99.

§ 506.1 Background.

The Bureau operates individual inmate commissary accounts to maintain inmates' monies while they are incarcerated. Deposits to the account may be made by family or friends, and for funds received from other sources.

§ 506.2 Deposit procedures.

(a) *Funds deposited by family and friends.* Deposits by family and friends must be mailed to the centralized inmate commissary account at the address provided by the Bureau and must be in the form of a money order.

(1) The deposit envelope must not contain any enclosures intended for delivery to the inmate. Any enclosure is subject to disposal.

(2) The deposit must be in the form of a money order made out to the inmate's full name and complete register number. Checks are to be returned to the sender provided the check contains an adequate return address.

(b) *Funds received from other sources.* Funds received from other sources in correspondence addressed to the inmate (for example, tax refunds, royalties from books, dividends from stocks, state benefits) are to be forwarded for deposit to the centralized inmate commissary account.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552A, 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509; 28 CFR 0.95–0.99.

2. Section 540.23, is revised to read as follows:

§ 540.23 Inmate funds received through the mails.

Except as provided for in part 506 of this chapter, funds enclosed in inmate correspondence are to be rejected. Deposits intended for the inmate's commissary account must be mailed directly to the centralized commissary account (see 28 CFR part 506).

3. In § 540.51 paragraph (g)(3) is revised to read as follows:

§ 540.51 Procedures.

* * * * *

(g) * * *

(3) The visiting room officer may not accept articles or gifts of any kind for an inmate, except packages which have had prior approval by the Warden or a designated staff member.

* * * * *

[FR Doc. 99–10207 Filed 4–22–99; 8:45 am]
BILLING CODE 4410–05–P

Friday
April 23, 1999

Part VI

Federal Trade Commission

Public Workshop: Market Power and Consumer Protection Issues Involved With Encouraging Competition in the U.S. Electric Industry; Notice

FEDERAL TRADE COMMISSION

Public Workshop: Market Power and Consumer Protection Issues Involved With Encouraging Competition in the U.S. Electric Industry

AGENCY: Federal Trade Commission.

ACTION: Notice announcing the dates of workshop.

SUMMARY: The Federal Trade Commission has set September 13–14, 1999 as the dates for its public workshop examining the market power and consumer protection issues involved with encouraging competition in the U.S. electric industry.

DATES: The workshop will be held September 13 and 14, 1999 in the Commission Meeting Room (Room 432), 600 Pennsylvania Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: For questions about the workshop, contact: Michael Wroblewski, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone 202–326–2155, e-mail mwroblewski@ftc.gov; John C. Hilke, Bureau of Economics, Federal Trade Commission, 1961 Stout Street, Suite 1523, Denver, CO 80294–0101, telephone 303–844–3565, e-mail jhilke@ftc.gov; Gina Schaar Howard, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone 202–326–2982, e-mail ghoward@ftc.gov; or David Balto, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, telephone 202-326–2881, e-mail dbalto@ftc.gov.

To preregister for the workshop, contact Wendy Givler, National Research Regulatory Institute at The Ohio State University, 1080 Carmack Road, Columbus, Ohio 43210, telephone (614) 292–9106, e-mail givler.4@osu.edu.

SUPPLEMENTARY INFORMATION:

Retail Electricity: Promise and Progress Workshop

Overview

In recent years, states and the Federal government have taken steps to encourage restructuring and competition in the electricity industry, including the elimination of regulatory barriers. The FTC recognizes these issues are vast and interrelated and that states could derive substantial benefit from sharing ideas and experiences in these areas. The FTC seeks to convene a workshop that will allow such idea sharing on two topics that bear directly on the FTC's expertise—market power (*e.g.* evaluating and addressing horizontal market power concerns in generation) and consumer protection (*e.g.* disclosures by electric service providers of environmental attributes of power they are selling). The intent of the workshop is to provide a forum for discussing the experience under policies that have been implemented at the state level, rather than attempting to provide all of the answers to a complex set of issues that vary by region and locale. The FTC anticipates that a robust exchange of views and ideas among those working on the issues will prove stimulating and useful as the regulatory reform process moves forward. To facilitate discussion of how states have addressed these two issues, each of the panels in the workshop will be moderated by the FTC (or the U.S. Department of Justice, Antitrust Division), so that we can gain a better understanding of the issues involved and be available as a resource. Although there are many other issues that policymakers are considering in the electric industry restructuring debate, discussion will focus on how states have addressed market power and consumer protection concerns.

Workshop Goals

1. Provide state regulators and state attorneys general a forum in which they can describe and discuss present and expected results of state regulatory reform efforts in the electric power industry with a focus on market power and consumer protection strategies to ensure that consumers benefit from regulatory reform.

2. Provide an opportunity for the Commission and the staff to gain a better understanding of the issues involved in the regulatory reform process so that we can serve as a resource with respect to market power and consumer protection issues.

Registration and Participants

The workshop will focus on issues of concern to state regulators and state attorneys general. State commissioners, attorneys general and their staffs from states active in promoting retail electricity competition will be invited to participate as panelists as described in the following proposed workshop agenda. Suppliers, customers, public policy and interest groups and/or representatives from academia that have experience with these state efforts also will be invited to participate as panelists. Other state commissioners, attorneys general and their staff are encouraged and welcome to attend. Electricity industry groups, marketers, suppliers and customers are invited to attend as well.

