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Friday
October 8, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7233 of October 5, 1999

German-American Day, 1999

By the President of the United States of America

A Proclamation

Throughout America's history, we have drawn strength from the diversity of our people. Men and women from many different countries and cultures have arrived here, determined to forge a new life in a new land, and their talents have contributed to our national life. Germans were among the earliest ethnic groups to emigrate to America, arriving at William Penn's invitation more than 300 years ago. Whether motivated by the pursuit of religious liberty, intellectual freedom, or economic opportunity, the millions of Germans who have made their home in America have played an important part in advancing the peace and prosperity that our country enjoys today.

The achievements of notable German Americans have enriched every aspect of our society. The leadership of statesmen such as President Eisenhower and Henry Kissinger helped guide our Nation securely through the difficult Cold War years. The military acumen of German Americans has benefited us—from the Revolutionary War, when Baron Friedrich von Steuben's training programs brought discipline and organization to the Continental Army, to the Gulf War, when General Norman Schwarzkopf helped lead our troops to victory over Saddam Hussein. Prominent authors H. L. Mencken and Theodore Dreiser have enlightened our literary tradition, while inventors George Westinghouse and Charles Steinmetz have fueled our technological advancement. The world of American sports has been energized by outstanding athletes of German descent, providing a showcase for the talents of such greats as Babe Ruth and Lou Gehrig.

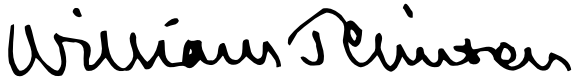
But by focusing on the achievements of prominent individuals, we risk understating the overall importance of the German heritage to our Nation's strength and development. Today, nearly one-quarter of all Americans can trace their ancestry to Germany, just as our English language finds its roots in the Germanic tongues of centuries past. German Americans honor the traditions of their lineage in the way they live, reflecting the sense of personal honor and strong work ethic passed down to them by their forebears.

As Americans seek to become a more united people, we must not forget our roots, for they remind us of who we are and of what we have to share with others. German-American Day offers us an invaluable opportunity not only to honor the contributions of German Americans, but also to celebrate the close relationship that we enjoy today with our German friends across the Atlantic. Next month, we will join them in commemorating the 10th anniversary of the fall of the Berlin Wall—a symbolic triumph of democracy and self-determination. As we look back on half a century of joint accomplishments with Germany that reflect our shared respect for the rule of law, human rights, and social justice, we can look ahead to a new era of coopera-tion, whether working together to restore peace to the war-torn Balkans or assisting the former Eastern Bloc nations on their own road to democratization and economic recovery.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim Wednesday, October 6, 1999, as German-American Day. I encourage all Americans to applaud

the important contributions made to our country by our millions of citizens of German descent and to celebrate our close ties to the people of Germany.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of October, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.



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Rules and Regulations

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AI49

Federal Employees' Group Life Insurance Program: Court Orders

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is making final its interim regulations implementing legislation which was enacted July 22, 1998. The legislation requires that certain court orders be followed instead of the otherwise existing statutory order of precedence for payment of benefits under the Federal Employees' Group Life Insurance Program.

DATES: Effective October 8, 1999.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, (202) 606–0004.

SUPPLEMENTARY INFORMATION: The Federal Employees' Group Life Insurance (FEGLI) law sets an order of precedence for payment of benefits following the death of an insured employee, annuitant, or compensationer (5 U.S.C. 8705). First in the order of precedence is a designated beneficiary. Public Law 105–205, 112 Stat. 683, enacted July 22, 1998, requires benefits to be paid in accordance with the terms of a court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement relating to a court decree of divorce, annulment, or legal separation, regardless of whether or not the insured individual actually completes a designation complying with the court order, if the court order is received in the appropriate office before the death of the insured individual. To the extent provided in the court order, the court order supersedes any prior designation by the insured individual. On April 6, 1999, OPM issued interim regulations in the **Federal Register** [64 FR 16601] implementing this legislation.

OPM received no comments on the court order regulations.

OPM received one comment from an agency on a correction we published at the same time as the court order regulations. The correction dealt with the situation in which an individual returns to Federal service following a break in service of at least 180 days. The regulation requires that, if he/she doesn't make a new life insurance election, the employee will get back the same FEGLI coverage he/she had before the break in service. The commentor was concerned about the length of time it often takes for an agency to receive the previous employment records for an individual with prior Federal service. If the employee doesn't remember what coverage he/she had before, the agency would not know what coverage to give the individual until the records arrive. We understand that in this situation the agency may have to make retroactive adjustments in coverage and premiums. However, we believe that most individuals returning to Federal service after a 180-day break will make a new life insurance election, and that election will supersede the prior coverage. It is only in instances in which the employee does not submit an election that an agency would need to reinstate prior coverage. We believe that these returning employees should be treated the same as returning employees with a less than 180-day break in service.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect life insurance benefits of Federal employees and retirees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, under the authority of 5 U.S.C. 8716, OPM is adopting its interim regulation under 5 CFR part 870 as published on April 6, 1999 [64 FR 16601], as a final rule without change.

[FR Doc. 99–26318 Filed 10–7–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM164, Special Conditions No. 25–150–SC]

Special Conditions: Boeing 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes modified by Canard Aerospace Corporation. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is September 30, 1999. Comments must be received on or before November 22, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–114), Docket No. NM164, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM164. Comments may be inspected in the Rules Docket

weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM164.'' The postcard will be date stamped and returned to the commenter.

Background

On April 2, 1999, Canard Aerospace Corporation, 13050 Pioneer Trail, Minneapolis, MN 55347, applied for a supplemental type certificate (STC) to modify Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes approved under Type Certificate No. A20WE. The 747 series airplanes are 231 feet, 4 inches long and 195 feet, 8 inches wide. The height at vertical stabilizer to ground is 63 feet, 5 inches. The passenger load is 374 to 420 passengers, and the range is from 5,290 to 6,600 miles. The modification incorporates the installation of Honeywell Classic Navigator Systems. Each system consists of a Honeywell HT–9100 Navigation Management System, a Super Attitude Heading Reference System, and a Digital to Analog Adapter. These advanced systems use electronics to a far greater extent than the original Inertial Navigation Systems and may be more susceptible to electrical and magnetic interference. This disruption of signals could result in loss of attitude or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Canard Aerospace must show that the Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The certification basis for the modified Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes include 14 CFR part 25, dated February 1, 1965, with Amendments 1 through 40, as amended by Type Certificate Data Sheet (TCDS) A20WE.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Canard Aerospace apply at a later date for design change approval to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes will incorporate a new navigation system, which was not available at the time of certification of these airplanes, that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes, which require that new electrical and electronic systems, such as the Honeywell Navigator System, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, or 2 below:

1. A minimum threat of 100 volts per meter root-mean-square (rms) electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz –100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50

Frequency	Field Strength (volts per meter)	
	Peak	Average
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

Applicability

As discussed above, these special conditions are applicable to Boeing 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes modified by Canard Aerospace. Should Canard Aerospace apply at a later date for design change approval to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on Boeing 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes modified by Canard Aerospace Corporation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes modified by Canard Aerospace Corporation.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, September 30, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–26372 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–318–AD; Amendment 39–11360; AD 99–21–15]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires removal of the fuel boost pump wiring in the conduits of the wing and center fuel tanks; an inspection to detect damage of the wiring, and corrective action, if necessary; and eventual installation of Teflon sleeving over the electrical cable. This amendment expands the inspection requirement to include airplanes with fewer than 20,000 flight hours; requires additional repetitive inspections for all airplanes; reidentifies the requirement to install Teflon sleeving as a nonterminating action; and removes the requirement to report inspection results. This amendment is prompted by the FAA's determination that Model 737–100 through –500 series airplanes that are not affected by the current AD must also be protected against excessive wire chafing of the fuel boost pump wiring and that all Model 737–100 through –500 series airplanes must be repetitively inspected. The actions specified by this AD are intended to detect and correct chafing and prevent electrical arcing between the fuel boost pump wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank.

DATES: Effective November 12, 1999.

The incorporation by reference of Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998, as listed in the regulations, is approved by the Director of the **Federal Register** as of November 12, 1999.

The incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998, as listed in the regulations, was approved previously by the Director of the **Federal Register** as of October 15, 1998 (63 FR 52152, September 30, 1998).

The incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; as listed in the regulations; was approved previously by the Director of the Federal Register as of June 29, 1998 (63 FR 34271, June 24, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–19–09, amendment 39–10751 (63 FR 52152, September 30, 1998), which is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published in the Federal Register on January 11, 1999 (64 FR 1545). The action proposed to continue to require removal of the fuel boost pump wiring in the conduits of the wing and center fuel tanks; an inspection to detect damage of the wiring, and corrective action, if necessary; and eventual installation of Teflon sleeving over the electrical cable. The action also proposed to expand the inspection requirement to include additional airplanes, add repetitive inspections for all airplanes, and reidentify the requirement to install Teflon sleeving as a nonterminating action.

Comments

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

Support for the Proposal

Three commenters, including the airplane manufacturer, support the requirement of initial inspection of the fuel boost pump wiring specified in paragraph (f) of the proposed rule.

Three commenters, including the airplane manufacturer, support the requirement of repetitive inspections of the fuel boost pump wiring specified in paragraph (g) and reidentification of the requirement to install Teflon sleeving as a nonterminating action specified in paragraphs (h) through (k) of the proposed rule.

Requests to Revise Requirements for Certain Airplanes

One commenter, the airplane manufacturer, requests that the applicability for the initial inspection of the fuel boost pump wiring specified in paragraph (f) of the proposed AD be limited to airplanes having line numbers 1 through 3072 inclusive. The commenter states that airplanes having line numbers 3073 and subsequent were delivered with the Teflon sleeving specified in paragraphs (h) through (k) of the proposed AD already installed. The FAA concurs with the commenter's request and has revised paragraph (f) of the final rule accordingly. Airplanes having line numbers 3073 and subsequent still require repetitive inspections of the fuel boost pump wiring at intervals not to exceed 30,000 flight hours as specified in paragraph (g) of the AD. Therefore, paragraph (f) of the final rule has also been revised to require an initial inspection of the fuel boost pump wiring prior to the accumulation of 30,000 total flight hours for those airplanes.

One commenter requests that the applicability for the repetitive inspections of the fuel boost pump wiring specified in paragraph (g) of the proposed AD include airplanes inspected in accordance with paragraphs (a), (b), and (c) of the proposed AD. The FAA concurs that airplanes inspected in accordance with paragraphs (a), (b), and (c) of this AD must be subject to the repetitive inspections specified in paragraph (g). However, by including reference to paragraph (d) in paragraph (g) of this AD, all airplanes that have accumulated more than 30,000 total flight hours are already included. The reference in paragraph (g) of this AD to paragraphs (e) and (f) includes all other airplanes. Therefore, paragraph (g) of this AD requires repetitive inspections of the fuel boost pump wiring for all Model 737–100, –200, –300, –400, and –500 series airplanes. No change to the final rule is necessary in this regard.

Request for Alternative Corrective Action

One commenter requests that paragraph (l) of the proposed AD be revised to allow removal of the case ground wire in lieu of replacement of the case ground wire with a new wire. The commenter states that Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998, and Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998, allow removal of the case ground wire as an alternative to replacement of the case ground wire with a new wire. The FAA concurs and has revised paragraph (l) of the final rule accordingly.

Request to Eliminate the Repetitive Inspections

Two commenters request that the repetitive inspections of the fuel boost pump wiring specified in paragraph (g) of the proposed AD be eliminated. One commenter states that, because the repetitive inspections apply to the electrical cable with the Teflon sleeving installed, use of the findings from the initial inspection of the fuel boost pump wiring, which did not have the Teflon sleeving installed, to determine the interval for the repetitive inspections is without merit. This commenter requests that the FAA eliminate the proposed repetitive inspections, and instead, perform tests of the electrical cable with the Teflon sleeving installed to determine the resistance of the fuel boost pump wiring to chafing. The commenter states that only after thorough testing and examination of the data should the FAA determine whether repetitive inspections of the fuel boost pump wiring are necessary. The other commenter states that it has reviewed the data made public by the FAA with the findings from the initial inspection of the fuel boost pump wiring, and concludes that installation of Teflon sleeving over the electrical cable improves the durability of the wiring sufficiently to be considered terminating action. This commenter requests that, if the FAA determines that repetitive inspections of the fuel boost pump wiring are necessary, the interval be a minimum of 60,000 flight hours. In addition, both commenters express concern that wire bundle removal and installation can cause damage which may induce an unsafe condition that would not otherwise be present.

The FAA does not concur with the commenters' request. The FAA has determined that 30,000 flight hours represents an appropriate interval of time for the repetitive inspections of the fuel boost pump wiring specified in paragraph (g) of this AD wherein an acceptable level of safety can be maintained. The FAA finds that the conduit-enclosed fuel boost pump wiring installation is not a fail-safe design. Therefore, repetitive inspections are necessary to ensure safe operation. This decision is supported by the testing conducted by the airplane manufacturer, and the findings from the inspections of the fuel boost pump wiring. In addition, the FAA recognizes that the fuel boost pump wiring may be damaged upon removal from and installation into the conduit. However, damage upon removal is readily detectable and a damaged wire will not be reinstalled into the airplane. The FAA also notes that the addition of the Teflon sleeving prior to installation of the wiring greatly reduces the possibility of installation damage. The sleeving allows the wiring to translate in the conduit with less friction than without sleeving, resulting in less force being required to pull the wiring

through the conduit. Therefore, the FAA concludes that the hazard introduced by removal and installation of the wiring is minimal relative to the hazard of not re-inspecting at all. No change to the final rule is necessary in this regard.

Request for Reduction of Repetitive Inspection Interval

One commenter requests that the interval for the repetitive inspections of the fuel boost pump wiring specified in paragraph (g) of the proposed AD be reduced from 30,000 flight hours to 20,000 flight hours. The commenter assumes that the compliance threshold of 20,000 flight hours for the initial inspection of the fuel boost pump wiring represents the ''safe life'' of the wiring. The commenter then states that there appears to be no justification for the interval of 30,000 flight hours for the repetitive inspections of the fuel boost pump wiring, and that it would be logical for the compliance thresholds for the initial and repetitive inspections to be the same.

The FAA does not concur with the commenter's request. Paragraphs (d) through (f)(1) of the final rule require an initial inspection of the fuel boost pump wiring for all airplanes that do not have Teflon sleeving installed over the electrical cable, at various times, but no later than 24 months after the effective date of this AD. For some airplanes, the initial inspection will occur substantially earlier than 20,000 total flight hours. The compliance time for the initial inspection is not meant to be representative of the ''safe life'' of the wiring. The FAA notes that the wiring configuration is changed by adding Teflon sleeving over the electrical cable, in accordance with paragraphs (h) through (k) of this AD, between the initial inspection specified in paragraphs (d) through (f)(1) and the repetitive inspections specified in paragraph (g). The additional sleeving increases the amount of insulation around the conductor by approximately 33 percent. In developing an appropriate compliance time for the repetitive inspections, the FAA considered the recommendation of the airplane manufacturer and testing conducted by the airplane manufacturer to substantiate the selected interval. In consideration of these items, as well as the findings from the inspection of the fuel boost pump wiring, the FAA has determined that 30,000 flight hours represents an appropriate interval of time for the repetitive inspections of the fuel boost pump wiring specified in paragraph (g) of this AD wherein an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request for Information on Terminating Action

One commenter requests information regarding development of terminating action for the repetitive inspections specified in paragraph (g) of the proposed AD. The commenter states that, although this AD addresses the immediate problem of chafing of the fuel boost pump wiring, no information is provided that defines the root cause of the chafing, such as vibration, and possible terminating action for the repetitive inspections. No specific change to the rule is requested.

The FAA agrees that the actions specified in this AD do not address the root cause of the chafing of the fuel boost pump wiring; however, the FAA has determined that installation of the Teflon sleeving and the repetitive inspections address the stated unsafe condition. If the airplane manufacturer chooses to conduct testing to identify the root cause of the chafing and recommends additional design modifications, the FAA will give those due consideration. However, the FAA, as well as the manufacturer, recognizes that the hazards associated with obtaining sufficient data may outweigh the benefits of further testing. Such testing could require installation of electrical equipment inside the fuel tank to monitor conduit vibration, which may present an additional ignition source inside the tank, substantially increasing risk to test personnel and testing fixtures. No change to the final rule is necessary in this regard.

Explanation of Additional Change to the Proposal

The requirements to submit damaged electrical cables and conduits to the manufacturer and report results of the initial inspection to the FAA have been eliminated from this final rule. In the preamble to AD 98–19–09, the FAA indicated that it was considering further rulemaking action to require inspection of Model 737 series airplanes that have accumulated fewer than 20,000 total flight hours. The reporting requirements were intended to allow the manufacturer and the FAA to determine the extent of wiring damage in the affected fleet in order to consider further rulemaking action. As stated in the NPRM, this AD follows from the determination that further rulemaking action is necessary. The FAA has determined that sufficient data have been collected, and no additional data is necessary. Therefore, the reporting requirements included in paragraph (m) of the proposal are not included in this final rule.

Conclusion

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

Cost Impact

There are approximately 2,866 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,131 airplanes of U.S. registry will be affected by this AD.

The inspection that is currently required by AD 98–19–09, and retained in this AD, takes approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. This new AD action will require repetitive performance of that inspection. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $2,035,800, or $1,800 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10751 (63 FR 52152, September 30, 1998), and by adding a new airworthiness directive (AD), amendment 39–11360, to read as follows:

99–21–15 BOEING: Amendment 39–11360. Docket 98-NM–318–AD. Supersedes AD 98–19–09, Amendment 39–10751.

Applicability: All Model 737–100, –200, –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 (m)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct chafing and prevent electrical arcing between the fuel boost pump wiring and the surrounding conduit, which could result in arc-through of the conduit, and consequent fire or explosion of the fuel tank, accomplish the following:

Inspections Required by AD 98–11–52

(a) For all airplanes that have accumulated 50,000 or more total flight hours as of June 29, 1998 (the effective date of AD 98–11–52, amendment 39–10611): Prior to further flight, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(b) For all airplanes that have accumulated less than 50,000 total flight hours as of receipt of telegraphic AD T98–11–51: Prior to the accumulation of 40,000 total flight hours, or within 14 days after June 29, 1998, whichever occurs later, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

(c) For all airplanes: Remove the fuel boost pump wiring from the in-tank conduit for the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998. Accomplish the inspection at the earliest of the times specified in paragraphs (c)(1), (c)(2), and (c)(3).

(1) For Model 737–300, –400, and –500 series airplanes: Inspect prior to the accumulation of 40,000 total flight hours, or within 14 days after June 29, 1998, whichever occurs later.

(2) For Model 737–100 and –200 series airplanes: Inspect prior to the accumulation of 40,000 total flight hours, or within 10 days after June 29, 1998, whichever occurs later.

(3) For all airplanes: Inspect prior to the accumulation of 50,000 total flight hours, or within 5 days after June 29, 1998, whichever occurs later.

(d) For all airplanes: Prior to the accumulation of 30,000 total flight hours or within 45 days after June 29, 1998, whichever occurs later, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring, in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

Inspections Required by AD 98–19–09

(e) For airplanes that have accumulated 20,000 or more total flight hours and less than 30,000 total flight hours as of October 15, 1998 (the effective date of AD 98–19–09, amendment 39–10751): Within 60 days after October 15, 1998, remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring; in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

New Inspection Requirements

(f) Remove the fuel boost pump wiring from the in-tank conduit for the aft boost pumps in main tanks numbers 1 and 2, and the center tank left and right boost pumps, and perform a detailed visual inspection to detect damage of the wiring; at the time specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable. Perform these actions in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) For airplanes having line numbers 1 through 3072 inclusive that have accumulated less than 20,000 total flight hours as of October 15, 1998: Inspect at the earlier of the times specified in paragraph (f)(1)(i) and (f)(1)(ii) of this AD.

(i) Prior to the accumulation of 20,000 total flight hours, or within 60 days after the effective date of this AD, whichever occurs later.

(ii) Within 24 months after the effective date of this AD.

(2) For airplanes having line numbers 3073 and subsequent: Inspect prior to the accumulation of 30,000 total flight hours.

(g) For all airplanes: Repeat the inspection required by paragraph (d), (e), or (f) of this AD, as applicable, at intervals not to exceed 30,000 flight hours after initial accomplishment of the applicable inspection.

Corrective Actions

(h) If red, yellow, blue, or green wire insulation cannot be seen through the outer jacket of the electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraph (h)(1), (h)(2), or (h)(3) of this AD in accordance with procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Revision 1, dated May 28, 1998; or Revision 2, dated November 26, 1998.

(1) Install Teflon sleeving over the electrical cable, and reinstall the cable. Or

(2) Reinstall the electrical cable without Teflon sleeving over the cable. Within 500 flight hours after accomplishment of the reinstallation, repeat the inspection

described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable. Or

(3) Replace the electrical cable with new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection specified in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(i) If red, yellow, blue, or green wire insulation can be seen through the outer jacket of the electrical cable during any inspection required by this AD, but no evidence of electrical arcing is found: Prior to further flight, accomplish either paragraph (i)(1) or (i)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) Replace the damaged electrical cable with a new cable, install Teflon sleeving over the cable, and reinstall the cable. Or

(2) Replace the electrical cable with a new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(j) If any evidence of electrical arcing but no evidence of fuel leakage is found on the removed electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraphs (j)(1) and (j)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) Verify the integrity of the conduit in accordance with the instructions contained in NSC 03, Revision 1, or Revision 2 of the alert service bulletin. And

(2) Accomplish either paragraph (j)(2)(i) or (j)(2)(ii) of this AD in accordance with the alert service bulletin.

(i) Replace the damaged electrical cable with a new cable, install Teflon sleeving over the cable, and reinstall the cable. Or

(ii) Replace the electrical cable with a new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(k) If any evidence of fuel is found on the removed electrical cable during any inspection required by this AD: Prior to further flight, accomplish paragraphs (k)(1) and (k)(2) of this AD in accordance with the procedures specified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) Replace the conduit section where electrical arcing was found. And

(2) Accomplish either paragraph (k)(2)(i) or (k)(2)(ii) of this AD.