The National Regulatory Research Institute (NRRI) and the National Council on Competition and the Electric Industry (NCCEI) are co-sponsoring the workshop. NRRI will handle registration. To ensure space, attendees are encouraged to preregister by September 3, 1999. To preregister, contact Wendy Givler, National Research Regulatory Institute at The Ohio State University, 1080 Carmack Road, Columbus, Ohio 43210, telephone (614) 292–9106, e-mail givler.4@osu.edu.

Proposed Workshop Agenda

First Day

Introduction Address 9 a.m. (15 minutes)—Representatives of the sponsoring organizations (FTC, NRRI, and NCCEI) will provide an introduction by establishing the framework for the two-day workshop and providing an overview concerning the focus of the workshop on market power and consumer protection issues involved as states move toward retail electricity competition.

Session I: Retail Competition in Pioneer States

Panel A: What Approaches Did Pioneer States take in Promoting Retail Electricity Competition?

(9:15 a.m.–10:00 a.m.)

State policymakers (state commissioners or staff) from pioneer states (states active in promoting retail electricity competition) will be asked to discuss the approach and structure each state used or is using to proceed with electricity restructuring. In order to provide guidance and to share experiences with other states considering restructuring, each panelist will be asked to provide an assessment of the best and worst of his/her state's experience, as well as describe the most significant decisions made in restructuring the provision of electricity at the retail level Examples of the types of issues panelists might raise include:

- The approach and process the state used to address regulatory reform and restructuring;
- Types of services (e.g., generation, metering & billing) subject to competition;
- Elimination of entry barriers (e.g., streamline of siting requirements);
- Effects on consumer choice of various competitive transition charges that have been implemented; and
- Consumer education efforts aimed at retail electricity competition.

Break (10:00 a.m.–10:15 a.m.)

Panel B: Assessment of the Results to Date of Pioneer State Reform Efforts

(10:15 a.m.–12:00 p.m.)

Panelists representing suppliers, customers, public policy and interest groups and/or academia will be asked to assess the positive and negative results of state retail electricity restructuring efforts, and the reasons therefor, with an emphasis on:

- Types of products and services that have been offered in the states where retail competition has been implemented;
- Percentage of industrial, commercial and residential customers switching to new service providers; and
- Electricity pricing trends for industrial, commercial and residential customers in a deregulated environment.

Lunch Break (12:00 p.m.–1:15 p.m.)

Session II: Existing Market Power in Retail Markets

Panel A: How Have States Addressed Existing Market Power?

(1:15 p.m.–2:15 p.m.)

Panelists (state attorneys general, commissioners or staff) will be asked to discuss how each state addressed existing market power of incumbent utilities, if any.

- Approaches states have taken with respect to evaluating and addressing concerns about horizontal market power (in the generation sector) of incumbent utilities (e.g., divestiture, ISOs).
- Approaches states have taken with respect to evaluating and addressing vertical discrimination and cross-subsidization (e.g., use of ISOs, divestiture, codes of conduct).

Break (2:15 p.m.–2:30 p.m.)

Panel B: Assessment of State Efforts to Address Existing Market Power

(2:30 p.m.–3:45 p.m.)

Panelists representing suppliers, customers, public policy and interest groups and/or academia will be asked to discuss the positive and negative results of state efforts to evaluate and address existing market power, if any, held by incumbent utilities. FTC staff also will assist in this discussion by presenting possible approaches to address and remedy market power by:

- Applying the factors in the DOJ/FTC Horizontal Merger Guidelines to assess existing market power (horizontal);
- Considering alternative future scenarios based upon different possible remedies;
- Providing access to the information necessary for an appropriate analysis;
- Using computer simulations to assess market power.

Break (3:45 p.m.–4:00 p.m.)

Session III: How Does Wholesale Competition for Generation Affect Retail Electricity Competition?

(4:00 p.m.–5:30 p.m.)

Panelists (federal policymakers, academics, or representatives from public policy groups) will be asked to discuss the links between wholesale competition and retail competition and whether competitive wholesale generation electricity markets are necessary for competition to emerge at the retail level. The topics will include:

- Consideration of regional transmission organizations;
- Use of new technologies (distributed generation) that facilitate entry;
- Congestion pricing through locational marginal pricing and the use of firm transmission rights;
- Role of North American Electric Reliability Council (NERC) and reliability monitoring; and
- Implications of the wholesale price spikes of the past year for prospective retail electricity competition.

Second Day

Session IV: Affiliate Rules or Codes of Conduct

Panel A: How Have States Developed Affiliate Rules or Codes of Conduct?

(9:00 a.m.–10:00 a.m.)

Panelists (state attorneys general, commissioners or staff) will be asked to discuss how each state has used affiliate rules or codes of conduct to remedy problems posed by incumbent utilities' market power and to prevent deceptive practices. Topics of discussion will include:

Types of affiliate entities created by utilities for unregulated activities;

- The potential for cross-subsidization between a utility and its affiliates, including controls to avoid cross-subsidization;
- Unregulated affiliates' use of incumbent utilities' names/logos—varieties of use and possibility for consumer confusion; and
- Remedies to avoid consumer deception regarding the relationship between the incumbent utility and the affiliate—disclosures regarding the relationship versus a ban on use of the utility name and logo by the affiliate.

Break (10:00 a.m.–10:15 a.m.)

Panel B: Assessment of State Use of Affiliate Rules or Codes of Conduct

(10:15 a.m.–12:00 p.m.)

Panelists representing suppliers, customers, public policy and interest groups and/or academia will be asked to assess the positive and negative results of state use of affiliate rules or codes of conduct with an emphasis on:

- Effect (enhancement vs. inhibition) on competition;
- Consumer expectations and reactions; and
- Relationship between these rules and the offering and pricing of new/innovative products.