(i) Replace the damaged electrical cable with a new cable, install Teflon sleeving over the cable, and reinstall the cable. Or

(ii) Replace the electrical cable with a new cable without Teflon sleeving. Within 18 months or 6,000 flight hours, whichever occurs first, repeat the inspection described in paragraph (d), (e), or (f) of this AD, as applicable, and install Teflon sleeving over the cable.

(l) For Groups 1 and 2 airplanes, as identified in Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998: Concurrent with the first accomplishment of corrective action in accordance with paragraph (h), (i), (j), or (k) of this AD, as applicable, replace the case ground wire with a new wire or remove the case ground wire in accordance with Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notices of Status Change NSC 01, dated May 7, 1998, NSC 02, dated May 8, 1998, and NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

Alternative Methods of Compliance

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

(m)(2) Alternative methods of compliance, approved previously in accordance with AD 98–11–52 and AD 98–19–09, are approved as alternative methods of compliance with this AD.

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

Special Flight Permits

(n) 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

(o) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notice of Status Change NSC 01, dated May 7, 1998, Notice of Status Change NSC 02, dated May 8, 1998, and Notice of Status Change NSC 03, dated May 9, 1998; Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998; or Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998.

(1) The incorporation by reference of Boeing Service Bulletin 737–28A1120, Revision 2, dated November 26, 1998, as listed in the regulations, is approved by the Director of the Federal Register as of November 12, 1999.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, Revision 1, dated May 28, 1998, was approved previously by the Director of the Federal Register as of October 15, 1998 (63 FR 52152, September 30, 1998).

(3) The incorporation by reference of Boeing Alert Service Bulletin 737–28A1120, dated April 24, 1998, as revised by Notice of Status Change NSC 01, dated May 7, 1998, Notice of Status Change NSC 02, dated May 8, 1998, and Notice of Status Change NSC 03, dated May 9, 1998, was approved previously by the Director of the Federal Register as of June 29, 1998 (63 FR 34271, June 24, 1998).

(4) 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.

(p) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 29, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25930 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–115–AD; Amendment 39–11356; AD 99–21–12]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that requires a one-time visual inspection of the conduit pipe for distortion or repairs, and replacement of the conduit pipe with a new pipe, if necessary. This amendment also requires replacement of the cable assemblies to the fuel standby pumps with new cable assemblies that have improved sheathing protection.

This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent electrical arcing due to damaged fuel standby pump cable assemblies and conduit pipes, which could create a possible ignition source, and consequent fire hazard.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on July 15, 1999 (64 FR 38157). That action proposed to require a one-time visual inspection of the conduit pipe for distortion or repairs, and replacement of the conduit pipe with a new pipe, if necessary. That action also proposed to require replacement of the cable assemblies to the fuel standby pumps with new cable assemblies that have improved sheathing protection.

Comments

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

Correction of Manufacturer's Title

The FAA has been informed that the title of the manufacturer has changed. The FAA has made this change in the final rule.

New Service Information

Since issuance of the proposed AD, the FAA has reviewed and approved Jetstream Service Bulletin J41–28–010, Revision 1, September 7, 1999. This new revision is essentially the same as the original issue of the service bulletin, which was cited in the proposed AD as the appropriate source of service information for accomplishment of the actions required. However, Revision 1 changes the part number of a crimping tool. The FAA has determined that the inspection and corrective actions required by paragraph (a) of the final rule may be accomplished in accordance with either of those service bulletins. The final rule has been revised accordingly.

Conclusion

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

Cost Impact

The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $56,640, or $960 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–21–12 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11356. Docket 99–NM–115–AD.

Applicability: All Jetstream Model 4101 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing due to damaged fuel standby pump cable assemblies and conduit pipes, which could create a possible ignition source, and consequent fire hazard, accomplish the following:

Corrective Actions

(a) Within 6 months after the effective date of this AD, accomplish the following actions

required by paragraphs (a)(1) and (a)(2) of this AD in accordance with Jetstream Service Bulletin J41–28–010, Revision 1, dated September 7, 1999.

(1) Perform a one-time visual inspection of the conduit pipe (left and right), which carries the fuel standby pump cable assembly into the dry bay of the wing, for distortion (*i.e.,* damage) or repairs. If any distortion or repair is found, prior to further flight, replace the conduit pipe with a new pipe, part number 14128032–403 (left) or part number 14128032–405 (right).

(2) Replace fuel standby pump cable assemblies (left and right) with new cable assemblies, part number F5–71–1.

Note 2: Inspections or replacements that have been accomplished prior to the effective date of this AD in accordance with Jetstream Service Bulletin J41–28–010, dated April 5, 1999, are considered acceptable for compliance with the applicable action specified by this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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.

Incorporation by Reference

(d) The actions shall be done in accordance with Jetstream Service Bulletin J41–28–010, Revision 1, dated September 7, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 005–04–99.

(e) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25931 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–26–AD; Amendment 39–11359; AD 99–21–14]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 helicopters, that requires inspecting and, if necessary, replacing certain circuit breakers. This amendment is prompted by the manufacturer discovering the loss of electrical continuity between the terminals of a circuit breaker. The actions specified by this AD are intended to prevent loss of electrical power, loss of instrumentation, and subsequent loss of control of the helicopter.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 helicopters was published in the **Federal Register** on June 29, 1999 (64 FR 34746). That action proposed to require inspecting and, if necessary, replacing certain circuit breakers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 136 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish the inspection and replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $23 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,208.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–21–14 Eurocopter France: Amendment 39–11359. Docket No. 98–SW–26–AD.

Applicability: Model SA–360C, SA–365C, C1, C2, SA–365N, N1, AS–365N2, and SA–366G1 helicopters, with Crouzet single-pole circuit breaker, part number (P/N) 84 400 028 through P/N 84 400 037, 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 (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 prevent loss of electrical power, loss of instrumentation, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS) or within the next 3 calendar months, whichever occurs first,

(1) For Model SA–360C, and SA–365C, C1, and C2 helicopters, inspect the electrical master box assembly, flotation gear unit assembly, and ground receptacle Crouzet circuit breakers for electrical continuity in accordance with section 2B of the Accomplishment Instructions contained in Eurocopter France Service Bulletin (SB) No. 01.36, dated December 11, 1997.

(2) For Model SA–365N, N1, and AS–365N2 helicopters, inspect the electrical master box assembly, flotation gear unit assembly, and ground receptacle Crouzet single-pole circuit breakers for electrical continuity in accordance with section 2B of the Accomplishment Instructions contained in SB No. 01.00.45, dated December 11, 1997.

(3) For Model SA–366G1 helicopters, inspect the electrical master box assembly, flotation gear unit assembly, and ground receptacle Crouzet single-pole circuit breakers for electrical continuity in accordance with section 2B of the Accomplishment Instructions contained in SB 01.24, dated December 11, 1997.

(b) On or before 500 hours TIS or 6 calendar months, whichever occurs first, inspect all remaining Crouzet single-pole circuit breakers in accordance with section 2B of the Accomplishment Instructions of the applicable SB.

(c) Any replacement single-pole circuit breaker installed, or any single-pole circuit breaker removed and reinstalled, must be inspected prior to further flight in accordance with paragraph 2.B. of the Accomplishment Instructions of the applicable SB.

(d) Remove any affected part-numbered circuit breaker and replace with an airworthy circuit breaker on or before December 31, 1999.

(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, 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.

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

(g) The inspections shall be done in accordance with section 2B of the Accomplishment Instructions contained in Eurocopter France Service Bulletin No. 01.36, or No. 01.00.45, both dated December 11, 1997, as applicable. The circuit breaker replacement shall be done in accordance with section 2B of the Accomplishment Instructions contained in the applicable service bulletin. 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, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 12, 1999.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile AD 98–112–042(A), AD 98–113–043(A), and AD 98–111–021(A), all dated March 11, 1998.

Issued in Fort Worth, Texas, on September 29, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–25917 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–52–AD; Amendment 39–11357; AD 99–19–22]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GMBH Model BO–105A, BO–105C, BO–105 C–2, BO–105 CB–2, BO–105 CB–4, BO–105S, BO–105 CS–2, BO–105 CBS–2, BO–105 CBS–4, and BO–105LS A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 99–19–22 which was sent previously to all known U.S. owners and operators of Eurocopter Deutschland GMBH (ECD) Model BO–105A, BO–105C, BO–105 C–2, BO–105 CB–2, BO–105 CB–4, BO–105S, BO–105 CS–2, BO–105 CBS–2, BO–105 CBS–4, and BO–105LS A–1 helicopters by individual letters. This AD requires, before further flight, creating a component log card or equivalent record and determining the age and number of flights on each tension-torsion (TT) strap. The AD also requires inspecting and removing, as necessary, certain unairworthy TT straps. This amendment is prompted by an accident in which a main rotor blade (blade) separated from an ECD Model MBB–BK 117 helicopter because of fatigue failure of the TT strap. The ECD Model MBB–BK 117 and the BO–105 helicopters use the same part-numbered TT strap. The actions specified by this AD are intended to prevent failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

DATES: Effective October 25, 1999, to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99–19–22, issued on September 3, 1999, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of October 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–52–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On September 3, 1999, the FAA issued Emergency Priority Letter AD 99–19–22, applicable to ECD Model BO–105A, BO–105C, BO–105 C–2, BO–105 CB–2, BO–105 CB–4, BO–105S, BO–105 CS–2, BO–105 CBS–2, BO–105 CBS–4, and BO–105LS A–1 helicopters, which requires, before further flight, creating a component log card or equivalent record and determining the age and number of flights on each TT strap. The AD also requires inspecting and removing, as necessary, certain unairworthy TT straps. That action was prompted by an accident in which a blade separated from an ECD Model MBB–BK 117 helicopter resulting in three fatalities. The cause of the blade separation was a TT strap fatigue failure within the main rotor head. The ECD Model MBB–BK 117 and the BO–105 helicopters use the same part-numbered TT strap. This condition, if not corrected, could result in failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter.

The FAA has reviewed ECD Alert Service Bulletin BO 105 No. ASB–BO 105–10–114, Revision 2, dated August 31, 1999 (ASB). The ASB describes procedures for determining the total accumulated installation time and number of flights on each TT strap. The ASB specifies inspecting and replacing, as necessary, certain unairworthy TT straps. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, classified that ASB as mandatory and issued AD 1999–300/2, dated August 31, 1999, applicable to all models of the BO–105, except the BO–105 CB–5, BO–105 CBS–5, and BO–105 DBS–5 variants.

These helicopter models are manufactured in the Federal Republic of Germany and are type certificated for operation in the United States under the provision 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 LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operations in the United States.

Since the unsafe condition described is likely to exist or develop on other ECD Model BO–105A, BO–105C, BO–105 C–2, BO–105 CB–2, BO–105 CB–4, BO–105S, BO–105 CS–2, BO–105 CBS–2, BO–105 CBS–4, and BO–105LS A–1 helicopters of the same type design, the FAA issued Emergency Priority Letter AD 99–19–22 to prevent failure of a TT strap, loss of a blade, and subsequent loss of control of the helicopter. The AD requires, before further flight, creating a component log card or equivalent record and determining the age and number of flights on each TT strap. The AD also requires inspecting and removing, as necessary, certain unairworthy TT straps. The actions must be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, creating a component log card or equivalent record, determining the age and number of flights on each TT strap, and inspecting and removing, as necessary, certain unairworthy TT straps are required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 3, 1999, to all known U.S. owners and operators of ECD Model BO–105A, BO–105C, BO–105 C–2, BO–105 CB–2, BO–105 CB–4, BO–105S, BO–105 CS–2, BO–105 CBS–2, BO–105 CBS–4, and BO–105LS A–1 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 200 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour to inspect the 4 TT straps on each helicopter; 15 work hours per helicopter to remove and replace the 4 TT straps, if necessary; and the average labor rate is $60 per work hour. Required parts will cost approximately $2,600 per TT strap ($10,400 per helicopter). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,272,000; $12,000 to inspect each helicopter once and $2,260,000 to remove and replace the 4 TT straps on all helicopters.

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. 99–SW–52–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 99–19–22 Eurocopter Deutschland GMBH: Amendment 39–11357. Docket No. 99–SW–52–AD.

Applicability: BO–105A, BO–105C, BO–105 C–2, BO–105 CB–2, BO–105 CB–4, BO–105S, BO–105 CS–2, BO–105 CBS–2, BO–105 CBS–4, and BO–105LS A–1 helicopters, with part number (P/N) 2604067 (Bendix) or J17322–1 (Lord) rotor tension-torsion (TT) strap, 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 (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 prevent main rotor blade (blade) separation due to failure of a TT strap, accomplish the following:

(a) Before further flight:

(1) Create a component log card or equivalent record for each TT strap.

(2) Review the history of the helicopter and each TT strap. Determine the age since initial installation on any helicopter (age) and the number of flights on each TT strap. Enter both the age and the number of flights for each TT strap on the component log card or equivalent record. For the time-in-service (TIS) when the number of flights is unknown, multiply the number of hours TIS by 5 to determine the number of flights. If a TT strap has been previously used at any time on Model BO–105LS A–3 ''SUPER LIFTER'', BO–105 CB–5, BO–105 CBS–5, BO–105 DBS–5, or any MBB–BK 117 series helicopter, multiply the number of flights accumulated on those other models by a factor of 1.6 and then add that result to the number of flights accumulated on the helicopters affected by this AD.

(3) Remove any TT strap from service if the total hours TIS or number of flights and age cannot be determined.

(4) Remove any TT strap from service that has either accumulated 40,000 or more flights or has an age equal to or greater than 216 months.

(b) When a TT strap age is greater than or equal to 120 months and less than 216 months and has accumulated less than 40,000 flights, inspect the TT strap in accordance with the ''Accomplishment Instructions,'' paragraph 2.B.2, of Eurocopter Deutschland GMBH Alert Service Bulletin ASB–BO–105–10–114, Revision 2, dated August 31, 1999, according to following:

(1) If the age is greater than or equal to 120 months but less than 132 months and has less than 35,200 flights, inspect the TT strap within the next 6 weeks. If the number of flights equals or exceeds 35,200, inspect the TT strap before further flight.

(2) If the age is greater than or equal to 132 months but less than 144 months and has less than 30,400 flights, inspect the TT strap within the next 5 weeks. If the number of flights equals or exceeds 30,400, inspect the TT strap before further flight.

(3) If the age is greater than or equal to 144 months but less than 156 months and has less than 25,600 flights, inspect the TT strap within the next 4 weeks. If the number of flights equals or exceeds 25,600, inspect the TT strap before further flight.

(4) If the age is greater than or equal to 156 months but less than 168 months and has less than 20,800 flights, inspect the TT strap within the next 3 weeks. If the number of flights equals or exceeds 20,800, inspect the TT strap before further flight.

(5) If the age is greater than or equal to 168 months but less than 180 months and has less than 16,000 flights, inspect the TT strap within the next 2 weeks. If the number of flights equals or exceeds 16,000, inspect the TT strap before further flight.

(6) If the age is greater than or equal to 180 months but less than 216 months, inspect the TT strap before further flight.

(c) If a defect is found as a result of the inspections of paragraph (b), remove the TT strap from service before further flight.

(d) If no defect is found as a result of the inspection, a maximum of 1,000 flights or 12 months additional time is permitted on a one-time basis before the TT strap must be replaced, provided the limits of paragraph (a)(4) are not exceeded.

(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, Rotorcraft Standards Staff, 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.

(f) Special flight permits may be issued for up to five flights in accordance with §§ 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.

(g) The TT strap inspections shall be done in accordance with paragraph 2.B.2. of the ''Accomplishment Instructions'' in Eurocopter Deutschland GMBH Alert Service Bulletin No. ASB–BO 105–10–114, Revision 2, dated August 31, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from 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, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(h) This amendment becomes effective on October 25, 1999, to all persons except those persons to whom it was made immediately effective by Emergency Priority Letter AD 99–19–22, issued September 3, 1999, which contained the requirements of this amendment.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (LBA), Federal Republic of Germany, AD 1999–300/2, dated August 31, 1999.

Issued in Fort Worth, Texas, on September 29, 1999.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–25918 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–385–AD; Amendment 39–11355; AD 99–21–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, that requires a one-time inspection to detect damage of the input connectors and wiring of the main and auxiliary power unit (APU) battery chargers, and corrective action, if necessary. This amendment also requires installation of secure connectors for the battery charger input connections. In addition, this amendment requires, for certain airplanes, either the installation of a resistor in the battery charger wiring, or the installation of new batteries with internal resistors. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent increased risk of a short circuit and consequent electrical smoke or fire in the aft fuselage.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Louis Castracane, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certifciation Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7335; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes was published in the **Federal Register** on August 12, 1999 (64 FR 43957). That action proposed to require a one-time inspection to detect damage of the input connectors and wiring of the main and auxiliary power unit (APU) battery chargers, and corrective action, if necessary. If also proposed to require installation of secure connectors for the battery charger input connections. In addition, that action proposed to require, for certain airplanes, either the installation of a resistor in the battery charger wiring, or the installation of new batteries with internal resistors.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 115 airplanes of U.S. registry will be affected by this AD. It will take approximately 6 work hours per airplane to accomplish the required actions (no breakdown of work hours for each action is provided in the service bulletin), at an average labor rate of $60 per work hour. Required parts will be provided at no cost to the operators. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $41,400, or $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–21–11 Bombardier, Inc. (Formerly Canadair): Amendment 39–11355. Docket 98–NM–385–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes, serial numbers 7003 through 7067 inclusive and 7069 through 7250 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

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

Compliance: Required as indicated, unless accomplished previously.

To prevent increased risk of a short circuit and consequent electrical smoke or fire in the aft fuselage, accomplish the following:

Inspection and Corrective Action

(a) For all airplanes: Within 450 flight hours after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Part A of the Accomplishment Instructions of Canadair Alert Service Bulletin A601R–24–085, Revision ''C,'' dated November 5, 1998.

(1) Perform a detailed visual inspection to detect damage of the input connector of the main battery charger and the wire harness between the electrical connectors for the main battery and the main battery charger. If any damage is detected, prior to further flight, repair it, or replace the wiring or connector with new or serviceable parts.

(2) Perform a detailed visual inspection to detect damage of the input connector of the auxiliary power unit (APU) battery charger and the wire harness between the electrical connectors for the APU battery and the APU battery charger. If any damage is detected, prior to further flight, repair it, or replace the wiring or connector with new or serviceable parts.

(3) Secure both the spin coupling ring of the input connector of the main battery charger and the spin coupling ring of the input connector of the APU battery charger by installing heat shrink tubing and ty-rap.

Note 2: For the purpose of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

Modification or Replacement

(b) For airplane serial numbers 7003 through 7067 inclusive and 7069 through 7249 inclusive: Within 450 flight hours after the effective date of this AD, accomplish the actions in either paragraph (b)(1) or (b)(2) in accordance with Part B of the Accomplishment Instructions of Canadair Alert Service Bulletin A601R–24–085, Revision ''C,'' dated November 5, 1998:

(1) Install an external 5.1-Kohm resistor in the mid-voltage sensing wire for the main battery and an external 5.1-Kohm resistor in the mid-voltage sensing wire for the APU battery; or

(2) Install main battery P/N 601R59041–3 and APU battery P/N 600–59151–11, which contain an internal resistor for the mid-voltage sensing wire.

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, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

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

Incorporation by Reference

(e) The actions shall be done in accordance with Canadair Alert Service Bulletin A601R–24–085, Revision 'C,' dated November 5, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–98–40, dated November 10, 1998.

(f) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25928 Filed 10–7–99 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–345–AD; Amendment 39–11361; AD 99–21–16]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace BAe Model ATP airplanes, that requires repetitive replacements of the weight on wheels microswitch harness subassembly with a new microswitch harness subassembly. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent a nose wheel shimmy, which could result in the collapse of the nose landing gear during takeoff or landing and possible injury to the flightcrew and passengers.

DATES: Effective November 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1999.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes was published in the **Federal Register** on July 15, 1999 (64 FR 38156). That action proposed to require repetitive replacements of the weight on wheels

microswitch harness subassembly with a new microswitch harness subassembly.

Comments Received

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

The commenter states that the full name and address from which service information is obtained has changed. The FAA concurs and has changed the service information name and address to British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171.

The commenter also states that the British Aerospace Alert Service Bulletin ATP–A32–93, dated October 3, 1998, has been revised to include a reference to revised Messier-Dowty Limited Service Bulletin 200–32–257, which is now at Revision No. 2. British Aerospace Service Bulletin ATP–32–93, Revision 1, dated August 2, 1999, does not contain any changes except for reference to the revised Messier-Dowty Limited Service Bulletin. The revision to the Messier-Dowty Limited Service Bulletin introduces a revised and clarified set-up and test procedure using different (but readily available) test equipment. Since these changes are considered minor, and since they clarify and improve the original service bulletin, the commenter requests that British Aerospace Service Bulletin, Revision 1, dated August 2, 1999, be referenced in the AD.

The FAA concurs with the request to include the cited revised service information. The final rule is revised to require accomplishment of the actions in accordance with British Aerospace Service Bulletin, Revision 1, dated August 2, 1999. A note is included in the final rule to allow accomplishment of the actions in accordance with the earlier British Aerospace Alert Service Bulletin ATP–A32–93, dated October 3, 1998, prior to the effective date of this AD.

Conclusion

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

Cost Impact

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $5,300 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $54,800, or $5,480 per airplane, per replacement cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–21–16 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11361. Docket 98–NM–345–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent a nose wheel shimmy, which could result in the collapse of the nose landing gear during takeoff or landing and possible injury to the flightcrew and passengers, accomplish the following:

Replacement

(a) Within 4 years after the initial installation of the weight on wheels microswitch harness subassembly or 3 months after the effective date of this AD, whichever occurs later, replace the weight on wheels microswitch harness subassembly with a new microswitch harness subassembly in accordance with British Aerospace Service Bulletin ATP–32–93, Revision 1, dated August 2, 1999. Repeat the replacement thereafter at intervals not to exceed 4 years.

Note 2: Accomplishment of the replacement in accordance with British Aerospace Alert Service Bulletin ATP–A32–93, dated October 3, 1998, prior to the effective date of this AD, is acceptable for compliance with this paragraph.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with British Aerospace Service Bulletin ATP–32–93, Revision 1, dated August 2, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 014–10–98.

(e) This amendment becomes effective on November 12, 1999.

Issued in Renton, Washington, on September 29, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–25929 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 1

[T.D. ATF–416a]

RIN 1512–AB94

Delegation of Authority (99R–159P); Correction

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects the regulatory text of a final rule published in the **Federal Register** of September 15, 1999, regarding delegations of authority contained in part 1, title 27, Code of Federal Regulations (CFR).

DATES: This rule is effective October 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) published a document in the **Federal Register** of September 15, 1999 (64 FR 49984). The first sentence of the text of 27 CFR 1.25 contained an obsolete form, ATF Form 5170.4. This document corrects this error.

In rule FR Doc. 99–23618 published on September 15, 1999, make the following correction:

§ 1.25 [Corrected]

On page 49985, in the center column, correct the first full sentence of § 1.25 to read: ''Applications for basic permits to engage in any of the operations set forth in §§ 1.20 to 1.22 must be made on ATF Form 5100.24 or 5100.18, verified as required by § 1.56, and will be accompanied by such affidavits, documents, and other supporting data, as the appropriate ATF officer may require.''

Signed: October 4, 1999.

John W. Magaw,

Director.

[FR Doc. 99–26385 Filed 10–7–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR PART 117

[CGD08–99–011]

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice; withdrawal of temporary deviation from regulations.

SUMMARY: The Coast Guard is withdrawing a temporary deviation from the regulation governing the operation of the Florida Avenue bascule span drawbridge across the Inner Harbor Navigation Canal, mile 1.7 at New Orleans, Orleans Parish, Louisiana. This temporary deviation was issued to allow for replacement of the damaged fender system. The fender system has been replaced ahead of schedule and the temporary deviation is no longer necessary.

DATES: The temporary deviation is withdrawn effective October 8, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eight Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Administration Branch of the Eight Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 7, 1999, the Coast Guard published a Notice of deviation from regulations in the **Federal Register** (64 FR 37570). The temporary deviation allowed the draw of the Florida Avenue bascule span drawbridge to remain closed to navigation daily from 8 a.m. until noon and from 1 p.m. until 5 p.m. from September 23, 1999 through November 6, to allow for replacement of the damaged fender system. On September 14, 1999 the Coast Guard received notification that the temporary deviation is no longer necessary. The Coast Guard is, therefore, withdrawing this notice of temporary deviation from drawbridge operating regulations (CGD08–99–011).

Dated: September 30, 1999.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eight Coast Guard District.

[FR Doc. 99–26355 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–171]

Drawbridge Operation Regulations: Passaic River, NJ.

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Dock Bridge, mile 5.0, across the Passaic River at Harrison, New Jersey. This deviation allows the bridge owner to keep the bridge in the closed position from 10 p.m. on October 8, 1999, to 5 a.m. on October 11, 1999. This deviation is necessary to facilitate the replacement of the gliders at the bridge.

DATES: this deviation is effective from October 8, 1999, to October 11, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Dock Bridge, mile 5.0, across the Passaic River has vertical clearances of 24 feet at mean high water, and 29 feet at mean low water in the closed position. The current operation regulations listed at 33 CFR 117.739(e) require the bridge to open on signal; except that, from Monday through Friday, except federal holidays, the draw need not open from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m. At all other times, an opening may not be delayed for more than ten minutes, unless the drawtender and the vessel operator agree to a longer delay.

The bridge owner, AMTRAK, requested a temporary deviation from the operating regulations for the Dock Bridge in order to replace the gliders at the bridge. This work will require the Dock Bridge to remain in the closed position from 10 p.m. on October 8, 1999, to 5 a.m. on October 11, 1999. Vessels that can pass under the bridge without an opening may do so at all times during the closed periods. This work is essential for public safety and the continued operation of the bridge.

Thirty days notice to the Coast Guard for approval of this maintenance repair was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 29, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–26356 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300936; FRL–6386–4]

RIN 2070-AB78

Tebuconazole; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide tebuconazole in or on sunflower oil at 0.4 part per million (ppm) and sunflower seed at 0.2 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sunflowers. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective October 8, 1999. Objections and requests for hearings, identified by docket control number OPP–300936, must be received by EPA on or before December 7, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300936 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9375; and e-mail address: rosenblatt.dan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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.* The Agency has established an official record for this action under docket control number OPP–300936. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available

for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5752–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of tebuconazole in or on sunflower seed at 0.2 ppm and sunflower oil at 0.4 ppm, with an expiration date of September 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebuconazole on sunflowers for this year's growing season due to disease pressure posed by sunflower rust. New strains of sunflower rust have been discovered in sunflower-producing regions in the plains states that could lead to significant yield loss for growers. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebuconazole for control of sunflower rust in sunflower.

EPA assessed the potential risks presented by residues of tebuconazole in or on sunflower seed and sunflower oil. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of October 29, 1997 (62 FR 56089). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sunflower seed and sunflower oil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300936 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 7, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control

number OPP–300936, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

V. 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 this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 28, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.474 [Amended]

2. In § 180.474, by amending paragraph (b)(1) by changing the date for sunflower oil and sunflower seed from ''9/30/99'' to read ''12/31/00''.

[FR Doc. 99–26201 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300925; FRL–6383–2]

RIN 2070–AB78

Ethalfluralin; Reestablishment of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation reestablishes a time-limited tolerance for residues of the herbicide ethalfluralin and its metabolites in or on canola at 0.05 part per million (ppm) for an additional 2–year period. This tolerance will expire and is revoked on December 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

DATES: This regulation is effective October 8, 1999. Objections and requests for hearings, identified by docket control number OPP–300925, must be received by EPA on or before December 7, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300925 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9358; and e-mail address: Deegan.Dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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.* The Agency has established an official record for this action under docket control number OPP–300925. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of December 17, 1997 (62 FR 66008) (FRL–5756–4), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of ethalfluralin and its metabolites in or on canola at 0.05 ppm, with an expiration date of October 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Such tolerances can be established without providing notice or period for public comment.

EPA received a request to reestablish the use of ethalfluralin on canola for this year's growing season due to the continued lack of effective registered herbicides for use on canola. EPA has authorized under FIFRA section 18 the use of ethalfluralin on canola for control of kochia in canola.

EPA assessed the potential risks presented by residues of ethalfluralin in or on canola. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 17, 1997 (62 FR 66008). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is reestablished for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409.

However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300925 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before December 7, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300925, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on 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, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section

408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

V. 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 this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: September 24, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.416 [Amended]

2. In § 180.416, by amending paragraph (b) by changing the date ''10/31/98'' to read ''12/31/01''.

[FR Doc. 99–26202 Filed 10–7–99; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 204

[Docket No. MARAD–1999–6309]

Redelegation of Authority To Settle Federal Tort Claims

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Administrator of the Maritime Administration (MARAD) redelegates claim settlement authority under the Federal Tort Claims Act solely to MARAD's Office of the Chief Counsel and removes the settlement authority from MARAD's Associate Administrator for Administration and the Superintendent of the United States Merchant Marine Academy. Before this redelegation, the Associate Administrator for Administration had authority to settle tort claims and to authorize payments of $50,000 or less, and the Superintendent of the Merchant Marine Academy had authority to settle tort claims and to authorize payments of $20,000 or less. These changes are necessary to consolidate the settlement authority in the Office of the Chief Counsel and will make the Federal Tort Claims process easier for claimants.

DATES: This rule is effective October 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. J. Patrick Wiese, Chief, Division of Litigation, Office of the Chief Counsel, Maritime Administration, (202) 366–5191; 400 Seventh Street, SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In 49 CFR 1.45(a)(2), the Secretary of Transportation delegated to each Agency Administrator the authority to act under any statute, Executive Order, or regulation and in sections (a)(3) and (a)(16) specifically delegated the authority to request the Attorney General to approve a Federal tort claim in excess of $100,000, and the authority to settle claims of $100,000 or less. The Administrator of MARAD (Administrator) redelegated authority under the Federal Tort Claims Act, as amended, 28 U.S.C. 2672, to the Chief Counsel of MARAD, the Associate Administrator for Administration of MARAD, and the Superintendent of the United States Merchant Marine Academy.

The regulations at 46 CFR part 204 set forth the requirements for settlement of claims against MARAD. Prior to this rule, § 204.7 (Delegation of authority) provided that the Chief Counsel had the authority to settle Federal tort claims subject to the written approval of the U.S. Attorney General for payments in excess of $100,000; the Associate Administrator for Administration had the authority to settle tort claims and to authorize payments of $50,000 or less, and the Superintendent of the Merchant Marine Academy had authority to settle tort claims and to authorize payments of $20,000 or less.

This rule redelegates the settlement authority under the Federal Tort Claims Act by removing the settlement authority from the Superintendent of the Merchant Marine Academy and the Associate Administrator for Administration and consolidating the authority in the Chief Counsel. The amended § 204.7 (Delegation of authority) will consolidate the settlement authority in the Office of the Chief Counsel. These changes will make the Federal Tort Claims process easier for claimants.

The MARAD Administrator should make this redelegation because the Office of the Chief Counsel has the requisite expertise and capability to carry out the responsibilities under the Federal Tort Claims Act. In practice, the Associate Administrator and Superintendent seek the legal advice of the Chief Counsel when settling tort claims. The consolidation of all agency authority with respect to tort claims in the Office of Chief Counsel is a natural extension of its current administration of tort claims.

MARAD publishes this rule as a final rule, effective on the date of publication. Under 5 U.S.C. 553(b), notice and comment are unnecessary because the rule relates to departmental management, organization, procedure and practice. Further, since the amendment expedites the ability of MARAD to settle Federal Tort Claims, the Administrator finds good cause under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 46 CFR Part 204

Claims, Delegation of authority.

Accordingly, MARAD amends 46 CFR part 204 as follows:

PART 204—CLAIMS AGAINST THE MARITIME ADMINISTRATION UNDER THE FEDERAL TORT CLAIMS ACT

1. The authority citation for part 204 is revised to read as follows:

Authority: 28 U.S.C. 2672; 28 CFR 14.11; 49 CFR 1.45(a)(2), (3), and (16).

§ 204.4 [Amended]

2. Section 204.4 is amended as follows:

a. By adding in the first sentence of paragraph (b) before the words ''Maritime Administration'' the words ''Office of the Chief Counsel of the''.

b. By removing from the second sentence of paragraph (b) the words ''which does not have settlement authority over the claim'' and by adding

in their place the words ''other than the Office of the Chief Counsel''.

c. By removing from the second sentence of paragraph (b) the words ''the official vested with such authority'' and by adding in their place the words ''the Office of the Chief Counsel''.

d. By removing from the second sentence of paragraph (b) the parenthetical ''(see § 204.13, this part).''

3. Section 204.7 is revised to read as follows:

§ 204.7 Delegation of authority.

(a) Subject to written approval of the Attorney General of the United States of any payment in excess of $100,000, the Chief Counsel of the Maritime Administration is authorized to approve the award, compromise, or settlement of any tort claim and to authorize payment of the claim.

(b) The Chief Counsel is authorized to deny any claim and to settle and authorize payment of any tort claim involving the Maritime Administration in an amount not exceeding $100,000.

4. Section 204.8 is revised to read as follows:

§ 204.8 Where to file claims.

Claimants must file claims with the Chief Counsel (MAR–220), Maritime Administration, Department of Transportation, Room 7232, SW, Washington, DC 20590 at the Nassif Building, 7th and D Streets.

Dated: October 4, 1999.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–26262 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–226; RM–9603]

Radio Broadcasting Services; Toquerville, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 280C at Toquerville, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 34753, June 29, 1999. The coordinates for Channel 280C at Toquerville are 37–15–12 NL and 113–17–00 WL. With this action, this proceeding is terminated. A filing window for Channel 280C at Toquerville will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–226, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Toquerville, Channel 280C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26306 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–224; RM–9605]

Radio Broadcasting Services; Parowan, UT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300C2 at Parowan, Utah, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 34752, June 29, 1999. The coordinates for Channel 300C2 at Parowan are 37–50–30 NL and 112–49–30 WL. With this action, this proceeding is terminated. A filing window for Channel 300C2 at Parowan will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–224, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Parowan, Channel 300C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26307 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–80; RM–9493]

Radio Broadcasting Services; Hubbardston, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 279A at Hubbardston, Michigan, in response to a petition filed by Garry Zack. *See* 64 FR 14419, March 25, 1999. The coordinates for Channel 279A at Hubbardston are 43–05–53 NL and 84–51–54 WL. Canadian concurrence has been received for the allotment of Channel 279A at Hubbardston. With this action, this proceeding is terminated. A filing window for Channel 279A at Hubbardston will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–80, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC. 20036 (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Hubbardston, Channel 279A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26309 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–219; RM–9638]

Radio Broadcasting Services; Choteau, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271C1 at Choteau, Montana, in response to a petition filed by The Battani Corporation. *See* 64 FR 34751, June 29, 1999. The coordinates for Channel 271C1 at Choteau are 47–33–40 NL and 112–18–43 WL. Canadian concurrence has been received for the allotment of Channel 271C1 at Choteau. With this action, this proceeding is terminated. A filing window for Channel 271C1 at Choteau will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–219, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Choteau, Channel 271C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26310 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1884; MM Docket No. 96–215; RM–8898, RM–8924]

Radio Broadcasting Services; Anamosa and Asbury, Iowa

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document denies a petition for reconsideration of the *Report and Order*, 62 FR 65766 (December 16, 1997), in this proceeding that allotted Channel 239A to Anamosa, Iowa and Channel 238A to Asbury, Iowa. Susan I. Coloff had proposed the allotment of Channel 239A to Anamosa as that community's first local FM service. The *Report and Order* added a channel to each community after Sports America Radio Network agreed to accept Channel 238A at Asbury in lieu of its original counterproposal to allot Channel 238C3 to Asbury.

DATES: Effective October 8, 1999.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Docket No. 96–215, adopted September 1, 1999, and released September 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26313 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–218; RM–9637]

Radio Broadcasting Services; Alberton, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288C2 at Alberton, Montana, in response to a petition filed by The Battani Corporation. *See* 64 FR 34754, June 29, 1999. The coordinates for Channel 288C2 at Alberton are 47–01–45 NL and 114–45–20 WL. Canadian concurrence has been received for the allotment of Channel 288C2 at Alberton. With this action, this proceeding is terminated. A filing window for Channel 288C2 at Alberton will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–218, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Alberton, Channel 288C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26314 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–243; RM–9675]

Radio Broadcasting Services; Breckenridge, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A at Breckenridge, Texas, in response to a petition filed by Breckenridge Radio Broadcasting Company. *See* 64 FR 37926, July 14, 1999. The coordinates for Channel 261A at Breckenridge are 32–44–34 NL and 98–54–32 WL. There is a site restriction 1.5 kilometers (0.9 miles) south of the community. With this action, this proceeding is terminated. A filing window for Channel 261A at Breckenridge will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–243, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 261A at Breckenridge.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26315 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–18; RM–9414]

Radio Broadcasting Services; Washburn, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel *284A at Washburn, Wisconsin, and reserves the channel for noncommercial educational use in response to a petition filed by The State of Wisconsin Educational Communications Board. *See* 64 FR 5740, February 5, 1999. The coordinates for Channel *284A at Washburn are 46–40–12 NL and 90–53–36 WL. Canadian concurrence has been received for the allotment of Channel *284A at Washburn. With this action, this proceeding is terminated.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–18, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel *284A at Washburn.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26316 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–1945; MM Docket No. 99–228; RM–9612]

Radio Broadcasting Services; Valier, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289C1 at Valier, Montana, in response to a petition filed by The Battani Corporation. *See* 64 FR 34751, June 29, 1999. The coordinates for Channel 289C1 at Valier are 48–18–18 NL and 112–15–30 WL. Canadian concurrence has been received for the allotment of Channel 289C1 at Valier. With this action, this proceeding is terminated. A filing window for Channel 289C1 at Valier will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–228, adopted September 15, 1999, and released September 24, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Valier, Channel 289C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–26317 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333–01; I.D. 092999C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the restrictions for the Pacific Coast groundfish limited entry fisheries for the *Sebastes* complex, canary rockfish, widow rockfish, and trawl-caught sablefish coastwide; yellowtail rockfish north of Cape Mendocino; daily trip limit nontrawl sablefish north of 36° N. lat.; and chilipepper and splitnose rockfish south of Cape Mendocino. NMFS announces changes to the open access restrictions for the *Sebastes* complex, bocaccio, widow rockfish, and chilipepper rockfish south of Cape Mendocino; and daily trip limits for nontrawl sablefish north of 36° N. lat. NMFS also announces the coastwide closure for lingcod taken with any open access gear. This action also announces the last cumulative trip limit period in 1999 for the ''B'' platoon, those limited entry trawl vessels designated to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to extend the fisheries as long as possible during the year while keeping landings within the 1999 optimum yields (OYs) and allocations for these species.

DATES: Effective 0001 hours local time (l.t.) October 1, 1999. For limited entry vessels operating in the B platoon, effective 0001 hours l.t. October 16, 1999. These changes are in effect, unless modified, superseded, or rescinded, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through October 25, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or to Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Becky Renko, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its September 13 through 17, 1999, meeting in Portland, OR. The adjusted trip limits are calculated to achieve, but not exceed, the OYs and allocations for the groundfish fishery, so as to provide a year-long fishing opportunity for at least some groundfish species. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the cumulative trip limits may be made as necessary.

As previously announced in the **Federal Register** (64 CFR 1316 January 8, 1999) the third trip limit fishing phase of 1999 will begin on October 1, 1999. At this time, the 2-month cumulative trip limits that applied to limited entry landings during the second fishing phase of 1999, April 1 to September 30, 1999, will convert to 1-

month limits for the October 1 to December 31 period.

Limited Entry Sebastes Complex Cumulative Trip Limit Decrease

The best available information at the Council's September meeting indicated that 2,935 mt of *Sebastes* complex species had been landed in the limited entry fishery north of Cape Mendocino through August 31, 1999, which is 73 percent of the 4,033 mt of the *Sebastes* complex landed catch target for the year. South of Cape Mendocino, 798 mt of the *Sebastes* complex species had been landed, which is 85 percent of the 941 mt of the *Sebastes* complex landed catch target for the year. If the fishery were to continue at current landing rates, the fleet would exceed its target levels for these species before the end of the year. Because of this, the Council changed its earlier recommendation for the *Sebastes* complex 1-month cumulative trip limits, effective October 1, 1999, from 10,000 (4,536 kg) north of Cape Mendocino and from 5,000 lb (2,268 kg) south of Cape Mendocino to a coastwide cumulative limit of 500 lb (227 kg) per month.

The *Sebastes* complex includes yellowtail rockfish, canary rockfish, and bocaccio, which have their own cumulative limits and which count toward the overall *Sebastes* cumulative limits. Within the *Sebastes* complex, 1,983 mt of yellowtail rockfish had been landed north of Cape Mendocino through August 31, 1999, which is 95 percent of the 2,080 mt landed catch target. Preliminary data from the at-sea whiting fleet indicate that the actual catch of yellowtail was roughly 300 mt higher than was planned for, based on previous years' data. If the fishery were to continue at the same rates as were seen in June or July, it is likely that the limited entry allocations for yellowtail and the northern *Sebastes* complex could be reached by the end of September. Because of this, the Council recommended that the 1-month cumulative trip limit for yellowtail rockfish taken north of Cape Mendocino be decreased from its prior recommendation of 5,000 lb (2,268 kg) to 300 lb (136 kg) for each 1-month cumulative trip limit period between October 1 and December 31, 1999.

So as not to exceed the overall *Sebastes* complex limits, the Council also recommended decreasing the coastwide cumulative trip limit for canary rockfish from its prior recommendation of 3,000 lb (1,361 kg) to 500 lb (227 kg) per 1-month trip limit period from October 1 to December 31, 1999. Similarly, the 1-month cumulative trip limits for *Sebastes* species, other than yellowtail rockfish and canary rockfish north of Cape Mendocino, would be reduced to 500 lb (227 kg) from the Council's prior recommendation of 4000 lb (1,814 kg) so that the total *Sebastes* limit is not exceeded.

As previously announced, the bocaccio rockfish limit of 500 lb (227 kg) per 1-month south of Cape Mendocino becomes effective October 1, 1999.

Limited Entry Chilipepper Rockfish and Splitnose Rockfish South of Cape Mendocino Trip Limit Decrease

The chilipepper rockfish 1-month cumulative trip limits for each period between October 1, 1999, and December 31, 1999, are currently set at 18,000 lb (8,165 kg). The splitnose rockfish (rosefish) 1-month cumulative trip limit for this same period is currently set at 10,000 lb (4,536 kg). The Council expressed concern about the bycatch and potential discard of *Sebastes* complex species by vessels targeting on chilipepper and splitnose rockfish particularly when the *Sebastes* complex cumulative trip limit is reduced to 500 lb (227 kg) per month on October 1, 1999. As a result of this concern, the Council recommended that the 1-month cumulative trip limits for chilipepper rockfish and splitnose rockfish cumulative trip limits south of Cape Mendocino each be reduced to 5,000 lb (2,268 kg) on October 1, 1999.

Limited Entry Widow Rockfish Trip Limit Restriction for Vessels Landing Catch in Washington and Oregon

Through August 31, 1999, 2,415 mt, or 64 percent of the 3,777 mt, coastwide limited entry landed catch target for widow rockfish had been taken. However, an increase in the cumulative trip limit for widow rockfish to 30,000 lb (13,608 kg) on October 1, 1999, as earlier recommended, is complicated by the likely bycatch of other species in the *Sebastes* complex, particularly yellowtail rockfish, associated with bottom trawl fishing strategies. Council discussion focused on the regulatory authority to prohibit the use of bottom trawl gear to target widow rockfish for the last 3 months of 1999. However, NMFS does not have the regulatory flexibility to restrict the use of specific types of trawl gear by October 1, 1999. Yellowtail rockfish bycatch in bottom trawls targeting widow rockfish is primarily an issue in waters off Washington and Oregon. The Council agreed to keep the widow rockfish 1-month trip limit at 30,000 lb (13,608 kg) for the 1-month periods between October 1, 1999, and December 31, 1999, because the States of Washington and Oregon will adopt regulations that require vessels landing the 1-month trip limit of 30,000 lb (13,608 kg) to have midwater gear onboard the vessel. If a vessel does not have midwater gear on board, the state-imposed trip limit of 500 lb (227 kg) per 1-month cumulative period will be applied. The Council agreed that this measure would adequately address the bycatch concern while allowing the widow rockfish allocation to be taken.