Lunch Break (12:00 p.m.–1:30 p.m.)

Session V: Advertising and disclosures of Environmental Attributes and Price

(1:30 p.m.–3:00 p.m.)

Panelists (state attorneys general, commissioners, public policy and interest groups, or industry consultants) will be asked to discuss the trends in advertising environmental claims, labeling requirements, and tracking systems. FTC staff would lead off with a summary of its Green Guide comment to the National Association of Attorneys General (NAAG).

- Description of existing remedies for deceptive claims—jurisdiction (i.e., attorneys general, state commissions, or both); whether these remedies are sufficient or whether new legal authority is needed; need for additional industry guidance from regulators (e.g., Electricity Green Guides).
- Mandated disclosure of information—current requirements; effect on consumers and the market; relationship to advertising.
- Verification or auditing of company-supplied information—state experience thus far.
- Issues with systems for tracking fuel mix—cost; prevention of ''double counting'' of a fuel source; substantiation that a product has not been ''double counted''; the Western states' current views and plans on using a ''tradable tags'' system.

Break (3:00 p.m.–3:15 p.m.)

Session VI: Supplier Practices in a Retail Environment

(3:15 p.m.–4:45 p.m.)

Panelists (state attorneys general, commissioners, public policy and interest groups, or industry consultants) will be asked to discuss existing legislation/regulations on slamming/cramming issues, licensing/bonding of

service providers and credit and billing practices of service providers.

- Slamming and cramming—extent of problem; adequacy of existing remedies; preventing fraud without creating unnecessary barriers to entry or legitimate innovative marketing techniques.
- Licensing and bonding—deterring unscrupulous competitors without discouraging legitimate new entrants; protecting incumbent utilities vs. protecting consumers.
- Credit laws and regulations—applicability of Truth in Lending Act (TILA), Equal Credit Opportunity Act (ECOA), etc. to suppliers and utilities under various billing schemes; consumer privacy concerns arising from exchange of account information for switching or billing purposes; account information access and sharing between utilities and suppliers.

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–10251 Filed 4–22–99; 8:45 am]

BILLING CODE 6750–01–P

Friday
April 23, 1999

Part VII

Federal Trade Commission

Intel Corporation; Analysis To Aid Public Comment and Commissioner Statements; Notice

FEDERAL TRADE COMMISSION

[Docket No. 9288]

Intel Corp.; Analysis To Aid Public Comment and Commissioner Statements

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement: Publication of commissioner statements.

SUMMARY: The consent in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint that the Commission issued in June 1998 and the terms of the consent order—embodied in the consent agreement—that would settle these allegations. This document also contains the Statement of Chairman Pitofsky and Commissioners Anthony and Thompson, and the Statement of Commissioner Swindle.

DATES: Comments must be received on or before May 24, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John Horsley or Richard Parker, FTC/H–3105, 600 Pennsylvania Avenue, NW, Washington, DC 20580. (202) 326–2648 or (202) 326–2574.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis of Proposed Consent Order to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. This document also contains (1) the Statement of Chairman Pitofsky and Commissioners Anthony and Thompson, and (2) the Statement of Commissioner Swindle.[1] An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 17, 1999) on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½-inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with Intel Corporation (''Intel'') to resolve the matters charged in an administrative Complaint issued by the Commission on June 8, 1998. The Agreement has been placed on the public record for sixty (60) days for receipt of comments from interested members of the public. The Agreement is for settlement purposes only and does not constitute an admission by Intel that the law has been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint alleges that Intel has monopoly power in the worldwide market for general purpose microprocessors. According to the Complaint, Intel's market dominance is reflected in a market share approximating 80 percent of dollar sales, together with high entry barriers including large sunk costs of design and manufacture, substantial economies of scale, customers' investments in existing software, the need to attract support from software developers, and reputational barriers.

The Complaint alleges that Intel sought to maintain its dominance by, among other things, denying advance technical information and product samples of microprocessors to Intel customers (''original equipment manufacturers'' or ''OEMs'') and threatening to withhold product from those OEMs as a means of coercing those customers into licensing their patented innovations to Intel.

A microprocessor is an integrated circuit that serves as the central processing unit (or CPU) of computer systems. Microprocessors are sometimes described as the ''brains'' of computers because they perform the major data processing functions essential to computer systems. Advance technical information about new microprocessor products is essential to Intel's OEM customers, who design, develop, manufacture, and sell computer system products such as servers, workstations, and desktop and mobile personal computers. Computer design and development require the effective integration of multiple complex microelectronics components (including microprocessors, memory components, core logic chips, graphics controllers, and various input and output devices) into a coherent system. To achieve such system integration, a computer OEM requires product specifications and other technical information about each component, such as the electrical, mechanical, and thermal characteristics of the microprocessor. OEMs also need advance product samples, errata, and related technical assistance in order to perform system testing and debugging, thereby assuring the high performance and reliability of new computer products.

Intel promotes and markets its microprocessors by providing customers with technical information about new Intel products in advance of their commercial release, subject to formal nondisclosure agreements. Such information sharing has substantial commercial benefits for Intel and its OEM customers. Customers benefit because the information enables them to develop and introduce new computer system products incorporating the latest microprocessors as early and efficiently as possible. Intel benefits because a larger group of OEMs can sell new computer systems incorporating Intel's newest microprocessors as soon as the new microprocessors are introduced to the market.