Limited Entry Non-Trawl Sablefish Fishery Cumulative Trip Limit Increase Daily Trip Limit Fishery North of 36° N. Lat.

On September 1, 1999, the 1-month cumulative trip limit for the daily trip limit non-trawl sablefish fishery north of 36° N. lat. was set at 2,100 lb (952 kg), with a 300 lb (136 kg) daily trip limit that counts toward the 1-month limit. The best available information at the September Council meeting indicated that 2,177 mt of the 2,516 mt allocation had been landed through August 31, 1999. Because of low landings earlier in the year, the Council recommended increasing the 1-month cumulative trip limit to 3,600 lb (1,633 kg) from October 1, 1999, through December 31, 1999, with the continuation of a daily 300 lb (136 kg) trip limit per vessel.

Limited Entry Trawl-Caught Sablefish Trip Limit Increase

The trawl-caught sablefish 1-month cumulative limit for each period between October 1 through December 31, 1999, is currently set at 6,000 lb (2,722 kg). The best available information at the September Council meeting indicated that 1,967 mt, or 57 percent of the 3,475 mt, trawl sablefish allocation had been landed by limited entry trawl vessels through August 31, 1999. To give the fleet access to sablefish not taken earlier in the year, the Council recommended increasing the 1-month cumulative trip limit to 7,000 lb (3,175 kg) for each 1-month trip limit period between October 1 and December 31, 1999.

Open Access Sebastes Complex South of Cape Mendocino

The 1-month cumulative trip limit for the *Sebastes* complex south of Cape Mendocino is currently 2,000 lb (907 kg) per vessel. Through August 31, 1999, 341 mt, or 75 percent of the 455 mt, open access *Sebastes* allocation had been taken. Monthly landings for June to August ranged from 39 to 73 mt. If the fishery were to continue at current landing rates, the fleet would exceed its harvest allocations for these species

before the end of the year. The Council recommended that the *Sebastes* complex 1-month cumulative trip limit south of Cape Mendocino be reduced to 500 lb (227 kg).

Bocaccio catch applies toward the cumulative monthly limit for the *Sebastes* complex south of Cape Mendocino. The 1-month limit for bocaccio taken in setnets or trammel nets is currently set at 1000 lb (454 kg). Because the cumulative limit of *Sebastes* complex species cannot be exceeded by a component of the complex, the 1-month limit is effectively reduced to 500 lb (227 kg) for the bocaccio taken with setnets or trammel nets.

Open Access Widow Rockfish Trip Limit Decrease South of Cape Mendocino

The coastwide cumulative monthly limit for widow rockfish taken with open access gear is currently 8,000 lb (3,629 kg) per vessel. The Council recommended reducing the monthly limit to 4,000 lb (1,814 kg) south of Cape Mendocino to minimize bycatch of the *Sebastes* complex species whose 1-month cumulative trip limit has been reduced to 500 lb (227 kg) on October 1, 1999.

Open Access Chilipepper Rockfish Trip Limit Decrease South of Cape Mendocino

The cumulative monthly limit for chilipepper rockfish taken with open access gear south of Cape Mendocino is currently 6,000 lb (2,722 kg) per vessel. As for widow rockfish, the Council expressed concerns about the bycatch of species within the *Sebastes* complex and identified the need to reduce the opportunity for vessels to target on chilipepper south of Cape Mendocino. Because of this concern, the Council recommended that the 1-month trip limits south of Cape Mendocino be reduced to 3,000 lb (1,361 kg).

Open Access Daily Trip Limit Sablefish Fishery Cumulative Trip Limit Increase North of 36° N. Lat

The 1-month cumulative trip limit for the open access daily trip limit sablefish fishery north of 36° N. lat. is currently 1,500 lb (680 kg), with a 300 lb (136 kg) per day limit, which counts toward the cumulative monthly limit. Because of low catches earlier in the year, the Council recommended increasing the monthly cumulative limits to 2,700 lb (1,225 kg), with the continuation of a daily 300 lb (136 kg) trip limit per vessel. This increase applies only to the nontrawl fishery.

Open Access Coastwide Lingcod Closure

The best available data through August 31, 1999, indicated that 72 mt or 90 percent of the 82 mt open access lingcod allocation had been taken. Monthly landings from June to August were between 15 mt and 18 mt. At these rates the open access lingcod allocation is expected be reached by the end of September. Effective October 1, 1999, the Council recommended that open access landings of lingcod be prohibited coastwide. These prohibitions apply to all gear, including exempted trawl gear.

Final Period for the ''B'' Platoon

NMFS also announces the last cumulative trip limit period in 1999 for the ''B'' platoon, those limited entry trawl vessels designated (on their limited entry permit) to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. For vessels in the ''B'' platoon, the final cumulative trip limit period will be from November 16, 1999, through December 31, 1999. At any time during this period, each vessel in the ''B'' platoon is allowed time during this period, each vessel in the ''B'' platoon is allowed to take and retain, possess, or land the equivalent of two 1-month cumulative limits (the November and December cumulative trip limits).

NMFS Action

For the reasons stated previously, NMFS concurs with the Council's recommendations and announces the following changes to the 1999 annual management measures (64 FR 1316, January 8, 1999; 64 FR 16862, April 7, 1999; 64 FR 24062, May 5, 1999; 64 FR 36817, July 8, 1999; and 64 FR 42286, August 4, 1999) as amended. The annual management measures are modified as follows:

1. In section IV., under *B. Limited Entry Fishery,* under paragraph B.(1), a note is added at the end of table 2; paragraph B.(2)(b)(ii) is removed, paragraph B.(2)(b)(i) is redesignated B.(2)(b)(ii), the introductory language at paragraph B.(2)(b) is redesignated as B.(2)(b)(i), and revised , and table 3 under the newly redesignated paragraph B.(2)(b) (ii) is revised; table 4 under paragraph B.(4), table 5 under paragraph B.(5), table 6 under paragraph B.(6)(c), and paragraph B.(6)(d)((ii)(A) are revised, to read as follows:

B. Limited Entry Fishery

* * * * *

(1) * * *

Table 2—Widow Rockfish

* * * * *

Note: The States of Washington and Oregon are expected to implement more restrictive limits on October 1, 1999, such that the 30,000 lb monthly cumulative limit for widow rockfish will be available only to vessels using midwater trawl gear. If midwater trawl gear is not used, Washington and Oregon will impose a cumulative monthly trip limit for widow rockfish of only 500 lb (227 kg) per month. The states may also require that only midwater trawl gear may be on board when landing more than 500 lb of widow rockfish. The Washington Department of Fish and Wildlife and the Oregon Department of Fish and Wildlife should be contacted before taking and retaining, possessing, or landing widow rockfish in ocean waters off Washington or Oregon.

(2) * * *

(b) *Trip limits for the Sebastes complex.*

(i) Harvest of all *Sebastes* complex species with their own cumulative limits (yellowtail rockfish, canary rockfish, bocaccio), count toward the overall applicable *Sebastes* cumulative limits for the areas north and south of Cape Mendocino.

(ii) * * *

TABLE 3: SEBASTES COMPLEX AND ITS COMPONENT SPECIES

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)							Length of cumulative trip limit period (month)
		Sebastes complex (north and south of Cape Mendocino)		Yellowtail rockfish [1] (north of Cape Mendocino)	*Sebastes* other than yellowtail and canary [1] (north of Cape Mendocino)	Canary rockfish [1] (north and south of Cape Mendocino)		Bocaccio [1] (south of Cape Mendocino)	
		North	South			North	South		
I	Jan 1–Mar 31 ...	24,000 ..... (10,886 kg)	13,000 ..... (5,897 kg)	15,000 ..... (6,804 kg)	.....	9,000 ..... (4,082 kg)	9,000 ..... (4,082 kg)	750 per month. (340 kg)	.....
III	Oct 1–31	500 coastwide		300	500	500 coastwide		500	1
	Nov 1–30	500 coastwide		300	500	500 coastwide		500	1
	Dec 1–31	500 coastwide (227 kg)		300 ..... (136 kg)	500 ..... (227 kg)	500 coastwide (227 kg)		500 ..... (227 kg).	1

[1] Also counts toward the overall *Sebastes* complex limit.
[2] No more than 500 lb (227 kg) of bocaccio may be landed per trip, which counts towards the cumulative trip limits for bocaccio and the *Sebastes* complex south of Cape Mendocino.

* * * * * (4) * * *

TABLE 4: CHILIPEPPER ROCKFISH
[south of Cape Mendocino]

Fishing	Cumulative trip limit periods	Cumulative trip limit (in pounds)	Length of cumulative trip limit period (months)
I	Jan 1–Mar 31	45,000 20,412 kg	3
II	Apr 1–May 31	25,000	2
	June 1–July 31	25,000	2
	Aug 1–Sept 30	25,000 *11,340 kg	2
III	Oct 1–31	5,000	1
	Nov 1–30	5,000	1
	Dec 1–31	5,000 *2,268 kg	1

(5) *Splitnose rockfish.* The cumulative trip limit for splitnose rockfish south of Cape Mendocino is as follows, unless otherwise announced in the **Federal Register**:

TABLE 5: SPLITNOSE ROCKFISH (ROSEFISH)
[south of Cape Mendocino]

Fishing phase	Cumulative trip limit periods	Cumulative trip limit	Length of cumulative trip limit period (months)
I	Jan 1–Mar 31	32,000 *14,515 kg	3
II	Apr 1–May 31	19,000	2
	June 1–July 31	19,000	2
	Aug 1–Sept 30	19,000 *8,618 kg	2
III	Oct 1–31	5,000	1
	Nov 1–30	5,000	1
	Dec 1–31	5,000 2,268 kg	1

*In kilograms.

(6) * * *

(c) * * *

TABLE 6: DTS COMPLEX

[coastwide]

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)				Length of cumulative trip limit period (months)
		Dover sole cumulative trip limit	Longspine thornyhead cumulative trip limit	Shortspine thornyhead cumulative trip limit	Trawl-caught sablefish* cumulative trip limit	
I	Jan 1–Mar 31	70,000 (31,752 kg)	12,000 (5,443 kg)	3,000 (1,361 kg)	13,000 (5,897 kg).	3
II	Apr 1–May 31	25,000 (11,340 kg)	8,000	2,000	12,000 (5,443 kg).	2
	June 1–July 31	20,000	8,000	2,000	10,000	2
	Aug 1–Sept 30	20,00 (9,072 kg)	8,000 (3,629 kg)	2,000 (907 kg)	10,000 (4,536 kg).	2
III	Oct 1–31	22,000	4,000	1,000	7,000	1
	Nov 1–30	22,000	4,000	1,000	7,00	1
	Dec 1–31	22,000 (9,979 kg)	4,000 (1,814 kg)	1,000 (454 kg)	7,000 (3,175 kg).	1
II	Apr 1–May 31	25,000 11,340 kg)	8,000	2,000	12,000 (5,443 kg).	2
	June 1–July 31	20,000	8,000	2,000	10,000	2
	Aug 1–Sept 30	20,000 (9,072 kg)	8,000 (3,629 kg)	2,000 (907 kg)	10,000 (4,536 kg).	2
III	Oct 1–31	22,00	4,000	1,000	7,000	1
	Nov 1–30	22,000	4,000	1,000	7,000	1
	Dec 1–31	22,000 (9,979 kg)	4,000 (1,.814 kg)	1,000 (454 kg)	7,000 (3,175 kg).	1

*At any time of year unless otherwise announced, no more than 500 lb (227 kg) per trip may be trawl-caught sablefish smaller than 22 inches (56 cm) TL. (See paragraph IV.A.(6) regarding length measurement.)

(d) * * *

(ii) * * *

(A) *North of 36° N. lat.* The daily trip limit, which applies to sablefish of any size, is in effect north of 36° N. lat. until the closed periods before or after the regular season as specified at 50 CFR 660.323(a)(2), between the end of the regular season and the beginning of the mop-up season, and after the mop-up season. The daily trip limit for sablefish taken and retained with nontrawl gear north of 36° N. lat. is 300 lb (136 kg), which counts toward a cumulative trip limit of 3,600 lb (1,633 kg) per calendar month.

* * * * *

2. In section IV., under C. Trip Limits in the Open Access Fishery, paragraphs (1)(b), (1)(d)(i), (1)(e), (2)(a)(i), and (3) are revised, to read as follows:

C. Trip Limits in the Open Access Fishery

(1) * * *

(b) *Widow rockfish.* The cumulative monthly trip limit for widow rockfish is 8,000 lb (3,629 kg) per vessel north of Cape Mendocino and 4,000 lb (1,814 kg) per vessel south of Mendocino. (These limits are not additive; the crossover provisions at paragraph IV.A. (12) apply.)

* * * * *

(d) * * *

(i) *Cumulative monthly limits.* The cumulative monthly limit for the *Sebastes* complex is 12,000 lb (5,443 kg) per vessel north of Cape Mendocino, and 500 lb (227 kg) per vessel south of Cape Mendocino. Within the cumulative trip limit for the *Sebastes* complex north of Cape Mendocino, no more than 2,000 lb (907 kg) per month may be canary rockfish, no more than 6,500 lb (2,948 kg) per month may be yellowtail rockfish, no more than 3,500 lb (1,588 kg) per month may be black rockfish and blue rockfish combined, no more than 2,000 lb (907 kg) per month may be *Sebastes* complex species other than yellowtail rockfish, canary rockfish, black rockfish and blue rockfish. The 500-lb (227 kg) cumulative monthly trip limit for the *Sebastes* complex south of Cape Mendocino includes canary rockfish, bocaccio, and other *Sebastes* species south of Cape Mendocino, which are counted toward the *Sebastes* limit, and together may not exceed the monthly cumulative limit for the *Sebastes* complex south of Cape Mendocino.

[**Note:** The sum of the cumulative monthly limits for canary rockfish, yellowtail rockfish, black rockfish and blue rockfish, and other *Sebastes* rockfish is greater than the overall monthly cumulative limit for the *Sebastes* complex north of Cape Mendocino, which may not be exceeded. Consequently, the monthly cumulative limits for canary rockfish, yellowtail rockfish, black rockfish and blue rockfish, and other *Sebastes* complex species north of Cape Mendocino cannot all be achieved. Similarly, any of the southern *Sebastes* complex species, including canary rockfish and bocaccio, could contribute as much as 500 lb (227 kg) of the 500-lb (227 kg) southern *Sebastes* limit, but only if no other *Sebastes* complex species were taken and retained, possessed or landed.

* * * * *

(e) *Chilipepper.* The cumulative monthly limit for chilipepper south of Cape Mendocino is 3,000 lb (1,361 kg) per vessel.

* * * * *

(2) * * *

(a) * * *

(i) *North of 36°00′ N. lat.* North of 36°00′ N. lat., the daily trip limit for sablefish is 300 lb (136 kg), which counts toward a cumulative trip limit of 2,700 lb (1,225 kg) per calendar month.

* * * * *

(3) *Lingcod.* Lingcod may not be taken and retained, possessed or landed by any open access gear, including exempted trawl gear, coastwide.

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the

office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B) because providing prior notice and opportunity for comment would be impractical. It would be impractical because the trip limit period begins on October 1, 1999, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3) because such a delay would be contrary to the public interest. This action should be implemented at the beginning of the trip limit period to avoid confusion and to maximize the potential that fishers will harvest the allocation. For these reasons, good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–26100 Filed 10–1–99; 4:16 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 100199B]

Fisheries of the Exclusive Economic Zone Off Alaska; Overfished Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of overfished fishery.

SUMMARY: NMFS has identified Bering Sea snow crab (*Chionoecetes opilio*) and St. Matthew blue king crab (*Paralithodes platypus*) as overfished. This document is intended to notify the public that the North Pacific Fishery Management Council (Council) has been informed that these stocks are overfished and has been directed to initiate action to end overfishing and rebuild the stocks. This notification is necessary to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which requires identification of overfished stocks and subsequent implementation of management measures to rebuild overfished stocks.

FOR FURTHER INFORMATION CONTACT: Gretchen Harrington, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 304(e) of the Magnuson-Stevens Act requires that, if the Secretary of Commerce (Secretary) determines that a fishery is overfished, the Secretary shall immediately notify the appropriate fishery management council and request that action be taken to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks. The fishery management council has 1 year from the date of notification to prepare a plan to end overfishing in the fishery and to rebuild affected stocks.

On March 3, 1999, the Secretary approved Amendment 7 to the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs (64 FR 11390, March 9, 1999). Pursuant to section 303(a)(10) of the Magnuson-Stevens Act, and the national standard guidelines (50 CFR part 600), the amendment revised the definitions of overfishing, maximum sustainable yield, and optimum yield for the king and Tanner crab fisheries in the Bering Sea/Aleutian Islands.

Based on an analysis of the 1999 NMFS Eastern Bering Sea trawl survey data, the Bering Sea snow crab spawning biomass and the St. Matthew blue king crab spawning biomass are below the minimum stock size threshold defined for these stocks, and are thus deemed overfished.

Pursuant to section 304 of the Magnuson-Stevens Act, NMFS notified Mr. Richard B. Lauber, Council Chairman, by letter on September 24, 1999, that these crab stocks are overfished, as follows:

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501–2252

Dear Mr. Lauber:

Amendment 7 to the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs (FMP) revised the definitions of overfishing for the FMP crab species. This action was necessary for compliance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and will advance the Council's ability to achieve, on a continuing basis, the optimum yield from fisheries under its jurisdiction.

Based on an analysis of the 1999 NMFS Eastern Bering Sea trawl survey data, we determine Bering Sea snow crab (*Chionoecetes opilio*) and St. Matthew blue king crab (*Paralithodes platypus*) to be overfished because the total spawning biomass of each stock is below the minimum stock size threshold specified in the new overfishing definitions. A copy of this analysis is attached.

This letter serves as your official notification that snow crab and St. Matthew blue king crab are overfished. Section 304(e) of the Magnuson-Stevens Act states that a council will have one year from notification of the overfished status of a stock to prepare and submit conservation and management measures to end overfishing and rebuild the affected stock. The rebuilding program must be as short as possible, but not exceed 10 years, except if the biology of the stock or other environmental conditions dictate otherwise.

Sincerely,
Steven Pennoyer,
Administrator, Alaska Region

Dated: September 30, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–26216 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 100599C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 Pacific cod total allowable catch (TAC) allocated to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 5, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12904, March 11, 1999) and subsequent reserve apportionment (64 FR 16362, April 5, 1999) established the Pacific cod TAC allocated to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area as 38,642 metric tons (mt), determined in accordance with § 679.20(c)(4)(ii). The directed fishery for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area was closed under § 679.20(d)(1)(iii) on March 14, 1999, (64 FR 13122, March 17, 1999) and reopened on September 1, 1999 (64 FR 46317, August 25, 1999).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 37,642 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the final TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries

National Marine Fisheries Service.

[FR Doc. 99–26326 Filed 10–5–99; 2:50 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 100599B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Offshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 1999 Pacific cod total allowable catch (TAC) allocated to vessels catching Pacific cod for processing by the offshore component in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 5, 1999, through 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the final harvest specifications for the GOA established the 1999 TAC of Pacific cod allocated to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area as 3,435 metric tons (mt) (64 FR 12094, March 11, 1999).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,135 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the TAC limitations and other restrictions on the fisheries established in the final 1999 harvest specifications for groundfish in the GOA. It must be implemented immediately to prevent overharvesting the amount of the 1999 Pacific cod TAC allocated to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest, and further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 5, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries

National Marine Fisheries Service.

[FR Doc. 99–26325 Filed 10–5–99; 2:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 195
Friday, October 8, 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 JUSTICE

8 CFR Ch. I, 21 CFR Ch. II, 28 CFR Ch. I

Regulatory Flexibility Act Plan for the Periodic Review of Rules

AGENCY: Department of Justice.

ACTION: Notice of regulatory review.

SUMMARY: In accordance with the requirements of section 610(a) of the Regulatory Flexibility Act, the Department of Justice is publishing this revised Regulatory Flexibility Act Review Plan. The Act provides for agencies to conduct a periodic review of rules having a significant economic impact on a substantial number of small entities. This plan supersedes the prior Review Plan published by the Department.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Policy Development, Department of Justice, Room 4258, Main Building, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone (202) 514–8059.

SUPPLEMENTARY INFORMATION:

What Does Section 610 of the Regulatory Flexibility Act Require?

Section 610(a) of the Regulatory Flexibility Act, 5 U.S.C. 610(a), requires that each agency publish in the **Federal Register** a plan for the periodic review of the rules issued by that agency which have a significant economic impact on a substantial number of small entities. Section 610(a) required each agency to conduct its review within ten years with respect to rules in effect when the Regulatory Flexibility Act was enacted, or within ten years after promulgation with respect to rules adopted since then, if the rules meet the standard for review under section 610(a). The purpose of this review is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules on a substantial number of small entities.

What Has the Department Done Pursuant to Section 610?

Pursuant to section 610, the Department of Justice published an initial Regulatory Flexibility Act Plan for the Periodic Review of Rules in the **Federal Register** on November 28, 1984 at 49 FR 46820.

This initial Department of Justice Review Plan, however, inadvertently contained a list of all regulations of the Department existing at that time (other than the organizational rules in 28 CFR part 0) without regard to whether the rules listed in the plan met the test for review under section 610, *i.e.*, having a ''significant economic impact on a substantial number of small entities.''

The only rule in effect at the time of enactment of the Regulatory Flexibility Act that would have had a significant impact on a substantial number of small entities was the Drug Enforcement Administration (DEA) diversion control regulation for controlled substances. As discussed below, the DEA conducted a comprehensive rulemaking proceeding and revised its existing regulation in response to public comments several years ago.