The Complaint charges that Intel suspended its traditional commercial relationships with three established customers—Digital Equipment Corporation, Intergraph Corporation, and Compaq Computer Corporation—by refusing to provide advance technical information about, and product samples of, Intel microprocessors. Intel did so, according to the Complaint, to force those customers to end disputes with Intel concerning the customers' asserted intellectual property rights and to grant Intel licenses to patented technology developed and owned by those customers. In at least one of the cases,

[1] The Analysis and other Commissioner Statements were published in the **Federal Register** on March 24, 1999, and the public comment period began at that point. *See* 64 FR 14246 (March 24, 1999).

the Complaint alleges that Intel also acted to create uncertainty in the marketplace about the customer's future source of supply of Intel microprocessors.

The computer industry is characterized by short, dynamic product cycles, which are generally measured in months. Time to market is crucial. Indeed, the denial of advance product information is virtually tantamount to a denial of actual parts, because an OEM customer lacking such information simply cannot design new computer systems on a competitive schedule with other OEMs. An OEM who suffers denial of such information over a period of months will lose much of the profits it might otherwise have earned even from a successful new computer model. Continued denial of advance technical information to an OEM by a dominant supplier can make a customer's very existence as an OEM untenable.

As a result of the commercial pressure exerted by Intel's conduct, Compaq and Digital quickly entered into cross-license arrangements with Intel. Intergraph was able to resist that pressure because it succeeded in obtaining a preliminary injunction from a federal district court requiring Intel to resume and continue supplying Intergraph with advance product information, part samples, and other technical support pending a judicial resolution on the merits of the claims in the lawsuit.

The alleged conduct tends to reinforce Intel's domination of the general purpose microprocessor market in at least three ways. First, the alleged conduct tends to give Intel preferential access to a wide range of technologies being developed by many other firms in the industry. To the extent that firms desiring to compete with Intel are unable to obtain comparable access to such a wide range of technology, they can be seriously disadvantaged, thus making it more difficult for them to challenge Intel's dominance. Second, because patent rights are an important means of promoting innovation, coercion that forces customers to license away rights to microprocessor-related technologies on unfavorable terms tends to diminish the customers' incentives to develop such technologies, and thus harms competition by reducing innovation. Finally, Intel's conduct tends to make it more difficult for an OEM to serve as a platform for microprocessors that compete with Intel's. Intel's actions ensure that Intel can act as a conduit for technology flows from one OEM to another. That is, an OEM that seeks to enforce its intellectual property rights against other Intel customers may face retaliation from Intel, as the Complaint alleges Compaq did when it sued Packard-Bell for patent infringement. The result is that OEMs find it more difficult to differentiate their computer systems from their competitors through patented technology. As a result, an OEM seeking to use non-Intel microprocessors is less able to offset the lack of an Intel microprocessor by the strength of its own reputation for offering superior technology in other areas. For all of these reasons, continuation of this pattern of conduct would likely have injured competition by entrenching Intel's dominant position.

The Complaint also alleges that Intel's exclusionary conduct was not reasonably necessary to serve any legitimate, procompetitive purpose.

Exclusionary conduct by a monopolist that is reasonably capable of significantly contributing to the maintenance of a firm's dominance through unjustified means has long been understood to give rise to serious competitive concerns. *See, e.g., Lorain Journal Co.* v. *United States,* 342 U.S. 143, 154 n.7 (1951); *Eastman Kodak Co.* v. *Image Technical Services,* 504 U.S. 451, 483 & n.32 (1992); *Aspen Skiing Co.* v. *Aspen Highlands Skiing Co.,* 472 U.S. 585, 596 n.19 (1985); *United States* v. *Grinnell Corp.,* 384 U.S. 563, 570–71 (1966); *Barry Wright Corp.* v. *ITT Grinnell Corp.,* 724 F.2d 227, 230 (1st Cir. 1983) (Breyer, J.) (citing 3 P. Areeda & D. Turner, *Antitrust Law,* ¶ 626 at 83 (1978)).

Such conduct harms consumers, not only because competition brings lower prices, but also because competition is a powerful spur to the development of new, better, and more diverse products and processes. Unjustified conduct by a monopolist that removes the incentive to such competition by depriving innovators of their reward or otherwise tilting the playing field against new entrants or fringe competitors thus has a direct and substantial impact upon future consumers.

In the absence of a legitimate business justification that outweighs these concerns, such conduct constitutes a violation of Section 2 of the Sherman Act, 15 U.S.C. 2, and therefore Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. In issuing the Complaint, the Commission found reason to believe that such a violation had occurred.

II. Terms of the Proposed Consent Order

The Proposed Order would remedy all of the concerns embodied in the Complaint. The substantive prohibition, Section II.A., prohibits Intel from withholding or threatening to withhold certain advance technical information from a customer or taking other specified actions with respect to such information for reasons relating to an intellectual property dispute with that customer. It also prohibits Intel from refusing or threatening to refuse to sell microprocessors to a customer for reasons related to an intellectual property dispute with that customer. This provision is designed to prevent Intel from restricting access to microprocessor products, or advance technical information relating to such products, as leverage in an intellectual property dispute against a customer that is receiving advance technical information from Intel at the time the dispute arises. The Proposed Order does not impose any kind of broad ''compulsory licensing'' regime upon Intel. So long as it is otherwise lawful, Intel is free to decide in the first instance whether it chooses to provide or not provide information to customers, and whether to provide more information or earlier information to specific customers in furtherance of a joint venture or other legitimate activity. Moreover, the Order is limited to the types of information that Intel routinely gives to customers to enable them to use Intel microprocessors, not information that would be used to design or manufacture microprocessors in competition with Intel.