Section 610(a) also provides that a review plan may be amended at any time by the agency publishing a revision in the **Federal Register**. Accordingly, by this Notice the Department of Justice is amending its Regulatory Flexibility Act Review Plan.

What Other Reviews of Its Rules Has the Department Undertaken?

Subsequent to publication of the initial Review Plan, the Department's regulatory components conducted thorough reviews of their rules, both in 1992 and as part of President Clinton's Regulatory Reinvention Initiative in 1995.

During the 1995 initiative, each regulatory component reviewed their existing rules and identified those regulatory provisions that required reinvention or elimination. This wide-ranging reinvention effort examined all of the Department's regulations, not merely those few rules that fall within the statutory scope of section 610. As a result of that review process, many of the Department's regulatory components have eliminated unnecessary regulations and reinvented other provisions to carry out the Department's goals during the Regulatory Reinvention Initiative. The Department's entries in past issues of the semi-annual *Unified Agenda of Federal Regulatory and Deregulatory Actions* identify the Department's reinvention initiatives.

For example, though DEA did not specifically publish a separate notice under section 610(c), it did engage in a full notice-and-comment rulemaking in 1996 and 1997, as part of the President's Regulatory Reinvention initiative, resulting in a substantial revision and clarification of its entire diversion control regulations pertaining to controlled substances and listed chemicals. The DEA Final Rule was published at 62 FR 13938 (March 24, 1997).

In addition, as discussed below, the Immigration and Naturalization Service (INS) has proposed a comprehensive rewriting of its regulations concerning the employment verification process and the use of the Form I–9, which have been a source of public confusion and dissatisfaction in the past.

What Regulations of the Department Are Still Subject To Review Under the Ten-Year Review Requirement?

No further actions under section 610 are necessary with respect to the Department's regulations that were in effect at the time the Regulatory Flexibility Act was enacted. Based upon a review of the Department's regulations adopted since the enactment of the Regulatory Flexibility Act, the following final rules may have a ''significant economic impact upon a substantial number of small entities'':

- The Immigration and Naturalization Services (INS) employment authorization and employer sanctions rules implementing the Immigration Reform and Control ACt (IRCA), 8 CFR part 274a (published at 52 FR 16216, May 1, 1987);
- The Civil Rights Division's anti-discrimination rules under Title III of the Americans with Disabilities Act (ADA) with respect to commercial facilities, 28 CFR part 36 (published at 56 FR 35592, July 26, 1991);
- The DEA rules implementing the Domestic Chemical Diversion Control Act of 1993 (DCDCA), 21 CFR part 1309 (published at 60 FR 32447, June 22, 1995); and
- The Federal Bureau of Investigation (FBI) rules implementing section 109 of

the Communications Assistance for Law Enforcement Act (CALEA), 28 CFR part 100 (published at 62 FR 13307, March 20, 1997).

As such, these rules are appropriately the subject of the periodic review under section 610(a), within ten years of the publication of the Final Rule.

The INS has already conducted the review required by section 610 with respect to 8 CFR part 274a, ''Control of Employment of Aliens,'' in conjunction with a comprehensive restructuring of that rule. The INS Notice of Proposed Rulemaking, which was published on February 2, 1998, at 63 FR 5287, would completely rewrite and clarify the regulations according to Plain Language principles; would amend the existing standards to reduce instances of fraud or confusion in the employment verification process; and would implement amendments made by the Illegal Immigration and Immigration Reform Act (IIRIRA), Pub. L. 104–208, Division C. The proposed rule also announced the section 610 review. Once a Final Rule is published, the section 610 review of these regulations will be complete.

Accordingly, the schedule for periodic review of regulations of the Department of Justice, as required by section 610(a) of the Regulatory Flexibility Act, is as follows:

Regulation	Year scheduled for review
8 CFR part 274a, Control of Employment of Aliens (INS).	Pending (proposed rule published in 1998).
28 CFR part 36, Title III of the Americans with Disabilities Act (ADA) with respect to commercial facilities (Civil Rights Division).	2000.
21 CFR part 1309, Domestic Chemical Diversion Control Act of 1993 (DEA).	2004.
28 CFR part 100, Section 109 of the Communications Assistance for Law Enforcement Act (FBI).	2006.

Dated: August 12, 1999.

Eleanor D. Acheson,

Assistant Attorney General, Office of Policy Development.

[FR Doc. 99–26109 Filed 10–7–99; 8:45 am]

BILLING CODE 4410–BB–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–296–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 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 British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require a one-time inspection of the bottom aft roller of the main baggage-bay door structure for cracking or damage to the sub-frame; repetitive operational tests to determine if the counter-balance motor functions properly; and corrective actions, 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 prevent sub-frame damage, which, if left undetected, could cause rapid decompression of the airplane and consequent injury to passengers and crew.

DATES: Comments must be received by November 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–296–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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–296–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–296–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that it has received reports of damage to a sub-frame that supports the bottom aft roller of the main baggage bay door due to failure of the spring in the counter-balance motor. The damage to the sub-frame was caused by high uncontrolled loads applied to the bottom aft roller bracket each time the baggage bay door was allowed to fall onto the stop in the aft track. Such damage, if not corrected, could result in failure of the door structure, which could cause rapid decompression of the airplane and consequent injury to passengers and crew.

Explanation of Relevant Service Information

The manufacturer has issued Jetstream Service Bulletin J41–52–060, dated August 31, 1998, which describes procedures for a one-time visual inspection of the bottom door structure for cracking or damage to the sub-frame; repetitive operational tests to determine if the counter-balance motor of the main baggage bay door functions properly; and corrective actions, if necessary. The corrective actions involve repairing any cracked or damaged sub-frame, and replacing the failed motor with a new motor or repairing the motor. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–08–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom 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 CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the 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, or the Civil Aviation Authority (CAA) (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the CAA would be acceptable for compliance with this proposed AD.

Cost Impact

The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $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 $7,740, or $180 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the test proposed by this AD on U.S. operators is estimated to be $2,580, or $60 per airplane, per test 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 adding the following new airworthiness directive:

British Aerospace Regional Aircraft

[Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 98–NM–296–AD.

Applicability: British Aerospace (Jetstream) Model 4101 airplanes, as listed in Jetstream Service Bulletin J41–52–060, dated August 31, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 sub-frame damage, which, if left undetected, could cause rapid decompression of the airplane and consequent injury to passengers and crew, accomplish the following:

Visual Inspection

(a) Within 1,500 landings or within 5 months after the effective date of this AD, whichever occurs first, perform a one-time general visual inspection of the bottom aft roller of the main baggage bay door structure to check for cracking or damage to the sub-frame in accordance with Jetstream Service Bulletin J41–52–060, dated August 31, 1998. If any cracking or damage is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as

required by this paragraph, the Manager's approval letter must specifically reference this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Operational Test

(b) Within 30 days after the effective date of this AD, perform an operational test to determine if the counter-balance motor of the main baggage bay door functions properly in accordance with Jetstream Service Bulletin J41–52–060, dated August 31, 1998. Repeat the operational test thereafter at intervals not to exceed 5 days. If the motor fails during any operational test, within 10 flights after accomplishing the test, either replace the motor with a new motor or repair in accordance with the service bulletin, and accomplish the actions specified in paragraph (a) of 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, 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 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(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.

Note 4: The subject of this AD is addressed in British airworthiness directive 005–08–98.

Issued in Renton, Washington, on October 4, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26278 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–195–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322 Series Airplanes, and Model A340–211, –212, –213, –311, –312, and –313 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 all Airbus Model A330–301, –321, and –322 series airplanes, and Model A340–211, –212, –213, –311, –312, and –313 series airplanes. This proposal would require repetitive replacements of the yaw damper actuator installed on active position with a new or overhauled yaw damper actuator. 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 hydraulic leakage from the yaw damper actuator installed on active position due to premature wear of the dynamic seals between the actuator piston and the piston bearing. Hydraulic leakage could lead to complete loss of the green hydraulic circuit, which could result in reduced controllability of the airplane.

DATES: Comments must be received by November 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–195–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 99–NM–195–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. 99–NM–195–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A330–301, –321, –322 series airplanes, and Model A340–211, –212, –213, –311, –312, and –313 series airplanes. The DGAC advises that it has received several reports of hydraulic fluid leakage from the yaw damper actuator installed on active position. Investigation has revealed that the hydraulic leakage was caused by premature wear of the dynamic seals between the actuator piston and the piston bearing. This condition, if not corrected, could lead to complete loss of the green hydraulic circuit, which could

result in reduced controllability of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A330–27–3055, Revision 01, dated July 1, 1998 (for Model A330 series airplanes) and A340–27–4063, Revision 01, dated July 1, 1998 (for Model A340 series airplanes), which describe procedures for repetitive replacements of the yaw damper actuator installed on active position with a new or overhauled yaw damper actuator. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 1998–100–067(B) R2, dated May 19, 1999, and 98–104–083(B), dated February 25, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France 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 DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

Currently, there are no Airbus Model A330–301, –321, –322 series airplanes, or Model A340–211, –212, –213, –311, –312, and –313 series airplanes on the U.S. Register.

However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the proposed replacement, at an average labor rate of $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts are not attributable to this proposed AD. Based on these figures, the cost impact of this proposed AD would be $120 per airplane, per replacement cycle.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 99–NM–195–AD.

Applicability: All Model A330–301, –321, and –322 series airplanes, and Model A340–211, –212, –213, –311, –312, and –313 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic leakage from the yaw damper actuator which could lead to complete loss of the green hydraulic circuit, which could result in reduced controllability of the airplane, accomplish the following:

Repetitive Replacement

(a) Prior to the accumulation of 6,500 total flight hours, or within 500 flight hours after the effective date of this AD, whichever occurs later, replace the yaw damper actuator installed on active position with a new or overhauled yaw damper actuator in accordance with Airbus Service Bulletins A330–27–3055, Revision 01, dated July 1, 1998 (for Model A330 series airplanes); or A340–27–4063, Revision 01, dated July 1, 1998 (for Model A340 series airplanes); as applicable. Thereafter, repeat the replacement at intervals not to exceed 6,500 flight hours.

Note 2: Replacement of yaw dampers accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A330–27–3055, dated August 26, 1997 (for Model A330 series airplanes), or Airbus Service Bulletin A340–27–4063, dated August 26, 1997 (for Model A340 series airplanes); as applicable; is an acceptable method of compliance for the initial replacement required by paragraph (a) of this AD.

Alternative Methods of Compliance

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

Note 3: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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 4: The subject of this AD is addressed in French airworthiness directives 1998–100–067(B) R2, dated May 19, 1999, and 98–104–083(B), dated February 25, 1998.

Issued in Renton, Washington, on October 4, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26279 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–61–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

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 Pratt & Whitney (PW) PW2000 series turbofan engines, that currently requires revisions to the engine manufacturers time limits section (TLS) to include enhanced inspection of selected critical life-limited parts at each piece-part exposure. This action would add additional critical life-limited parts for enhanced inspection. This proposal is prompted by additional focused inspection procedures for other critical life-limited rotating engine parts that have been developed by the manufacturer. The actions specified in the proposed AD are intended to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by December 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–61–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov.'' Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–61–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–61–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On April 2, 1999, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 99–08–14, Amendment 39–11120 (64 FR 17949, April 14, 1999), to require within the next 30 days after the effective date of this AD, revisions to the Time Limits Section (TLS) of the Engine Manuals (EM's), and for air carriers the approved continuous airworthiness maintenance program, to include required enhanced inspection of selected critical life-limited parts at each piece-part exposure. That amendment was prompted by a Federal Aviation Administration (FAA) study of in-service events involving uncontained failures of critical rotating engine parts which indicated the need for improved inspections. The improved inspections are needed to identify those critical rotating parts with conditions, that if allowed to continue in service, could result in uncontained failures. That condition, if not corrected, could result in critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

Reason for This Supersedure

Since the issuance of that AD, additional focused inspection procedures for the high pressure turbine (HPT) 1st stage disk and the HPT 2nd stage disk have been developed by PW.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other Pratt & Whitney (PW) PW2000 series turbofan engines of the same type design, this AD supersedes AD 99–08–14 to require the additional critical life-limited rotating engine parts to be subject to focused inspection at each piece-part opportunity.

Economic Analysis

There are approximately 812 engines of the affected design in the worldwide fleet. The FAA estimates that 677 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per engine to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $324,960 ($480 per engine).

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 39–11120, (64 FR 17949, April 13, 1999), and by adding a new airworthiness directive.

Pratt & Whitney: Docket No. 98–ANE–61–AD.

Applicability: Pratt & Whitney (PW) PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143, series turbofan engines, installed on but not limited to Boeing 757 series and Ilyushin IL–96T series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, revise the manufacturer's Time Limits section (TLS) of the manufacturer's engine manual, Part Numbers (P/N's) 1A6231 and 1B2412, as appropriate for the PW PW2037, PW2040, PW2037M, PW2240, PW2337, PW2043, PW2643, and PW2143 series turbofan engines, and for air carriers revise the approved continuous airworthiness maintenance program, by adding the following:

''MANDATORY INSPECTIONS

(1) Perform inspections of the following parts at each piece-part opportunity in accordance with the instructions provided in the PW2000 series Engine Manuals:

Part nomenclature	Part No. (P/N)	Manual section	Inspection
Hub, 1st Stg Comp.	1A9001 (Assy P/N 1A9021)	72–31–04	Inspection—06
Disk—HPT 1st Stg	1A5301 (Assy. P/N 1A5921)	72–52–00	Inspection/Check—02
Disk—HPT 1st Stg	1A5301–001 (Assy P/N 1A5921–001)	72–52–02	Inspection/Check—02
Disk—HPT 1st Stg	1B2601 (Assy. P/N 1B2671)	72–52–02	Inspection/Check—02
Disk—HPT 1st Stg	1B2601–001 (Assy. P/N 1B2671–001)	72–52–02	Inspection/Check—02
Disk—HPT 1st Stg	1B3601 (Assy. P/N 1B3621)	72–52–02	Inspection/Check—02
Disk—HPT 1st Stg	1B3601–001 (Assy. P/N 1B3621–001)	72–52–02	Inspection/Check—02
Disk—HPT 1st Stg	1B7801 (Assy. P/N 1B7621) Post SB 72–608	72–52–02	Inspection/Check—02
Disk—HPT 2nd Stg	1A8302 (Assy. P/N 1B0454)	72–52–02	Inspection/Check—02
Disk—HPT 2nd Stg	1B1002 (Assy. P/N 1B0972)	72–52–02	Inspection/Check—02
Hub—HPT 2nd Stg	1B1202 (Assy. P/N 1B1710 or 1B1172)	72–52–02	Inspection/Check—02
Hub—HPT 2nd Stg	1B4902 (Assy. P/N 1B4552)	72–52–02	Inspection/Check—02
Hub—HPT 2nd Stg	1B6602 (Assy. P/N 1B6232 or 1B7572)	72–52–02	Inspection/Check—02
Hub—HPT 2nd Stg	1B8002 (Assy. P/N 1B7722)	72–52–02	Inspection/Check—02

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when done in accordance with the disassembly instructions in the manufacturer's engine manual to either part number level listed in the table above, and

(ii) The part has accumulated more than 100 cycles in service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(b) Except as provided in paragraph (c) of this AD, and notwithstanding contrary provisions in § 43.16 of Federal Aviation Regulations (14 CFR 43.16), these enhanced inspections shall be performed only in accordance with the TLS of the appropriate PW2000 series engine manuals.

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

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

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

(e) FAA-certificated air carriers that have an approved continuous airworthiness maintenance program in accordance with the record keeping requirement of § 121.369(c) of the Federal Aviation Regulations [14 CFR 121.369(c)] of this chapter must maintain records of the mandatory inspections that result from revising the Time Limits section of the Instructions for Continuous Airworthiness (ICA) and the air carrier's continuous airworthiness program. Alternately, certificated air carriers may establish an approved system of record retention that provides a method for preservation and retrieval of the maintenance records that include the inspections resulting from this AD, and include the policy and procedures for implementing this alternate method in the air carrier's maintenance manual required by § 121.369(c) of the

Federal Aviation Regulations [14 CFR 121.369(c)]; however, the alternate system must be accepted by the appropriate PMI and require the maintenance records be maintained either indefinitely or until the work is repeated. Records of the piece-part inspections are not required under § 121.380 (a)(2)(vi) of the Federal Aviation Regulations [14 CFR 121.380(a)(2)(vi)]. All other Operators must maintain the records of mandatory inspections required by the applicable regulations governing their operations.

Note 3: The requirements of this AD have been met when the engine manual changes are made and air carriers have modified their continuous airworthiness maintenance plans to reflect the requirements in the engine manuals.

Issued in Burlington, Massachusetts, on September 30, 1999.

David A. Downey,

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

[FR Doc. 99–26207 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–39–AD]

RIN 2120–AA64

Airworthiness Directives; LET, a.s. Model L–420 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 LET, a.s. (LET) Model L–420 airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–39–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–39–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–39–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to

reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, *i.e.*, there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (*e.g.*, during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in

order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all LET Model L–420 airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Industrie Aeronautiche e Mecchaniche, Model P–180 Airplanes	99–CE–34–AD
Pilatus Britten-Norman Ltd., BN–2T Series Airplanes	99–CE–35–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes	99–CE–37–AD
Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes	99–CE–38–AD
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD
Harbin Aircraft Manufacturing Corp., Model Y12 IV airplanes	99–CE–41–AD
Empresa Brasileira de Aeronautica S.A. (Embraer), Models EMB–110P1 and EMB–110P2 Airplanes	99–CE–42–AD
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation Models, 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream Model BAe ATP Airplanes	99–NM–145–AD
Jetstream Model 4101 Airplanes	99–NM–146–AD
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other LET Model L–420 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 1 airplane 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Let, A.S.: Docket No. 99–CE–39–AD.

Applicability: Model L–420 airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

- Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.,* take-off, final approach, and landing), compliance with the following is required.
- Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

- The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26398 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–42–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. Models EMB–110P1 and EMB–110P2 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 Empresa Brasileira de Aeronautica S.A. (Embraer) Models EMB–110P1 and EMB–110P2 airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–42–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–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the

onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, *i.e.*, there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (*e.g.*, during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all Embraer Models EMB–110P1 and EMB–110P2 airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Industrie Aeronautiche e Meccaniche, Model Piaggio P–180 Airplanes	99–CE–34–AD
Pilatus Britten-Norman Ltd., BN–2T Series Airplanes	99–CE–35–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes	99–CE–37–AD
Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes	99–CE–38–AD
LET, a.s., Model L–420 Airplanes	99–CE–39–AD
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD
Harbin Aircraft Manufacturing Corp., Model Y12 IV airplanes	99–CE–41–AD
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream Model BAe ATP Airplanes	99–NM–145–AD
Jetstream Model 4101 Airplanes, British Aerospace Model HS 748 Series Airplanes	99–NM–146–AD
	99–NM–147–AD
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Embraer Models EMB–110P1 and EMB–110P2 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 42 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Empresa Brasileira De Aeronautica S.A.: Docket No. 99–CE–42–AD.

Applicability: Models EMB–110P1 and EMB–110P2 airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from

an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with §§ 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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26399 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–37–AD]

RIN 2120–AA64

Airworthiness Directives; Partenavia Costruzioni Aeronauticas S.p.A. Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' 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 Partenavia Costruzioni Aeronauticas S.p.A. (Partenavia) Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–37–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–37–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of

airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, *i.e.*, there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of

data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (*e.g.*, during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all Partenavia Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Industrie Aeronautiche e Mecchaniche, Model P–180 Airplanes	99–CE–34–AD
Pilatus Britten-Norman Ltd., BN–2T Series Airplanes	99–CE–35–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD
Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes	99–CE–38–AD
LET, a.s., Model L–420 Airplanes	99–CE–39–AD
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD
Harbin Aircraft Manufacturing Corp., Model Y12 IV airplanes	99–CE–41–AD
Empresa Brasileira de Aeronautica S.A. (Embraer), Models EMB–110P1 and EMB–110P2 Airplanes	99–CE–42–AD
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Model 425 and 441 Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale, Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD
Jetstream, Model 4101 Airplanes, British Aerospace, Model HS 748 Series Airplanes	99–NM–146–AD 99–NM–147–AD
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Partenavia Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 3 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this

NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Partenavia Costruzioni Aeronauticas S.P.A.: Docket No. 99–CE–37–AD.

Applicability: Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26400 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–40–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace 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 Jetstream Models 3101 and 3201 airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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.

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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–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999.

The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

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In November 1997, the FAA and the National Aeronautics and Space

Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, *i.e.*, there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (*e.g.*, during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all British Aerospace Jetstream Models 3101 and 3201 airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

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Harbin Aircraft Manufacturing Corp., Model Y12 IV airplanes	99–CE–41–AD
Empresa Brasileira de Aeronautica S.A. (Embraer), Models EMB–110P1 and EMB–110P2 Airplanes	99–CE–42–AD

Airplane models	Docket No.
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream Model BAe ATP Airplanes	99–NM–145–AD
Jetstream Model 4101 Airplanes, British Aerospace Model HS 748 Series Airplanes	99–NM–146–AD
	99–NM–147–AD
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

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 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 revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 249 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 99–CE–40–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26401 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 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 Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–C–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–34–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–34–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also

concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1 ½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, *i.e.*, there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice

following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (*e.g.*, during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all I.A.M. Model Piaggio P–180 airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Pilatus Britten-Norman Ltd., BN–2T Series Airplanes	99–CE–35–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes	99–CE–37–AD
Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes	99–CE–38–AD
LET, a.s., Model L–420 Airplanes	99–CE–39–AD
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD
Harbin Aircraft Manufacturing Corp., Model Y12 IV Airplanes	99–CE–41–AD
Empresa Brasileira de Aeronautica S.A. (Embraer), Models EMB–110P1 and EMB–110P2 Airplanes	99–CE–42–AD
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, Model SA226 and SA227 Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model, G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream Model BAe ATP Airplanes	99–NM–145–AD
Jetstream Model 4101 Airplanes, British Aerospace Model HS 748 Series Airplanes	99–NM–146–AD 99–NM–147–AD
Saab Model SF340A/SAAB 340B/SAAB 2000, Series Airplanes	99–NM–148–AD
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25, (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers Model SD3–30/SD3–60/SD3-SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other I.A.M. Model Piaggio P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 5 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche E Meccaniche: Docket No. 99–CE–34–AD.

Applicability: Model Piaggio P–180 airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.,* take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26407 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH 228 Series 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 Dornier

Luftfahrt GmbH (Dornier) 228 Series airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–43–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–43–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–43–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileria de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate that wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused that FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common

practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuring tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all Dornier 228 series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Industrie Aeronautiche e Meccaniche,Model Piaggio P–180 Airplanes	99–CE–34–AD

Airplane models	Docket No.
Pilatus Britten-Norman Ltd., BN–2T Series Airplanes	99–CE–35–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes	99–CE–37–AD
Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes	99–CE–38–AD
LET, a.s., Model L–420 Airplanes	99–CE–39–AD
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD
Harbin Aircraft Manufacturing Corp., Model Y12 IV airplanes	99–CE–41–AD
Empresa Brasileira de Aeronautica S.A. (Embraer), Models EMB–110P1 and EMB–110P2 Airplanes	99–CE–42–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe Aerospatiale, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream Model BAe ATP Airplanes	99–NM–145–AD
Jetstream Model 4101 Airplanes, British Aerospace Model HS 748 Series Airplanes	99–NM–146–AD
	99–NM–147–AD
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Dornier 228 series airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 13 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 AFM revisions. Accomplishing the proposed FM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Dornier Luftfahrt Gmbh: Docket No. 99–CE–43–AD.

Applicability: The following model airplanes, all serial numbers equipped with pneumatic deicing boots, certificated in any category.

Models

Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201,
Dornier 228–202, Dornier 228–212

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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated.

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. the request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26402 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–38–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. Model MU–2B Series 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 Mitsubishi Heavy Industries, Ltd. (Mitsubishi) Model MU–2B series airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–38–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–38–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for 1/4 to 1/2 inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1 1/2 inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped

with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all Mitsubishi Model MU–2B series airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

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Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
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The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, Models SA226 and SA227 Airplanes	99–CE–52–AD
The Cessna Aircraft Company, 425 and 441 Series Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model, G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream Model BAe ATP Airplanes	99–NM–145–AD
Jetstream Model 4101 Airplanes	99–NM–146–AD
British Aerospace Model HS 748 Series Airplanes	99–NM–147–AD
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD

Airplane models	Docket No.
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Mitsubishi Model MU–2B series airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 415 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Mitsubishi Heavy Industries, Ltd.: Docket No. 99–CE–38–AD.

Applicability: The following model airplanes, all serial numbers equipped with pneumatic deicing boots, certificated in any category.

Models

MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60.

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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

obtained from the Small Airplane Directorate.

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26403 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–41–AD]

RIN 2120–AA64

Airworthiness Directives; Harbin Aircraft Manufacturing Corporation Model Y12 IV 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 Harbin Aircraft Manufacturing Corporation (HAMC) Model Y12 IV airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 1No. 99–CE–41–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–41–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–41–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of

the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for ¼ to ½ inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1½ inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical

precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all HAMC Model Y12 IV airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Industrie Aeronautiche e Meccaniche, Model Piaggio P–180 Airplanes	99–CE–34–AD
Pilatus Britten-Norman Ltd., BN–2T Series Airplanes	99–CE–35–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes	99–CE–37–AD
Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes	99–CE–38–AD
LET, a.s., Model L–420 Airplanes	99–CE–39–AD
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD
Empresa Brasileira de Aeronautica S.A. (Embraer), Models EMB–110P1 and EMB–110P2 Airplanes	99–CE–42–AD
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale, Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD
Jetstream, Model 4101 Airplanes British Aerospace, Model HS 748 Series Airplanes	99–NM–146–AD 99–NM–147–AD
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other HAMC Model Y12 IV airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

None of the HAMC Y12 IV airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register.

Should an affected airplane be imported and placed on the U.S. Register, accomplishment of the required action would take approximately 1 workhour per airplane to accomplish the proposed AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Harbin Aircraft Manufacturing Corporation: Docket No. 99–CE–41–AD.

Applicability: Model Y12 IV airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26404 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–35–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Limited Models BN–2T and BN–2T–4R 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 Pilatus Britten-Norman Limited (Pilatus Britten-Norman) Models BN–2T and BN–2T–4R airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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–35–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–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for 1/4 to 1/2 inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1 1/2 inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the

onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all Pilatus Britten-Norman Models BN–2T and BN–2T–4R airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

Airplane models	Docket No.
Industrie Aeronautiche e Mecchaniche, Model P–180 Airplanes	99–CE–34–AD
Pilatus Aircraft Ltd., Models PC–12 and PC–12/45 Airplanes	99–CE–36–AD
Partenavia Costruzioni Aeronauticas, S.p.A., Models AP68TP 300 ''Spartacus'' and AP68TP 600 ''Viator'' Airplanes	99–CE–37–AD
Mitsubishi Heavy Industries, Ltd. MU–2B Series Airplanes	99–CE–38–AD
LET, a.s., Model L–420 Airplanes	99–CE–39–AD
British Aerospace, Jetstream Models 3101 and 3201 Airplanes	99–CE–40–AD
Harbin Aircraft Manufacturing Corp. Model Y12 IV Airplanes	99–CE–41–AD
Empresa Brasileira de Aeronautica S.A. (Embraer), Models EMB–110P1 and EMB–110P2 Airplanes	99–CE–42–AD
Dornier Luftfahrt GmbH, 228 Series Airplanes	99–CE–43–AD
Bombardier Inc., DHC–6 Series Airplanes	99–CE–44–AD
The Cessna Aircraft Company, 208 Series Airplanes	99–CE–45–AD
Raytheon Aircraft Company, 90, 99, 100, 200, 300, 1900, and 2000 Series Airplanes	99–CE–46–AD
AeroSpace Technologies Of Australia Pty Ltd., Models N22B and N24A	99–CE–47–AD
Short Brothers & Harland Ltd., Models SC–7 Series 2 and SC–7 Series 3 Airplanes	99–CE–48–AD
The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe AEROSPATIALE, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Model 425 and 441 Airplanes	99–CE–53–AD

Airplane models	Docket No.
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream Model BAe ATP Airplanes	99–NM–145–AD
Jetstream Model 4101 Airplanes, British Aerospace Model HS 748 Series Airplanes	99–NM–146–AD
	99–NM–147–AD
Saab Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers Model SD3–30/SD3–60/SD3–SHERPA, Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Britten-Norman Models BN–2T and BN–2T–4R airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 7 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman Limited: Docket No. 99–CE–35–AD.

Applicability: Models BN–2T and BN–2T–4R airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from

an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26405 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–36–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 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 Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The proposed AD would require revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: Comments must be received on or before December 1, 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–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

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

SUPPLEMENTARY INFORMATION:

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.

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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–36–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that the FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

The FAA has reviewed the icing-related incident history of certain airplanes, and has determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Request for Information

On October 1, 1998, the FAA sent letters to certain manufacturers of airplanes certified in accordance with part 25 of the Federal Aviation

Regulations (14 CFR part 25). The letters requested certain icing system design information and operational procedures applicable to their airplanes concerning flight during icing conditions. The letters also requested that manufacturers provide data showing that the aircraft has safe operating characteristics with ice accreted on the protected surfaces (boots). The manufacturers were asked to provide data using the following assumptions: The most adverse ice accumulation possible during operation in the icing envelope specified in part 25, Appendix C of the Federal Aviation Regulations (14 CFR part 25), and that recommended procedures for deicing boot operation were used. Additionally, the manufacturers were asked to provide information related to operation of the autopilot during icing conditions, and for information related to appropriate operating speeds for icing operations.

No information received, as a result of that request, has caused the FAA to reconsider the previous conclusion that an unsafe condition may exist.

Public Meeting

Subsequent to the collection of those design and operational data, the FAA held an international conference on ''Inflight Operations in Icing Conditions'', in Washington, DC, on February 2–4, 1999. The purpose of the conference was to discuss the status of the FAA Icing Plan and other related efforts. Additionally, the conference provided a forum for representatives of industry to express their viewpoints on current information related to activation of deicing boots, minimum airspeeds, autopilot operation in icing conditions, flightcrew information needs, and flightcrew training. Certain information presented at that meeting is discussed in this proposed rule in the following section.

Delayed Activation of Pneumatic Deicing Boots

In accordance with manufacturer instructions and FAA-approved airplane flight manual (AFM) procedures, the flightcrews of most airplanes equipped with pneumatic deicing boots delay the initial activation of the boots until a certain quantity of ice has accumulated on the protected surfaces (boots). Some crews routinely wait for 1/4 to 1/2 inch of ice to accumulate, and at least one airplane type is routinely flown with up to 1 1/2 inches of ice on the protected surfaces before the initial activation of the deicing boots.

Ice Bridging

In the past, concern about ''ice bridging'' on early pneumatic deicing boot designs resulted in the common practice of delaying activation of ice protection. Ice bridging of pneumatic deicing boots occurred when a thin layer of ice is sufficiently plastic to deform to the shape of the inflated deicing boot tube without being fractured and shed during the ensuing tube deflation. As the deformed ice hardens and accretes additional ice, the deicing boot becomes ineffective in shedding the ''sheath'' of ice. However, ice accumulation resulting from delayed activation may pose an unsafe condition due to the resultant adverse aerodynamic effects on the airplane's performance or handling qualities.

In November 1997, the FAA and the National Aeronautics and Space Administration (NASA) co-sponsored an international workshop on aircraft deicing boot ice bridging. The objective of the workshop was to provide an open forum for investigating the existence of deicing boot bridging and other concerns related to activating ice protection systems at the initial detection of inflight icing. Sixty-seven representatives from airframe and deicing boot manufacturers, various airlines, the pilot community, NASA, the National Transportation Safety Board, non-US civil aviation authorities, and the FAA participated. At the workshop no evidence was presented to substantiate that aircraft with modern deicing boot designs experience ice bridging. The general consensus of the workshop participants was that ice bridging is not a problem for modern pneumatic deicing boot designs due to the use of higher air supply pressures, faster boot inflation and deflation cycles, and smaller boot chambers. Icing wind tunnel and flight testing of these newer design features with automatic cycling have demonstrated successful shedding of ice when activated at the onset of ice accretion, with ice not shed on the initial deicing boot cycle continuing to increase in thickness and being shed during subsequent cycles.

During the previously discussed November 1997 international workshop, the inability of flightcrews to accurately gauge wing and control surfaces ice accretion thickness before activating the deicing boots was recognized. Also, increased airplane drag resulting from ice accretion was recognized as a potential contributing cause of inadvertent airspeed loss that characterized most in-flight icing related accidents and incidents. Two airframe manufacturers, whose products comprise a substantial percentage of the turbopropeller transport fleet, reported that, because of these concerns they recommend activating the automatic airframe deicing system at first onset of airframe icing. Those manufacturers have received no reports of deicing boot ice bridging events for these airplanes.

The FAA considers that ice accumulation on protected surfaces due to delayed boot activation constitutes a potential safety concern. However, the FAA recognizes that not all airplanes may be equipped with ''modern'' deicing boots (as that term is used in this NPRM). The FAA specifically invites the submission of comments and other data regarding the effects of this proposed AD on airplanes equipped with older pneumatic deicing boots, including arguments for the retention of existing activation delays for these older-style deicing boots.

Residual Ice

During the February conference, the attendees agreed that the airplane is at risk while the airplane is accreting ice, and that the airplane must be adequately protected to ensure that no adverse handling and performance characteristics develop. An additional concern discussed at the conference was the possibility that early activation of the ice protection system might degrade the ice shedding effectiveness of the deicing boots, resulting in increased residual ice, i.e., there would be more ice fragments remaining on the deicing boots than would exist if a more substantial quantity of ice was allowed to form before the first ice shedding cycle. However, the FAA does not concur. No data has been provided that shows that the presence of residual ice following an earlier activation of the deicing boots is more hazardous than delaying cycling of the boots until the ice accretes to a larger, specific thickness. In fact, testing in icing conditions has shown that residual ice remaining on the boots after the initial boot cycle is removed during subsequent cycles.

As reported during the November 1997 international workshop, manufacturers of a substantial percentage of the turbopropeller transport fleet have reported satisfactory in-flight icing operations of their products with recommended procedures to activate operation of the deicing boots in the automatic mode at the onset of airframe icing.

Therefore, the FAA considers that the activation of pneumatic wing and tail deicing boots at the first signs of ice accumulation is warranted. The FAA specifically invites the submission of

data to substantiate that operating the deicing boots at the first sign of ice accretions is more hazardous than delaying boot activation until a specific thickness of ice has accumulated.

Other Considerations

The FAA recognizes that there may be some phases of flight during which use of the deicing boots may be inappropriate. For example, a deicing boot inflation cycle that begins immediately before or during the landing flare or the takeoff rotation may cause unexpected loss of lift or other adverse aerodynamic events. This proposed AD explicitly does not supersede procedures in the AFM that prohibit using deicing boots for certain phases of flight (e.g., during take-off, final approach, and landing).

The FAA specifically invites the submission of comments and other data regarding adverse effects that may occur during specific phases of flight, including takeoff, final approach, or landing. Any recommended speed restrictions or other operational procedures that would be necessary in order to mitigate any adverse aerodynamic effects of deicing boot inflation during critical phases of flight should be fully explained and documented.

The FAA's Determination

The FAA is aware that, based on previous procedures provided to flightcrews of many airplanes equipped with deicing boots, a historical precedent has been set that permits waiting to activate the deicing equipment. In light of this information and based on reports received, the FAA considers that certain procedures should be included in the Limitations Section of the AFM for all Pilatus Models PC–12 and PC–12/45 airplanes to require immediate activation of the ice protection systems when any ice accumulation is detected on the airplane.

This proposed action is one of a number of proposed AD's being issued on airplanes that have been determined to be subject to the same identified unsafe conditions. Currently proposed AD's for other airplanes that are equipped with pneumatic deicing boots address the following airplanes:

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The New Piper Aircraft, Inc., PA–31 Series Airplanes	99–CE–49–AD
SOCATA—Groupe Aerospatiale, Model TBM 700 Airplanes	99–CE–50–AD
Twin Commander Aircraft Corporation, 600 Series Airplanes	99–CE–51–AD
Fairchild Aircraft Corporation, SA226 and SA227 Series Airplanes	99–CE–52–AD
The Cessna Aircraft Company, Models 425 and 441 Airplanes	99–CE–53–AD
Cessna Aircraft Company, Models 500, 550, and 560 Airplanes	99–NM–136–AD
Sabreliner Corporation, Models 40, 60, 70, and 80 Series Airplanes	99–NM–137–AD
Gulfstream Aerospace, Model G–159 Series Airplanes	99–NM–138–AD
McDonnell Douglas, Models DC–3 and DC–4 Series Airplanes	99–NM–139–AD
Mitsubishi Heavy Industries, Model YS–11 and YS–11A Series Airplanes	99–NM–140–AD
Frakes Aviation, Model G–73 (Mallard) and G–73T Series Airplanes	99–NM–141–AD
Lockheed, Models L–14 and L–18 Series Airplanes	99–NM–142–AD
Fairchild, Models F27 and FH227 Series Airplanes	99–NM–143–AD
Aerospatiale, Models ATR–42/ATR–72 Series Airplanes	99–NM–144–AD
Jetstream, Model BAe ATP Airplanes	99–NM–145–AD
Jetstream, Model 4101 Airplanes	99–NM–146–AD
British Aerospace, Model HS 748 Series Airplanes	99–NM–147–AD
Saab, Model SF340A/SAAB 340B/SAAB 2000 Series Airplanes	99–NM–148–AD
CASA, Model C–212/CN–235 Series Airplanes	99–NM–149–AD
Dornier, Model 328–100 Series Airplanes	99–NM–150–AD
Lockheed, Model 1329–23 and 1329–25 (Lockheed Jetstar) Series Airplanes	99–NM–151–AD
de Havilland, Model DHC–7/DHC–8 Series Airplanes	99–NM–152–AD
Fokker, Model F27 Mark 100/200/300/400/500/600/700/050 Series Airplanes	99–NM–153–AD
Short Brothers, Model SD3–30/SD3–60/SD3–SHERPA Series Airplanes	99–NM–154–AD

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require revising the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

The FAA estimates that 100 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 AFM revisions. Accomplishing the proposed AFM revision requirements of this

NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 99–CE–36–AD.

Applicability: Models PC–12 and PC–12/45 airplanes, all serial numbers equipped with pneumatic deicing boots, 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 assure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

''• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice.''

(b) Incorporating the AFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(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, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–26406 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121063–97]

RIN 1545–AX01

Averaging of Farm Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations for averaging farm income under section 1301 of the Internal Revenue Code. The regulations reflect the enactment of the provision by the Taxpayer Relief Act of 1997, as amended by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. The regulations provide guidance to individuals engaged in a farming business who may elect to reduce their regular tax liability by treating all or a portion of the current year's farming income as if it had been earned in equal proportions over the prior three years. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments) at a public hearing

scheduled for February 15, 2000, must be received by January 14, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–121063–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–121063–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John M. Moran, at (202) 622–4940; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, at (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collection of information should be received by December 7, 1999. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.1301–1(c). This collection of information is required by the IRS to verify compliance with section 1301. This information will be used to determine whether the amount of tax has been calculated correctly. The collection of information is required to obtain a benefit. The respondents are certain individuals engaged in the trade or business of farming.

Taxpayers provide the information on Schedule J, Farm Income Averaging, which is attached to Form 1040, U.S. Individual Income Tax Return, for the taxable year in which income averaging is elected. The burden for this requirement is reflected in the burden estimate for Schedule J. The estimated burden for the 1998 Schedule J is 1.31 hours per respondent.

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

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

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) for averaging farm income under section 1301 of the Internal Revenue Code (Code). Section 1301 was enacted by section 933 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788) (the TRA of 1997), effective for taxable years beginning after December 31, 1997, and ending before January 1, 2001. Section 2011 of the Tax and Trade Relief Extension Act of 1998, which is part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681, amended section 933 of the TRA of 1997 by deleting the January 1, 2001 ending date.

Section 1301(c) authorizes the Secretary to prescribe regulations as may be appropriate to carry out the purposes of this section, including regulations regarding (1) the order and manner in which items of income, gain, deduction, or loss, or limitations on tax, shall be taken into account in computing the tax imposed by chapter 1 (Normal Taxes and Surtaxes) of subtitle A (Income Taxes) of the Code on the income of any taxpayer to whom this section applies for any taxable year, and (2) the treatment of any short taxable year.

Explanation of Provisions

I. In General

Under section 1301, an individual may elect to compute the section 1 tax for the current taxable year by designating all or a portion of the individual's farm income (subject to certain limitations) as elected farm income, and subtracting it from taxable income. One-third of the elected farm income is allocated to each of the three prior years' taxable income and the increase in the section 1 tax that results from these additions is calculated. The prior years are referred to as base years. The tax for the current year is the sum of (1) The section 1 tax for the current year without the elected farm income and (2) The increase in the section 1 tax for the three base years that is attributable to elected farm income.

II. Engaged in a Farming Business

The proposed regulations provide that the term *farming business* has the same meaning as provided in section 263A(e)(4) and the regulations thereunder. The proposed regulations also provide that an individual engaged in a farming business includes a sole proprietor of a farming business, a partner of a partnership engaged in a farming business, and a shareholder of an S corporation engaged in a farming business.

III. Making, Changing, or Revoking an Election

The proposed regulations provide that a farm income averaging election is made by filing Schedule J, Farm Income Averaging, with an individual's timely filed Federal income tax return (including extensions). In general, the proposed regulations provide that if an individual has an adjustment for an election year or base year, the individual may also make a late farm income averaging election or change or revoke a previous election. An adjustment is any change in taxable income or tax liability that is permitted to be made by filing an amended Federal income tax return, or a change in taxable income or tax liability resulting from an IRS examination. If

there is no adjustment for an election year or a base year, a late election, change, or revocation may be made only with the consent of the Commissioner. The IRS and the Treasury Department anticipate that the Commissioner's consent will be obtained by requesting a letter ruling from the national office.

IV. Calculation of Section 1 Tax

Farm income averaging allocates one-third of elected farm income from an election year to each of the base years only for the purpose of calculating the section 1 tax attributable to the elected farm income allocated to each base year. The proposed regulations provide that the section 1 tax for the election year is determined by allocating elected farm income to the base years only after all other adjustments and determinations have been made. For example, any net operating loss carryover is applied to an election year before allocating elected farm income to the base years.

The regulations provide that the allocation of elected farm income to the base years does not affect any determination (other than the calculation of the section 1 tax attributable to the elected farm income) with respect to the election year or the base years. Thus, for example, in applying the section 68 overall limitation on itemized deductions to the election year, adjusted gross income for the election year includes any elected farm income allocated to the base years. Similarly, the section 68 limitation for a base year is not recomputed to take into account any allocation of elected farm income to such base year.

The proposed regulations provide that calculation of the section 1 tax on elected farm income allocated to a base year is made without any additional adjustments or determinations with respect to that year. For example, if a base year had a partially used capital loss, the remaining capital loss may not be applied to reduce the elected farm income allocated to such year. Similarly, if a base year had a partially used credit, the remaining credit may not apply to reduce the section 1 tax attributable to the elected farm income allocated to such year.

V. Elected Farm Income

The proposed regulations provide that farm income includes all income, deductions, gains, and losses attributable to an individual's farming business. An individual may designate what type, and how much of each type, of farm income is to be treated as elected farm income. The elected farm income may not exceed an individual's taxable income. In addition, elected farm income from net capital gain attributable to a farming business may not exceed total net capital gain. One-third of each type of elected farm income is then allocated to each base year.