In short, Paragraph II.A. secures to Intel customers the right to seek full and fair value for their intellectual property, free from the risk of curtailment of needed advance technical information or product. With one exception, Intel will be required to continue providing information and product while the customer seeks any of a range of legal and equitable remedies available to it, such as damages (trebled or otherwise increased in appropriate cases), reasonable royalties, and attorneys fees and costs. These remedies will generally be sufficient to protect the customer in its exercise of its intellectual property rights.

The exception involves situations where a customer maintains the right to seek an injunction against Intel's manufacture, use, sale, offer to sell or importation of its microprocessors. The Order contemplates that Intel may request a customer to waive that remedy and give the customer a reasonable opportunity to make a simple written statement to that effect. If the customer refuses, Intel will not be required by this Order to continue providing information or product with respect to the microprocessors that the customer is seeking to enjoin.

This part of the Order strikes an appropriate balance, on a prospective basis, between the interests of Intel and its customers. If a customer chooses to seek an injunction against Intel's microprocessors, it cannot, under the provisions of this Order, be assured of continuing to receive advance technical information about the very same microprocessors that it is attempting to enjoin. If an Intel customer nevertheless wishes to seek injunctive relief against Intel's manufacture, use, sale, offer to sell or importation, it remains free to do so, but without the protections in this Order. In all other circumstances, Intel is required to continue supplying technical information and product under the Proposed Order.

The Proposed Order contains a number of other definitions and provisos to ensure that it will achieve its purposes while not sweeping more broadly than needed to remedy the competitive concerns alleged in the Complaint:

- ''Advance Technical Information'' (or ''AT Information'') is defined in Paragraph I.C. to encompass all information necessary to enable a customer to design and develop, in a timely way, computer systems incorporating Intel microprocessors. The Proposed Order establishes a rebuttable presumption that the provision of AT information six months before the commercial release date of a microprocessor is sufficient to enable the customer to design and develop new systems based on that microprocessor in a competitive and timely way. AT Information does not include detailed microprocessor design information or other information not generally provided to Intel's customers.
- ''Intellectual Property Dispute'' is defined in Paragraph I.D. to include not only situations in which a customer directly or indirectly asserts or threatens to assert patent, copyright or trade secret rights against Intel, but also to situations in which a customer asserts such rights against another Intel customer, or where a customer has refused a request by Intel to license or otherwise convey its intellectual property rights.
- Paragraph II.B.1. states that the Proposed Order does not prohibit Intel from seeking legal or equitable remedies based upon its own intellectual property, provided that it continues to supply AT Information to the customer.
- Paragraph B.2. and B.3. make clear that the Proposed Order does not prohibit Intel from withholding AT Information or making decisions about product supply based on otherwise lawful business considerations unrelated to the existence of the intellectual property dispute. For example, Intel retains the right to withhold information from a customer that has breached an agreement regarding the disclosure or use of the information.
- Paragraph B.4. provides that the Proposed Order does not require Intel to provide AT Information or microprocessors to facilitate the design or development of a type of system that the customer has not designed or developed or demonstrated plans to design or develop within the preceding year.
- Paragraph B.5. makes clear that the Proposed Order does not prohibit Intel from restricting the use of AT Information to the customer's design and development of computer systems that incorporate the microprocessor to which the AT Information pertains. For example, if a recipient of AT Information is in the business of designing competing microprocessors, the Proposed Order would not prevent Intel from using reasonable firewall provisions to prevent that recipient from using the information in that competing business.
- Paragraph B.6. provides that the Proposed Order does not require Intel to disclose information or supply microprocessors that are not otherwise available for disclosure or supply to Intel's customers. If the information or product is not being provided to other customers, then the refusal to provide it to a customer with which Intel has an intellectual property dispute does not provide the kind of leverage that the challenged conduct provides.
- Paragraph B.7. makes clear that, apart from the specific requirements and prohibitions, the Proposed Order does not otherwise limit Intel's intellectual property rights.

In light of the rapidly changing nature of the industry, Intel's obligations under the Proposed Order would terminate in ten years. The Commission appreciates that this same industry dynamic makes it important for it to address disputes over Intel's compliance with the Order expeditiously, should any such disputes arise.

Parts III, IV, and V of the Proposed Order set out various procedural requirements, such as notice to affected persons and annual compliance reporting. Paragraph III.A. permits Intel to provide notice of the Order to recipients of AT Information through a conspicuous notice placed, for thirty days after final entry of the Order, as the first item on the ''In the News'' portion of the ''developers'' page of Intel's World-Wide Web site. Because recipients of AT Information must frequently visit that area of Intel's Website in order to receive information needed in their business, a notice displayed at that location will ensure notice to all affected persons. After the initial thirty day period, Intel will maintain a link from the ''developers'' page to the Order, so that new customers will also have access to the Order. The other provisions of these paragraphs are standard provisions of the type typically included in Commission orders of this kind.

III. Opportunity for Public Comment

The Proposed Order has been placed on the public record for 60 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the Agreement and comments received, and will decide whether it should withdraw from the Agreement or make final the Order contained in the Agreement.

By accepting the Proposed Order subject to final approval, the Commission anticipates that the competitive issues described in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the Proposed Order. It is not intended to constitute an official interpretation of the Agreement and Proposed Order or in any way to modify their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson

In the Matter of Intel Corporation

Docket No. 9288

We join our colleague Commissioner Swindle in welcoming comments during the public comment period. To facilitate that comment, we briefly recapitulate the precedent, legal and economic reasoning, and judgment that led us to accept the settlement for public comment.