Proposed Effective Date

The regulations, as proposed, apply to any taxable period ending on or after the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register.** However, the rules in these proposed regulations may be relied on by individuals for taxable periods ending before the publication of the Treasury decision.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the collection of information imposed by this regulation is not significant as reflected in the estimated burden of information collection for Schedule J, which is 1.31 hours per respondent. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. In addition, comments are specifically requested regarding whether wages paid to a shareholder of an S corporation may be electible farm income. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 15, 2000, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 14, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is John M. Moran, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.1301–1 also issued under 26 U.S.C. 1301(c). * * *

Par. 2. An undesignated center heading and § 1.1301–1 are added immediately following the center heading ''Readjustment of Tax Between Years and Special Limitations'' to read as follows:

Income Averaging

§ 1.1301–1 Averaging of farm income.

(a) *Overview.* An individual engaged in a farming business may elect to compute his or her current year (election year) income tax liability under section 1 by averaging, over the prior three-year period (base years), all or a portion of the individual's current year electible farm income (as defined in paragraph (e)) of this section. To average farm income, the individual—

(1) Designates all or a portion of his or her electible farm income for the election year as elected farm income;

(2) Allocates one-third of the elected farm income to each of the three base years; and

(3) Determines the election year section 1 tax by determining the sum of—

(i) The election year section 1 tax without regard to the elected farm income; plus

(ii) For each base year, the increase in section 1 tax attributable to the elected farm income allocated to such year.

(b) *Individual engaged in a farming business. Farming business* has the same meaning as provided in section 263A(e)(4) and the regulations thereunder. An individual engaged in a farming business includes a sole proprietor of a farming business, a partner in a partnership engaged in a farming business, and a shareholder of an S corporation engaged in a farming business. An individual is not required to have been engaged in a farming business in any of the base years in order to make a farm income averaging election.

(c) *Making, changing, or revoking an election*—(1) *Making an election.* A farm income averaging election is made by filing Schedule J, Farm Income Averaging, with an individual's timely filed (including extensions) Federal income tax return for the election year.

(2) *Making a late election, or changing or revoking an election*—(i) *Adjustments in an election or base year.* An individual who has an adjustment for an election year or any base year may make a late farm income averaging election, change the amount of elected farm income in a previous election, or revoke a previous election, if the period of limitation on filing a claim for credit or refund has not expired for the election year. For purposes of this paragraph (c)(2), an adjustment is any change in taxable income or tax liability that is permitted to be made by filing an amended Federal income tax return or a change in taxable income or tax liability made as the result of an IRS examination.

(ii) *No adjustment.* If an individual does not have an adjustment described in paragraph (c)(1)(i) of this section, the individual may not make a late farm income averaging election, change the amount of elected farm income in a previous election, or revoke a previous election, without the consent of the Commissioner.

(d) *Calculation of section 1 tax*—(1) *In general.* The section 1 tax for the election year is determined by allocating elected farm income to the base years only after all other adjustments and determinations have been made. For example, any net operating loss (NOL) carryover or net capital loss carryover is applied to an election year before allocating elected farm income to the base years. Similarly, the determination of whether there is a net section 1231 gain or loss in the election year and the determination of the character of the section 1231 items are made before allocating elected farm income to the base years. The allocation of elected farm income to the base years does not affect any determination (other than the calculation of the section 1 tax attributable to the elected farm income) with respect to the election year or the base years. Thus, for example, in applying the section 68 overall limitation on itemized deductions to the election year, adjusted gross income for the election year includes any elected farm income allocated to the base years. Similarly, the section 68 limitation for a base year is not recomputed to take into account any allocation of elected farm income to such base year. The calculation of the section 1 tax on elected farm income allocated to a base year is made without any additional adjustments or determinations with respect to such year. For example, if a base year had a partially used capital loss, the remaining capital loss may not be applied to reduce the elected farm income allocated to such year. Similarly, if a base year had a partially used credit, the remaining credit may not be applied to reduce the section 1 tax attributable to the elected farm income allocated to such year.

(2) *Base year was previously an election year or another base year.* If a base year for a current farm income averaging election was previously an election year for another farm income averaging election, the base year's section 1 tax is determined after reducing the base year's taxable income by the elected farm income for that prior election year. If a base year for a current farm income averaging election was previously a base year for another farm income averaging election, the base year's section 1 tax is determined after increasing the base year's taxable income by the elected farm income allocated to that year by that prior election.

(3) *Example.* The rules of paragraph (d)(2) of this section are illustrated by the following example:

Example. (i) In each of years 1996, 1997 and 1998, T had taxable income of $20,000. In 1999, T had taxable income of $30,000 (prior to any farm income averaging election) and electible farm income of $10,000. T makes a farm income averaging election with respect to $9,000 of his electible farm income for 1999. Thus, $3,000 of elected farm income is allocated to each of years 1996, 1997 and 1998. T's 1999 tax liability is the sum of—

(A) The section 1 tax on $21,000 (1999 taxable income minus elected farm income); plus

(B) For each of years 1996, 1997, and 1998, the section 1 tax on $23,000 minus the section 1 tax on $20,000 (the increase in section 1 tax attributable to the elected farm income allocated to such year).

(ii) In 2000, T has taxable income of $50,000 and electible farm income of $12,000. T makes a farm income averaging election with respect to all $12,000 of his electible farm income for 2000. Thus, $4,000 of elected farm income is allocated to each of years 1997, 1998 and 1999. T's 2000 tax liability is the sum of—

(A) The section 1 tax on $38,000 (2000 taxable income minus elected farm income); plus

(B) For each of years 1997 and 1998, the section 1 tax on $27,000 minus the section 1 tax on $23,000 (the increase in section 1 tax attributable to the elected farm income allocated to such years after increasing such years' taxable income by the elected income allocated to such year by the 1999 farm income averaging election); plus

(C) For year 1999, the section 1 tax on $25,000 minus the section 1 tax on $21,000 (the increase in section 1 tax attributable to the elected farm income allocated to such year after reducing such year's taxable income by the 1999 elected farm income).

(e) *Electible farm income*—(1) *Identification of items attributable to a farming business*—(i) *In general.* Farm income includes items of income, deduction, gain, and loss attributable to the individual's farming business. Farm losses include a NOL carryover or carryback, or a net capital loss carryover, to an election year that is attributable to a farming business. Income, gain or loss from the sale of development rights, grazing rights, and other similar rights is not treated as attributable to a farming business. Farm income does not include wages.

(ii) *Gain or loss on sale or other disposition of property*—(A) *In general.* Gain or loss from the sale or other disposition of property (other than land,

but including a structure affixed to the land) that was regularly used in the individual's farming business for a substantial period of time is treated as attributable to a farming business. Whether property was regularly used for a substantial period of time depends on all of the facts and circumstances.

(B) *Cessation of a farming business.* If gain or loss described in paragraph (e)(1)(ii)(A) of this section is realized after cessation of a farming business, such gain or loss is treated as attributable to a farming business if the property is sold within a reasonable time after cessation of the farming business. A sale or other disposition within one year of cessation of the farming business is presumed to be within a reasonable time. Whether a sale or other disposition that occurs more than one year after cessation of the farming business is within a reasonable time depends on all of the facts and circumstances.

(2) *Determination of amount that may be elected farm income*—(i) *Electible farm income.* The maximum amount of income that an individual may elect to average (electible farm income) is the sum of any farm income and gain minus any farm deductions or losses (including loss carryovers and carrybacks) that are allowed as a deduction in computing the individual's taxable income. However, electible farm income may not exceed taxable income. In addition, electible farm income from net capital gain attributable to a farming business cannot exceed total net capital gain. An individual who has both ordinary and net capital gain farm income may elect (up to electible farm income) any combination of such ordinary and net capital gain farm income.

(ii) *Examples.* The rules of paragraph (e)(2)(i) of this section are illustrated by the following examples:

Example 1. A has farm gross receipts of $200,000 and farm ordinary deductions of $50,000. A's taxable income is $150,000 ($200,000-$50,000). A's electible farm income is $150,000, all of which is ordinary income.

Example 2. B has ordinary farm income of $200,000 and nonfarm losses of $50,000. B's taxable income is $150,000 ($200,000–$50,000). B's electible farm income is $150,000, all of which is ordinary income.

Example 3. C has a farm capital gain of $50,000 and a nonfarm capital loss of $40,000. C also has ordinary farm income of $60,000. C has taxable income of $70,000 ($50,000-$40,000+$60,000). C's electible farm income is $70,000. C can elect up to $10,000 of farm capital gain and up to $60,000 of farm ordinary income.

Example 4. D has a nonfarm capital gain of $40,000 and a farm capital loss of $30,000. D also has ordinary farm income of $100,000. D has taxable income of $110,000 ($40,000-$30,000+$100,000). D's electible farm income is $100,000 ordinary farm income minus $30,000 farm capital loss, or $70,000, all of which is ordinary income.

Example 5. E has a nonfarm capital gain of $20,000 and a farm capital loss of $30,000. E also has ordinary farm income of $100,000. E has taxable income of $97,000 ($20,000-$23,000 +$100,000). E has a farm capital loss carryover of $7,000 ($30,000-$23,000 allowed as a deduction). E's electible farm income is $100,000 ordinary farm income minus $23,000 farm capital loss, or $77,000, all of which is ordinary income.

(f) *Miscellaneous rules*—(1) *Short taxable year*—(i) *In general.* If a base year or an election year is a short taxable year, the rules of section 443 and the regulations thereunder apply for purposes of calculating the section 1 tax.

(ii) *Base year is a short taxable year.* If a base year is a short taxable year, the increase in section 1 tax attributable to the elected farm income allocated to such year is determined after the taxable income for such year has been annualized.

(iii) *Election year is a short taxable year.* If an election year is a short taxable year, any elected farm income is first annualized before being allocated to the base years. The increase in section 1 tax attributable to the elected farm income allocated to the base years is the same part of the tax computed on an annual basis as the number of months in the short election year is of 12 months.

(2) *Changes in filing status.* An individual is not prohibited from making a farm income averaging election solely because the individual's filing status is not the same in an election year and the base years. For example, an individual who files married filing jointly in the election year, but filed as single in all of the base years, may still elect to average farm income.

(3) *Employment tax.* A farm income averaging election has no effect in determining the amount of wages for purposes of the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (Federal income tax withholding), or the amount of net earnings from self-employment for purposes of the Self-Employment Contributions Act (SECA).

(4) *Alternative minimum tax.* A farm income averaging election does not apply for purposes of determining the section 55 alternative minimum tax in the election year or any base year. However, an election will apply for purposes of determining the regular tax under sections 53(c) and 55(c).

(5) *Unearned income of minor child.* In an election year, if a minor child's investment income is taxable under section 1(g) and a parent makes a farm income averaging election, the tax rate used for purposes of applying section 1(g) is the rate determined after application of the election. With respect to a base year, however, the tax on a minor child's investment income is not affected by a farm income averaging election.

(g) *Effective date.* The rules of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

John M. Dalrymple,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 99–26226 Filed 10–7–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 915

[SPATS No. IA–005–FOR]

Iowa Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to a previously proposed amendment to the Iowa regulatory program (Iowa program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Iowa proposes revisions to its revegetation success guidelines concerning the definition for ''prime farmland,'' plant species for recreational and wildlife areas, reference areas, normal husbandry practices, minimum planting arrangements for recreational, wildlife, and forested lands, and control area adjustments of prime farmland.

Iowa intends to revise its program to be consistent with the corresponding Federal regulations and to improve operational efficiency.

DATES: We will accept written comments until 4:00 p.m., c.d.t., October 25, 1999.

ADDRESSES: You should mail or hand deliver written comments to John W.

Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of the Iowa program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Mid-Continent Regional Coordinating Center.

John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, Alton Federal Building, 501 Belle Street, Alton, Illinois, 62002, Telephone: (618) 463–6460.

Iowa Department of Agriculture and Land Stewardship, Division of Soil Conservation, Henry A. Wallace Building, Des Moines, Iowa 50319, Telephone: (515) 281–6147.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet: jcoleman@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Iowa Program

On January 21, 1981, the Secretary of Interior conditionally approved the Iowa program, effective April 10, 1981. You can find background information on the Iowa program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5885). You can find later actions on the Iowa program at 30 CFR 915.10, 915.15, and 915.16.

II. Discussion of the Proposed Amendment

By letter dated September 28, 1998 (Administrative Record No. IA–441), Iowa sent us an amendment to its program under SMCRA. Iowa sent the amendment in response to our letter dated August 1, 1986 (Administrative Record No. IA–280), that we sent to Iowa under 30 CFR 732.17(c).

We announced receipt of the amendment in the October 14, 1998, **Federal Register** (63 FR 55025) and invited public comment on its adequacy. The public comment period closed November 13, 1998.

During our review of the amendment, we identified concerns relating to Iowa's revegetation success guidelines concerning the definition for ''prime farmland,'' plant species for recreational and wildlife areas, reference areas, normal husbandry practices, minimum planting arrangements for recreational, wildlife, and forested lands, and control area adjustments of prime farmland. We notified Iowa of these concerns by electronic mail on November 19, 1998 (Administrative Record No. IA–441.6). On August 3, 1999, Iowa sent us a revised amendment (Administrative Record No. IA–441.7).

Iowa proposes the following revisions to its revegetation success guidelines:

A. Part II.D. Definition of Prime Farmland

Iowa is revising the first sentence of its definition of Prime Farmland to clarify the source of the U.S. Department of Agriculture's definition for prime farmland, which was referenced in the definition. The revised sentence reads as follows: '' Prime Farmland is defined by the U.S. Department of Agriculture at 7 CFR Part 657. As defined, prime farmland is the land best suited for food, feed, forage, fiber, and oil seed crops.'' Iowa also is deleting the last sentence of the first paragraph, ''Farming of this land results in the least damage to the environment.''

B. Part III.C.5 Recreational and Wildlife

1. Iowa proposes to revise the second sentence of Part III.C.5.a.i. to read as follows: ''In the case of wildlife areas, all plant species found that are not included in the seed mixture approved in the permit shall be those listed in Appendix 8—Recommended Wildlife & Recreational Planting Species for Iowa of this document.''

2. Iowa also proposes to revise Part III.C.5.b.ii. to read as follows: ''Tree and shrub species planted shall be approved in the permit and as listed in Appendix 5—Recommended Tree Planting Species in Iowa of this document as acceptable species.''

C. Part IV.E. Recreational, Wildlife, and Forested Lands

1. Iowa is changing the heading for Part IV.E.1. from ''Forested Lands'' to ''Tree and Shrub Vegetation'' and is removing the phrase ''In the case of a forested land use'' from the first sentence of IV.E.1.

2. Iowa also revised the first paragraph of Part IV.E.2 to read as follows:

The tree and/or shrub success standards shall be met only when all of the following have been established. (a) All of the previous criteria under IV.E. Recreational, Wildlife, and Forested Lands have been met. (b) When eighty percent (80%) of the trees and/or shrubs used in proving this success standard have been in place for sixty percent (60%) of the responsibility period (or three years). (c) The Permittee provides documentation that eighty percent (80%) of the planted trees and/or shrubs have survived and been in place a minimum of three (3) consecutive years. (d) The Permittee provides documentation that there are at least four hundred (400) live trees and/or shrubs per acre. (e) The Permittee provides documentation that each tree and/or shrub counted toward this revegetation success standard has been in place at least two (2) years and have at least one-third (1/3) of its height in live crown.

3. Iowa proposes to revise the third sentence of the second paragraph of Part IV.E.2. to read as follows: ''In addition there shall be a minimum of four hundred (400) live trees or shrubs per acre of land under a forested land use, including recreational or wildlife land use areas where woody plants are used, for purposes of achieving revegetation success.''

4. Iowa is also revising the fourth sentence of the second paragraph of Part IV.E.2 to read as follows: ''At the time of counting trees or shrubs to determine if their survival meets the revegetation success standard, eighty percent (80%) of the original number of trees and/or shrubs planted per acre shall be alive [and] shall have been in place for three years.''

D. Part IV.G. Control Area Adjustments of Prime Farmland Revegetation Success Standards

1. Iowa is revising the climatic correction factor (CF) Examples #1 by changing the CF for Example #1 to1.05, the ''Climatically Adjusted Corn Productivity Revegetation Success Standard'' calculation to ''1.05 × 161 bu. corn/acre = 169.05,'' and the success standard statement to ''Corn Productivity Revegetation Success Standard = 169 bu. corn/acre.''

2. Iowa is revising the CF for Example #2 to 0.832, the ''Climatically Adjusted Soybean Productivity Revegetation Success Standard'' calculation to ''0.832 × 54.52 bu. soybeans/acre = 45.3 bu. soybeans/acre,'' and the success standard statement to ''Soybean Productivity Revegetation Success Standard = 45.3 bu. soybeans/acre.''

E. Part V.A.2. Grain Sampling Technique for Test Plot Harvesting

1. Iowa is revising Part V.A.2.h. to require the permittee to repeat the steps outlined in Part V.A.2.c. through 2.g. for the fifteen (15) test plots or samples for each ten (10) acres of field size. Iowa then provides a formula for determining field sample adequacy.

2. Iowa is deleting the language originally located at Part V.A.2.i. and replacing it with instructions on how to interpret the results of the formula for

determining field sample adequacy provided in Part V.A.2.h. Iowa also added Field Adequacy Test Examples.

3. Iowa is adding new Part V.A.2.j. to require a permittee to use corrected standard moisture percentage weights of the grain or beans to determine sample adequacy for the test plots. Iowa then provides a formula for determining standard moisture weight sample adequacy.

4. Iowa is also adding new Part V.A.2.k. describing how to interpret the results of the formula for determining standard moisture weight sample adequacy provided in Part V.A.2.j. Iowa also added Standard Moisture Weight Sample Adequacy Examples.

5. Original Parts V.A.2.j., k., and m. are redesignated as new Parts V.A.2.l., m., and o., respectively. Iowa then added Sample Unit Production Examples under new Part V.A.2.m. and Average Production Examples under new Part V.A.2.n.

6. Iowa is revising new Part V.A.2.o. to read as follows:

> The average crop production value for the field area, for the growing season sampled, will have met the appropriate grain or bean production success standard only when the all of the following criteria have been met. (i) All of the test plot yield data and moisture content data for the grain or bean field area has been submitted to the Division. (ii) The corn, soybeans, oats or wheat production is greater than or equal to the appropriate reference area production or calculated production success standard. (iii) The statistical sample adequacy has been achieved. (iv) All of the sampling and analysis criteria have been met.

F. Part V.A.3. The Use of Whole Field Harvest

1. Iowa is revising Part V.A.3.d. to read as follows:

> Immediately after the grain or beans are harvested and collected, they must be weighted to three significant digits and then have moisture contents measured. The grain or bean production shall be weighed on a scale licenced for trade. A weight and moisture sample for field, or reference area must be taken. Each moisture and foreign material sample must not represent more than five hundred (500) bushels. Tickets shall be submitted to the Division.

2. Iowa also proposes to add a provision to Part V.A.3.e. to require the moisture content of a harvest to be determined using a standard agricultural moisture tester, operated by a licensed grain elevator.

3. Iowa is adding new Parts V.A.3.i. and j. New Part V.A.3.i. describes how a permittee should calculate a bushel/acre production yield. New Part V.A.3.j. describes when the average grain or bean production value for the whole field harvest yield will have met the appropriate production success standard.

G. Part V.B.1. Productivity Sampling Technique

1. Iowa is adding new Part V.B.1.b. to require a permittee to determine representative sample points for each reclaimed area of forage crops which have been grown to prove achievement of a cropland or pastureland revegetation success standard. The permittee must use a minimum of fifteen random sample points per each ten acres to determine productivity for each field.

2. Existing Parts V.B.1.c. through n. are redesignated as Parts V.B.1.d. through o., respectively. Iowa then proposes to add additional language to new Part V.B.1.i. to read as follows: ''Areas requiring more than thirty (30) sample points for every ten (10) acres in size may not be eligible for bond release. This high variability indicates that the sample area may not meet the approved standard.'' After providing a formula for testing forage field sample adequacy, Iowa repeats the above statement, adding that if sample adequacy cannot be met after additional sampling, these areas should be abandoned until the next growing season. Iowa then provides a Forage Field Sample Adequacy Example.

3. Under new Part V.B.1.l., Iowa is adding an example of the Fifteen Percent Moisture Weight Sample Adequacy test. Under new Part V.B.1.m., Iowa is adding an example of the Corrected Forage Weight test. Under new Part V.B.1.n., Iowa is adding an example of the Total Forage Production test.

4. Iowa is adding a new provision at Part V.B.1.p. to read as follows: ''Forage production yields less than the ninety percent (90%) of the appropriate pastureland or forage crop revegetation success standard shall not be accepted for the purposes of bond release.'' Old Part V.B.1.o. is redesignated as new Part V.B.1.q.

H. Part V.B.2. Whole Field Harvest for Forage Production

1. Iowa is revising the first sentence of the introductory paragraph at Part V.B.2. to read as follows: ''The use of whole field harvested shall be limited to the reclaimed areas and any reference areas, and shall not include any adjacent areas outside these limits.''

2. Iowa is adding a new Part V.B.2.e. to describe when the moisture adjusted yield of a whole field harvest will have met the appropriate forage production success standard.

I. Part V.C. Ground Cover

1. Iowa is revising the introductory language at Part V.C. by adding the provision that plant species other than those included in the Permit as part of the land use will be counted as ground cover only after the permittee obtains written permission from the Division. Under no circumstances will the Division allow noxious weeds, rocks, or bare ground to be counted as ground cover.

2. Iowa is revising the third sentence of Part V.C.1.e. to read as follows: ''The only acceptable ground cover is dead vegetative litter and plant species included in the seed mixture approved in the Permit, and other acceptable and approved plant species for the land use being sampled. Iowa is also adding new Part V.C.1.e.i. and ii. to describe what is acceptable ground cover and non-acceptable ground cover.

3. Iowa is adding an example of the Ground Cover Transect Adequacy test at Part V.C.1.g. and an example of the Average Percent Ground Cover test at Part V.C.1.h.

4. Iowa is revising Part V.C.1.i. to describe when the average percent ground cover for the sample area will have met the appropriate land use ground cover success standard.

J. Part V.D. Trees and Shrubs

1. Iowa is adding additional language to Part V.D.1. to require the permittee to divide the total tree and/or shrub count by the number of acres within a forestland area, and to describe when a permittee will have met the tree and/or shrub revegetation success standard.