The Complaint alleged that Intel has monopoly power in the worldwide market for general purpose microprocessors, and that it sought to maintain that monopoly power by coercing customers into licensing to it certain patented innovations. Intel carried out this coercion, according to the Complaint, by refusing to provide advance technical information about Intel microprocessors, withholding product samples, and creating uncertainty in the marketplace about the

customer's future source of supply. Advance technical information about new microprocessor products is essential to Intel's customers, so it is alleged, because one cannot achieve the effective integration of components such as microprocessors, memory components, core logic chips, graphics controllers, and various input and output devices without information such as the electrical, mechanical, and thermal characteristics of the microprocessor.

The conduct is alleged to reinforce Intel's domination of the general purpose microprocessor market in at least three ways. First, the conduct gives Intel preferential access to the technologies of other firms. To the extent that competitors cannot obtain comparable access to technology, it would be more difficult for them to challenge Intel's dominance. Second, coercion that forces customers to license away patent rights on unfavorable terms tends to diminish the incentives to develop such technologies. Finally, a computer maker's inability to enforce its patent rights makes it more difficult to develop and maintain a brand name based on superior technology, because the patent owner is forced to share its technology with all computer makers. In turn, a weakened brand identification tends to make it more difficult for that computer manufacturer to find consumer acceptance for computers using non-Intel microprocessors.

These are allegations, not proven facts, and Intel would have had a full opportunity to respond to these allegations had there been a trial. But the allegations are consistent with our knowledge of the industry and with common sense, and the proposed remedy is consistent with both of those as well as with Intel's representations as to its own legitimate business needs.

Some have raised questions about a few of the factual predicates of the case. But those questions are of a type that one would litigate at trial, not use as a basis to reject a settlement. It is in the nature of any settlement before trial that the facts are not fully known. Were we to demand certainty, no case could ever be settled. Complaint Counsel would have had an opportunity to present its evidence with respect to each of the points that we have heard raised, and its pretrial brief promised to do so.[1]

Some have also questioned the practicalities of enforcing the order. But courts weigh facts and circumstances and make determinations about the purposes motivating challenged conduct every day, both within and outside the antitrust field. Certainly the order could have been made more certain in its application by, for example, requiring Intel to deal with all comers on identical terms, regardless of circumstances or the credit-worthiness or other characteristics of would-be customers. Such an order would have been far more burdensome on Intel and would have deterred a wide range of efficient conduct. Both the Commission and a respondent share a common interest in an order that is well-tailored to the violation and to the competitive circumstances—even, sometimes, at the expense of bright-line clarity.

In short, in welcoming public comments on the proposed order, we remain of the view that Complaint Counsel and Intel have done a commendable job of crafting a remedy that addresses serious potential competitive harm without significantly hindering Intel's legitimate business activity. Moreover, this important balance supports the climate of innovation that benefits both industry and consumers.

Statement of Commissioner Orson Swindle

In the Matter of Intel Corporation

Docket No. 9288

When the Commission accepted the consent agreement with Intel Corporation last month, I said that I would take the opportunity to express my views about it following my medical leave. In this statement I will address issues arising from both the consent agreement and the administrative complaint, from whose issuance I dissented last June. Since we do not have the benefit of a trial record here [1]—and because the information in hand does not allay the misgivings I have had since the outset—I hope that public comment on the consent agreement will provide helpful guidance on how to vote once the agreement comes off the public record.

In essence, the complaint consists of an allegation that Intel has monopoly power in general-purpose microprocessors (complaint ¶¶ 4–10, 38 [2]); an allegation that Intel engaged in exclusionary conduct toward several customers by cutting off key technical information and microprocessor prototypes in order to coerce those customers to license certain of their intellectual property to Intel (¶¶ 11–37, 39); and concluding allegations that, through its exclusionary behavior, Intel has both illegally maintained its monopoly power in general-purpose microprocessors and attempted to monopolize current and future generations of such microprocessors, in violation of Section 5 of the FTC Act (¶¶ 40–42).

In the first place, there is no doubt that Intel has long bestrode the market for general-purpose microprocessors, but there has also been reason to ask whether Intel's position in the market is as unassailable as the complaint suggests. It is widely recognized that Intel is facing vigorous competition in supplying microprocessors to the segment consisting of personal computers costing less than $1000—a segment toward which a good deal of consumer demand appears to have been shifting lately. Although Intel has not

[1] As to monopoly power, Complaint Counsel said it would offer evidence that the sub-$1000 segment was a small and relatively unprofitable portion of the market (CCBr. at 13), and that at the high-end, many computer manufacturers have been abandoning their proprietary microprocessor designs in favor of Intel's (CCBr. at 11–12). In the market as a whole, Complaint Counsel contended that Intel's share had grown, not shrunk, and was in the range of 80% or more. (CCBr. at 9 n.6.) Complaint Counsel also represented that it would prove the existence of formidable barriers to entry and expansion—including large sunk costs, long development lead times, economies of scale, network effects, intellectual property rights, and reputational barriers. (CCBr. at 15.)

As to whether Intel's actions affected actions taken against *customers* rather than *competitors,* these customers had microprocessor or related technology that Intel, the alleged monopolist, desired. Moreover, the Supreme Court has repeatedly condemned both monopolists and cartels that strike at their customers in order to injure competitors. *See, e.g., Lorain Journal Co.* v. *United States,* 342 U.S. 143 (191); *Blue Shield* v. *McCready,* 457 U.S. 465 (1982).

As to the customers in question being ''litigious,'' one could alternatively characterize the customers as firms attempting to resist inappropriate demands to turn over their constitutionally-derived patent rights. If monopoly power could be used to force an end to litigation, in such a Hobbesian world the strong would always vanquish the weak, regardless of he underlying merits. Such an outcome is the antithesis of civil society. Nor would forbidding such conduct necessarily condemn parties to lengthy an expensive litigation. Non-monopolists settle disputes all the time, even though they do not have the powerful weapon of monopoly power to wield.

As to whether Intel's conduct harmed consumer welfare, Compliant Counsel acknowledged the burden of proving that Intel engaged in ''conduct, other than competition on the merits or restraints reasonably 'necessary' to competition on the merits, that reasonably appear[s] capable of making a significant contribution to creating or maintaining monopoly power.'' CCBr. at 5–6, *quoting Barry Wright Corp.* v. *ITT Grinnell Corp.,* 724 F.2d 227, 230 (1st Dir. 1983) (Breyer, J.) (*quoting* 3 P. Areeda & D. Turner, Antitrust Law ¶ 626 at 83 (1978).

[1] Were we considering this matter at the conclusion of an adjudicative proceeding, I would of course base my analysis strictly on information in the adjudicative record. In the absence of such a record, I am compelled to rely on other sources of information.

[2] Unless otherwise indicated, all further citations to paragraph numbers refer to the administrative complaint.

faced challenges of the same magnitude in the midrange and high-end segments of the business, some have also questioned the durability of the firm's dominance of those segments as well. In the absence of a full-blown adjudicative record that might have proved what Paragraph 38 alleges, available information has not dispelled my questions about whether Intel has monopoly power—as opposed to just an extremely large market share—in general-purpose microprocessors.[3]

Second, even if one were to assume Intel's monopoly power, I have misgivings about the theory of violation underlying the complaint. The complaint claims that Intel took action against three *customers*—firms whose primary significance to the case, according to the Commission's own documentation, lies in their being manufacturers of PCs, not in their being competitors of Intel in the microprocessor market.[4] What action did Intel take against those customers, and for what reasons?

The Commission's complaint says that Intel cut off the supply of technical information and microprocessor prototypes to Digital Equipment, and demanded the return of information and prototypes already in Digital's possession, after Digital sued Intel for patent infringement (¶¶ 18–19). Intel took similar actions against Intergraph, a customer focused largely on workstations and servers, after Intergraph spurned Intel's demand for a royalty-free license to certain Intergraph microprocessor-related technology (¶¶ 26–29). Finally, Intel cut off technical information to Compaq Computer, which had earlier sued Packard Bell Electronics on the theory that certain Packard Bell computer systems used Intel microprocessors that infringed Compaq's patents—a lawsuit in which Intel felt an obligation to intervene on behalf of the defendant (¶¶ 34–35). According to the complaint, Intel's purpose in taking these actions was to ''forc[e] those customers to grant Intel licenses to microprocessor-related technology developed and owned by those customers' (¶ 13). The alleged effects of Intel's behavior were ''to diminish the incentives of those three Intel customers—as well as other firms that are Intel customers or otherwise commercially dependent upon Intel—to develop new innovations relating to microprocessor technology'' (¶ 14) and to ''entrench[] [Intel's] monopoly power in the current generation of general-purpose microprocessors and reduce[] competition to develop new microprocessor technology and future generations of microprocessor products' (¶ 39).

At this point I do not have sufficient information to be confident that complaint counsel would have proved these rather dramatic charges. My vote against pursuing the case last June, especially as regards Intel's conduct toward Digital and Compaq, rested in part on my sense that the Commission had not sufficiently considered the grounds on which even a putative monopolist is entitled to withhold aid and comfort from another company that threatens serious harm by suing it or suing a third party on whose behalf the monopolist is obligated to intervene. It was my judgment then, and it remains so now, that one could plausibly view Intel's conduct in precisely such an exculpatory light. If the Commission intended to broadcast some kind of general admonition that a monopolist in these circumstances cannot resort to ''self-help'' (by, *e.g.*, withdrawing and withholding technical information and prototypes) but must instead hire lawyers and take its disputes through lengthy and expensive litigation, then that is a message to which I most assuredly do not subscribe. On the other hand, if the complaint was meant to tell a narrower, more traditional antitrust story based on harm to competition and consumers—in this case, harm to innovation in a high-technology industry—I remain unsure whether even that more modest edifice can rest on Intel's decision to withdraw assistance from a handful of customers who were litigious or otherwise flouted Intel's wishes.[5]

Before I turn to the order, I wish to address one other consideration concerning issuance of the complaint against Intel. Regardless of how one characterizes the dealings between Intel and its three customers—*i.e.*, regardless of whether one accepts the complaint's claim that Intel used its monopoly power to unfairly gain access to intellectual property developed by those customers—I do not believe that the complaint spells out an especially coherent theory of how those dealings harmed consumers. Consumer welfare is the touchstone of antitrust enforcement, and the ''public interest'' standard of Section 5 of the FTC Act embodies considerations of consumer welfare. In the absence of clear evidence of how Intel's dealings with Digital, Intergraph, and Compaq could have adversely affected consumers, one can question the very basis for issuing this complaint—and for injecting a government agency into the dynamic workings of a fast-moving, high-technology industry.[6] I look forward to any public comments that deal with the likely harm to consumers stemming from the misconduct alleged in the Commission's complaint.

Regarding the proposed order itself, some observers have characterized it as

[3] In their statement, my fellow Commissioners—citing complaint counsel's pretrial brief as support—assert that ''Compliant Counsel said it would offer evidence that the sub-$1000 segment was a small and relatively unprofitable portion of the market * * * and that at the high-end, many computer manufacturers have been abandoning their proprietary microprocessor designs in favor of Intel's * * *. Moreover, according to my colleagues, ''[i]n the market as a whole, Compliant Counsel contended that Intel's share had grown, not shrunk, and was in the range of 80% or more.'' Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson at 2 n.1. I do not disagree that these propositions that complaint counsel aimed to establish. My point is simply that I have not yet been persuaded by the *evidence* in the Commission's possession—as distinguished from complaint counsel's representations and contentions—that Intel possesses monopoly power in the relevant market.

[4] Of course, both Digital (the developer of the Alpha microprocessor) and Intergraph (which developed the Clipper chip prior to 1993) were not only Intel's customers but also—at least to the extent that they were able to chisel away at Intel's alleged monopoly—its competitors in the microprocessor market. The Commission's complaint, however, is couched almost entirely in terms of Intel's allegedly anticompetitive behavior toward three victims that needed Intel technical information and prototypes *so that they could build computers.* And although press releases do not necessarily reflect the official views of the Commission (in the sense that the complaint does), both the June 8, 1998, FTC press release that announced the issuance of this complaint as well as the March 17, 1999, release announcing the Commission's acceptance of this consent agreement spoke almost entirely in terms of Intel's conduct toward its customers. Even if Digital and Intergraph can be characterized as Intel's present or erstwhile competitors—thereby giving this matter more of the character of a traditional monopolization case—the Commission has consistently placed far greater emphasis on the supplier/customer relationship between Intel and its alleged victims.

[5] My colleagues characterize Intel's conduct as ''coercion that forces customers to license away patent rights on unfavorable terms'' (Statement of Chairman Pitofsky and Commissioners Anthony and Thompson, *supra* n.3, at 1), which begs the important question whether Intel was truly engaged in such coercion or was instead defending against attacks by its alleged victims. Regarding my doubts about whether Intel's alleged conduct (and its anticompetitive effects) could have been proved, my colleagues state that these allegations ''are consistent with our knowledge of the industry and with common sense * * *'' *Id.* It bears repeating that my concerns arise from the state of the evidence underlying the Commission's allegations. I take little comfort from—indeed, I am not sure I fully understand—the notion that monopolization allegations are ''consistent with our knowledge of the industry and with common sense.'' I do not—as my colleagues suggest (*id.*)—''demand certainty'' about the facts at issue, but I do look to the strength of the evidence rather than to what a litigant's pretrial brief might promise to deliver (*id.* at 2).

[6] I note that to the extent this case is depicted as involving harm to Intel's competitors (rather than to its customers), that would tend to attenuate further any theory that Intel's conduct threatened harm to consumers.

having achieved whatever objective prompted the Commission's suit against Intel. I am not so sure, in part because of my uncertainty (discussed earlier) over what message the complaint was meant to communicate and in part because of the very terms of the order. In fact, given my reservations about the merits of the complaint, I would be more concerned about the order—comprising a difficult-to-enforce mandate to ''sin no more,'' with a major proviso and some significant exceptions—if it seemed likely to impose real and significant restrictions on Intel.

I expect the proposed order to present possible enforcement difficulties because, among other things, its basic prohibition (order ¶ II.A) commands Intel not to take certain adverse actions against microprocessor customers with regard to ''Advance Technical Information'' ''*for reasons related to* an Intellectual Property Dispute'' [7] and not to ''*base[ ]* any supply decisions for general purpose microprocessors *upon the existence of* an [Intellectual Property] Dispute.'' No matter what may motivate Intel's future decisions whether to furnish technical information and microprocessor prototypes to customers, it is extremely doubtful that Intel is going to create any kind of record that will enable the Commission to ascertain whether such a decision is ''for reasons related to'' or ''base[d] * * * upon'' the one ground made impermissible by the order—an intellectual property dispute. Exacerbating the impact of Paragraph II.A's subjective language are two further paragraphs that allow Intel to withhold advance technical information from customers (order ¶ II.B.2) or make product supply decisions (order ¶ II.B.3) based on ''*business considerations unrelated to* the existence of the [Intellectual Property] Dispute''—further verbiage that appears to make order enforceability hinge on difficult inquiries into the state of mind of Intel decision makers. I hope that my pessimism is unwarranted, but the key terms of the order seem destined to enmesh the Commission in expensive, and perhaps intractable, enforcement proceedings if Intel is ever suspected of violating it.[8]

I end where I began—searching for information to help me decide whether I now have reason to believe that Intel violated the law and, if so, whether I can support this consent order. I genuinely look forward to receiving public comments both supportive and critical of the settlement and the underlying theory of violation. I hope that the considerations spelled out in this statement will be helpful to those preparing to submit comments to the Commission.

[FR Doc. 99–10252 Filed 4–22–99; 8:45 am]
BILLING CODE 6750–01–P

[7] All italics in this paragraph are added.

[8] Presumably in response to my point about the difficulty of order enforcement in this case, my fellow Commissioners note that ''[c]ertainly the order could have been made more certain in its application by, for example, requiring Intel to deal with all comers on identical terms, regardless of circumstances or the credit-worthiness or other characteristics of would-be customers.'' Statement of Chairman Pitofsky and Commissioners Anthony and Thompson, *supra* n. 3, at 2. There is nothing in my statement to suggest that I would favor an order drafted along such rigid, mechanical lines. My point was that, in its current form, the order against Intel could present formidable enforcement problems.

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