2. Iowa is also adding additional language to Part V.D.2.c. to describe the criteria for eligible live and healthy trees or shrubs.

3. Iowa is adding new Parts V.D.2.e. through h. Part V.D.2.e. requires the permittee to determine if tree or shrub planting areas meet the minimum density of four hundred live and healthy trees or shrub per acre, as well as describes the minimum number of trees and/or shrubs needed in each acre and sampling circle. Part V.D.2.f. provides a formula for determining sampling circle adequacy. Part V.D.2.g. describes how the permittee should interpret the results of the Sampling Circle Adequacy test, as well as provides an example of the Sampling Circle Adequacy test. Finally, Part V.D.2.h. describes when the tree and/or shrub revegetation success standard will have been met.

K. Part VI Statistical Analysis of Sampling Data

Iowa is adding new Part VI.A. to explain the calculation of means,

variances, and standard deviations. This new section also includes examples of each of these statistical applications.

L. Appendices

Iowa is adding two new appendices: Appendix 8—Recommended Wildlife & Recreational Planting Species in Iowa; and Appendix 9—Critical Values of t. Both these Appendices are referenced in Iowa's Revegetation Success Standards and Statistically Valid Sampling Techniques document.

M. Editorial-type Errors

Finally, Iowa is making minor wording changes and revising various cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

III. Public Comment Procedures

We are reopening the comment period on the proposed amendment to provide you an opportunity to reconsider the adequacy of the amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Iowa program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Mid-Continent Regional Coordinating Center.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. IA–005–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 30, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–26357 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–115–FOR]

Virginia Abandoned Mine Land Reclamation Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Virginia Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment makes changes to the Ranking and Selection section by adding a subsection concerning reclamation projects receiving less than 50 percent government funding. The proposed amendment is intended to incorporate

the additional flexibility afforded by the revised Federal regulations.

DATES: Your written comments must be received on or before 4:00 p.m. on November 8, 1999. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on November 2, 1999. Requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on October 25, 1999.

ADDRESSES: Your written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of any scheduled public meetings or hearing, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (540) 523–8100.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 946.20 and 946.25.

II. Discussion of the Proposed Amendment

By letter dated September 10, 1999 (Administrative Record No. VA–981), the Virginia Division of Mined Land Reclamation (DMLR) submitted a proposed Program Amendment to the Virginia Program. This amendment is intended to revise the Virginia program to incorporate the additional flexibility afforded by the revised Federal regulations.

The proposed amendment revises the ''Ranking and Selection 884.13(c)(2)'' section by adding a subsection entitled ''Reclamation Projects Receiving Less Than 50% Government Funding.'' The proposed amendments are as follows.

Reclamation Projects Receiving Less Than 50% Government Funding

An abandoned mine land reclamation project may be considered for government-financed construction under Virginia program § 4 VAC 25–130 Part 707. If the level of government funding for the construction will be less than fifty percent of the total cost because of planned coal extraction, the procedures of this section apply. Such coal removal will be conducted in conformity with Virginia program § 4 VAC 25–130 Part 707 and the regulatory definitions for the terms ''extraction of coal as an incidental part,'' ''government financing agency,'' and ''government-financed construction'' contained within the Virginia regulatory program regulations at § 4–VAC–25–700.5.

In considering such AML construction, the DMLR AML Section (Title IV authority) will consult with the DMLR Reclamation Services Section (Title V authority) to make the following determinations:

1. The likelihood of the coal being mined under a Title V permit. The determination will take into account available information such as:

- Coal reserves from existing mine maps or other sources;
- Existing environmental conditions;
- All prior mining activity on or adjacent to the site;
- Current and historic coal production in the area; and
- Any known or anticipated interest in mining the site.

2. The likelihood that nearby or adjacent mining activities might create new environmental problems or adversely affect existing environmental problems at the site.

3. The likelihood that reclamation activities at the site might adversely affect nearby or adjacent mining activities.

After the above consultation, if it is decided that a government-financed reclamation project is to proceed, then the DMLR AML Section and DMLR Reclamation Services Section must concur to in the following determinations:

1. The limits on any coal refuse, coal waste, or other coal deposits which can be extracted under § 4–VAC–25–130 Part 707 and the Virginia regulatory definition of ''government-financed construction'' at § 4–VAC–25–130–700.5; and

2. The delineation of the boundaries of the AML project.

All of the above determinations, the information taken into account in making the determinations, and the names of the parties making the determinations will be documented in the AML project file. For each project, DMLR AML Section will:

- Characterize the site in terms of mine drainage, active slides and slide-prone areas, erosion and sedimentation, vegetation, toxic material, and hydrologic balance;
- Ensure that the reclamation project is conducted in accordance with the provisions of 30 CFR Subchapter R;
- Develop specific-site reclamation requirements, including performance bonds when appropriate in accord with State procedures; and
- Require the contractor conducting the reclamation to provide prior to the time reclamation begins applicable documents that clearly authorize the extraction of coal and payment of royalties.

The contractor shall be required to obtain a coal surface mining permit under the Virginia Coal Surface Mining Reclamation Regulations (Title 4 of the Virginia Administrative Code) for any coal extracted beyond the limits of the incidental coal specified in the AML project file.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 884.15, OSM is now seeking comment on whether the amendment proposed by Virginia satisfies the applicable requirements for the approval of State AMLR program amendments. If the amendment is deemed adequate, it will become part of the Virginia program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking [or administrative] record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking [or administrative] record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Big Stone Gap Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

If you wish to comment at the public hearing, you should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on October 25, 1999. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request that, if possible, each person who testifies at a public hearing provide us with a written copy of his or her testimony. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with OSM representatives to discuss the proposed amendments you may request a meeting at the Big Stone Gap Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of the meetings will be posted in advance at the locations listed above under **ADDRESSES.** A summary of meeting will be included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–26358 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–081–FOR]

West Virginia Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is announcing the reopening of the public comment period on a proposed amendment to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia Code to create the Office of Explosives and Blasting, and adds and amends sections of the West Virginia Code concerning blasting. The amendment is intended to improve the operational efficiency of the State program. The comment period is being reopened because West Virginia submitted additional information which may affect our final decision on the proposed amendment.

DATES: Written comments must be received on or before 4:00 p.m. on October 25, 1999.

ADDRESSES: Your written comments should be mailed or hand delivered to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

Copies of the proposed amendment, the West Virginia program, and the administrative record on the West Virginia program are available for public review and copying at the addresses below, during normal business hours, Monday through Friday, excluding

holidays. You may receive one free copy of the proposed amendment by contacting the OSM Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301 Telephone: (304) 347–7158

West Virginia Division of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0515

In addition, copies of the proposed amendment are available for inspection during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. Background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval can be found in the January 21, 1981, **Federal Register** (46 FR 5915–5956). Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Discussion of the Proposed Amendment

By letter dated March 25, 1999 (Administrative Record Number WV–1119), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to the West Virginia program pursuant to 30 CFR 732.17. The amendment concerns changes to Chapter 22 Article 3 (§ 22–3) and § 22–1 of the West Virginia Code as contained in West Virginia Senate Bill (SB) 681. The amendment creates the Office of Explosives and Blasting within the WVDEP, and adds and amends sections of the West Virginia Code concerning blasting. By letter dated April 1, 1999 (Administrative Record Number WV–1121), the WVDEP notified us that the West Virginia Governor signed SB–681, and provided a copy of the signed bill.

We published an announcement of the proposed rule and invited public comment in the April 20, 1999, **Federal Register** (64 FR 19327). No one requested a public hearing on the proposed amendment, so none was held.

During our review of the amendment, we submitted to West Virginia a listing of our issues and draft findings on the proposed amendment (Administrative Record Number WV–1136). The WVDEP requested a meeting to discuss our issues and draft findings, and that meeting was held on July 19, 1999. Finally, the WVDEP sent us a letter dated August 10, 1999 (Administrative Record Number WV–1137) which addressed the issues we presented in our listing and at the July meeting. A brief summary of the WVDEP's responses follows.

The WVDEP stated that the deletion of W.Va. Code section 22–3–13(b)(15)(C) does not leave a gap in the state's program. This section requires that blasting operations limit the type of explosives and detonating equipment, the size, timing and frequency of blasts based upon the conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel or availability of ground or surface water outside the permit area. The WVDEP stated that the deletion of this section leaves no gap in the approved program, because existing provisions at W.Va. Code section 22–3–2(c)(1), (2), and (5), and in the Code of State Regulations (CSR) at sections 38–2–6.4, 38–2–6.5 and 38–2–6.5.a., continue to apply and cover all of the requirements contained in the deleted provision.

The WVDEP stated that new section 22–3–13a(g) merely adds a requirement that operations conducting production blasting submit a pre-blast survey to the Office of Explosives and Blasting at least 15 days before blasting. The new section is not intended to limit the general requirement for a pre-blast survey to production blasting. In fact, the WVDEP stated, the regulatory time limits for pre-blast surveys, at CSR 38–2–6.8.a.4, continue to apply to all other blasting. The WVDEP agrees with OSM that a copy of the pre-blast survey should be provided to the owner or occupant of a dwelling who requested the survey, regardless of whether the owner or occupant actually requests a copy.

The WVDEP stated that it would not object if OSM were to disapprove section 22–3–13a(j), because this provision appears to exempt the surface blasting effects of underground mining operations from the general pre-blast survey requirements of section 22–3–13a.

The WVDEP stated that the distance prohibition on production blasting, contained in section 22–3–22a(d), is in addition to the general mining prohibitions contained in section 22–3–22(d)(4), and is not intended to replace those general prohibitions. Also, the WVDEP stated that if the site-specific blast design requirements of section 22–3–22a(e) are waived, the operator must still submit a generic blast design, as required by CSR 38–2–6.5.g.

The WVDEP requested that OSM defer its decision with respect to the new bond release provisions of section 22–3–23(c), because it plans to submit implementing regulations that it believes will address OSM's concerns with this provision. OSM is concerned that the proposed change to section 22–3–23(c) will allow final bond release prior to the end of the revegetation responsibility period, and that this allowance would be inconsistent with SMCRA section 515(b)(20).

Finally, the WVDEP stated that the new civil penalty provisions of section 22–3–30a apply only to production blasting violations that result in property damage. All other blasting related violations, according to the WVDEP, would continue to be subject to the existing civil penalty provisions contained in CSR 38–2–20.

We are reopening the public comment period to provide an opportunity to review the information provided by the WVDEP in response to our issues and draft findings on this amendment. If the information submitted by the WVDEP is found to be adequate, we may rely on that information as we make our findings on the provisions of the proposed amendment.

III. Public Comment Procedures

We are seeking comments, in accordance with the provisions of 30 CFR 732.17(h), on the WVDEP response letter dated August 10, 1999. Since the WVDEP letter responds directly to the issues raised in our July 7, 1999, listing of issues and draft findings, we recommend that you consult both documents during your review. Your comments should address whether the explanations provided by the WVDEP satisfy the applicable program approval criteria of 30 CFR 732.15. If the explanations provided by the WVDEP are deemed adequate, we may rely on

them as we write our findings on the proposed amendment to the West Virginia program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking [or administrative] record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking [or administrative] record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific, pertain only to the issues proposed in this notice and include explanations in support of your recommendations. Comments received after the time indicated under **DATES** or at locations other than the OSM Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 29, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 99–26359 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–084]

RIN 2115–AE46

Special Local Regulations for Marine Events; International Tug-of-War, Spa Creek, Annapolis Harbor, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the International Tug-of-War, a marine event to be held over the waters of Spa Creek, Annapolis Harbor, Maryland. This action is necessary to protect participants, spectators, and vessels transiting the event area. This action is intended to enhance the safety of life and property during the event.

DATES: Comments must reach the Coast Guard on or before October 25, 1999.

ADDRESSES: You may mail comments to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays or fax them to (757) 398–6203. Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection and copying at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05–99–084) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments

should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

In order to provide notice and an opportunity to comment before issuing an effective rule, the Coast Guard is providing a shorter than normal comment period. A 15-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments because the proposed regulations have a narrow, local application and the event has been held annually for 3 years without generating any problems or complaints.

Background and Purpose

On November 6, 1999, the City of Annapolis will sponsor the ''International Tug-of-War'' a marine event to be held over the waters of Spa Creek, between Eastport and Annapolis, Maryland. The event will consist of tug-of-war teams from Eastport pulling against teams from Annapolis, using a single 1800 foot rope stretched across Annapolis Harbor. These special local regulations are necessary to control vessel traffic during the event to provide for the safety of participants, spectators, and transiting vessels.

Discussion of Proposed Rule

The Coast Guard will establish temporary special local regulations on specified waters of Spa Creek. The regulated area will be approximately 400 yards long and 150 yards wide centered along the position of the rope. The temporary special local regulations will be effective from 11 a. m. to 2 p.m. on November 6, 1999, and will restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a limited amount of time, extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimum disruption to their enterprise.

Small Entities

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

Because this proposal will only be in effect for a limited amount of time, and extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, the Coast Guard expects the impact of this proposal to be minimal.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this proposal on State, local and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1531) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

Collection of Information

This proposal does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. An ''Environmental Analysis Checklist'' and a ''Categorical Exclusion Determination'' will be available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—MARINE EVENTS

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T05–084 is added to read as follows:

§ 100.35–T05–084 International Tug-of-War, Spa Creek, Annapolis Harbor, Maryland.

(a) *Definitions:* (1) *Regulated Area.* The waters of Spa Creek between Eastport and Annapolis from shoreline to shoreline, bounded on the northeast by a line drawn from latitude 38°58′37″ North, longitude 076°29′02″ West, to latitude 38°58′32″ North, longitude 076°28′48″ West, and bounded on the southwest by a line drawn from latitude 38°58′34″ North, longitude 076°29′07″ West, to latitude 38°58′29″ North, longitude 076°28′52″ West. All coordinates reference Datum NAD 1983.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations:* (1) All persons and/or vessels not authorized as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by the official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by the official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Date.* This section is effective from 11 a.m. to 2 p.m. on November 6, 1999.

Dated: September 27, 1999.

Thomas E. Bernard,

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

[FR Doc. 99–26218 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–089]

RIN 2115–AE46

Special Local Regulations for Marine Events; New Year's Celebration Fireworks, Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations for the New Year's Celebration Fireworks, to be held over the waters of the Patapsco River, Baltimore, Maryland. These special local regulations are needed to protect spectators and other vessels transiting the event area from the dangers associated with the fireworks displays. The effect will be to restrict general navigation in the regulated area in order to enhance the safety of life and property during the event.

DATES: Comments must reach the Coast Guard on or before November 8, 1999.

ADDRESSES: You may mail comments to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection and copying at the above address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 06–99–085) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ × 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

In order to provide notice and an opportunity to comment before issuing an effective rule, the Coast Guard is providing a shorter than normal comment period. A 30-day comment period is sufficient to allow those who might be affected by this rulemaking to submit their comments. This determination is based on the fact that the proposed regulations have a narrow, local application and this event has been held annually for the past 6 years without generating any problems or complaints.

Background and Purpose

The Baltimore Office of Promotions will sponsor the New Year's Celebration Fireworks, to be held over the waters of the Patapsco River, Baltimore, Maryland. The event will consist of pyrotechnic displays fired from 2 barges positioned in the Inner Harbor and Northwest Harbor. A fleet of spectator vessels is anticipated. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard will establish temporary special local regulations on specified waters of the Patapsco River, Baltimore, Maryland. These proposed special local regulations will be in effect from 11:45 p.m. on December 31, 1999 to 12:35 a.m. on January 1, 2000, and from 6:45 p.m. to 7:35 p.m. on January 1, 2000. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area while the regulations are in effect.

These proposed regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated area will only be in effect for a limited amount of time, extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimum disruption to their enterprise.

Small Entities

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

The Coast Guard expects the impact of this proposed rule to be minimal. The regulated area will only be in effect for a limited amount of time, extensive advisories will be made to the affected maritime community so that they may adjust their schedules accordingly, and the event schedule will allow commercial interests to coordinate their activities to allow for minimum disruption to their enterprise.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact S. L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this proposal on State, local and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1531) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

Collection of Information

This proposal does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. An ''Environmental Analysis Checklist'' and a ''Categorical Exclusion Determination'' will be available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T05–089 is added to read as follows:

§ 100.35–T05–089 New Year's Celebration Fireworks, Patapsco River, Baltimore, Maryland.

(a) *Regulated Areas:*

(1) *Inner Harbor Regulated Area.* The waters of the Patapsco River enclosed within the arc of a circle with a radius of 400 feet and with its center located at latitude 39°16′54″ North, longitude 076°36′18″ West. All coordinateS reference Datum NAD 1983.

(2) *Northwest Harbor Regulated Area.* The waters of the Patapsco River enclosed within the arc of a circle with a radius of 500 feet and with its center located at latitude 39°16′36″ North, longitude 076°35′48″ West. All coordinates reference Datum NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(c) *Special Local Regulations:*

(1) All persons and vessels not authorized as official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(3) The operator of any vessel in this area shall:

(i) Stop the vessel immediately when directed to do so by the official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by the official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(d) *Effective Dates.* The regulated areas are effective from 11:45 p.m. on

December 31, 1999 to 12:35 a.m. on January 1, 2000, and from 6:45 p.m. to 7:35 p.m. on January 1, 2000.

Dated: September 27, 1999.

Thomas E. Bernard,

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

[FR Doc. 99–26354 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[FRL–6454–4]

Source Specific Federal Implementation Plans for Navajo Generating Station and Four Corners Power Plant, Navajo Nation: Proposed Rules; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules; extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for two proposed rules published September 8, 1999 (64 FR 48725 and 64 FR 48731), proposing source specific Federal Implementation Plans for the Navajo Generating Station, located on the Navajo Indian Reservation near Page, Arizona, and the Four Corners Power Plant, located on the Navajo Indian Reservation near Farmington, New Mexico.

At the request of the Arizona Public Service Company, EPA is extending the comment period until November 8, 1999.

DATES: The comment period on the proposed rules is extended until November 8, 1999.

ADDRESSES: Written comments should be addressed to: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1246.

Dated: September 30, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 99–26333 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY34–1–198 FRL–6454–8]

Approval and Promulgation of Air Quality Implementation Plans; New York; Approval of Carbon Monoxide State Implementation Plan Revision; Removal of the Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, EPA is proposing to approve a State Implementation Plan revision submitted by the State of New York on August 30, 1999. That revision removes New York's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP. EPA is proposing to approve this revision because EPA has also determined that the New York—Northern New Jersey—Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the following addresses: Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866. New York State Department of Environmental Conservation, 50 Wolf Road, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3710.

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1. What Action Is EPA Taking Today?

EPA is determining that New York's oxygenated gasoline (oxyfuel) program is no longer needed to maintain the health-related carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS). As a consequence of this determination, EPA is proposing to approve part of a State Implementation Plan (SIP) revision submitted by the State of New York on August 30, 1999. That revision in part removes New York's oxyfuel program as a CO control measure from the State's CO SIP. In today's action, EPA is proposing to approve removal of the oxyfuel program because it has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS.

In a separate notice published on September 9, 1999 (64 FR 48790), EPA proposed to determine that the New York—Northern New Jersey—Long Island CO nonattainment area[1] (''the New York City CO nonattainment area'', ''the New York City area,'' or ''the area'') has attained the CO NAAQS.

Under Clean Air Act section 211(m), States with certain CO nonattainment areas are required to implement oxyfuel programs. Under section 211(m)(6), once such an area subsequently attains the CO NAAQS, oxyfuel requirements may be removed if it is demonstrated that they are not needed for maintaining healthy air quality in that area. Air quality measurements show that CO concentrations throughout the New York City area have been declining and have been below the CO NAAQS for more than four years. Complete monitoring data for the area demonstrating this finding can be found in the technical support document for this notice [Region 2 Docket No. NY34–1–198].

EPA has determined, through use of EPA's MOBILE computer model and air quality dispersion modeling, that the oxyfuel program is no longer necessary for New York because it has been demonstrated through technical analyses that attainment of the health-related CO NAAQS will not be violated anywhere in the area if the program is removed as a control strategy. By using these modeling tools, EPA has

[1] This area is comprised of counties in Northern New York, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

determined that improved CO levels are attributable primarily to three sources of emission reductions: (1) turnover of vehicle fleets in the area to more sophisticated cleaner technology vehicles; (2) implementation of reformulated gasoline year round; and (3) the recent implementation of the enhanced vehicle inspection and maintenance (I/M) program in New York (enhanced I/M in New Jersey is anticipated to begin this winter). This modeling, which is discussed in section 5.C of this notice and detailed in the technical support document, supports the conclusion that levels of CO meeting the NAAQS are able to be maintained without the wintertime oxyfuel program in place.

2. What Is the Oxygenated Gasoline Program and How Does It Apply to New York?

The oxygenated gasoline (oxyfuel) program is one of several programs designed to reduce CO pollution from gasoline powered vehicles including passenger cars, sport utility vehicles and light trucks, which, combined, are significant contributors of CO emissions. EPA established a NAAQS for CO for the protection of human health. *See* 40 CFR § 50.8; 50 FR 37501 (Sept. 13, 1985). The applicable CO NAAQS is 9 parts per million (ppm) CO averaged over an eight-hour period. Inhalation of CO results in inhibition of the blood's capacity to carry oxygen to organs and tissues. Persons with heart disease, infants, elderly persons, and individuals with respiratory diseases are particularly sensitive to CO. Effects of CO on healthy adults include impaired exercise capacity, visual perception, manual dexterity, learning functions, and ability to perform complex tasks.

The Clean Air Act sets forth a number of SIP requirements for states with areas designated as nonattainment for the CO NAAQS. Section 211(m) of the CAA requires states with CO nonattainment areas, having design values of 9.5 parts per million (ppm) CO or above for any two-year period after 1989, to implement oxyfuel programs. The requirement for an oxyfuel program is to apply during the high CO season, which is generally during the colder winter months when cars tend to have higher tailpipe CO emissions. Oxyfuel programs require that, during the high CO season, gasoline contain at least 2.7% oxygen by weight. This requirement was intended to assure more complete gasoline combustion, thus achieving a reduction in tailpipe emissions. It should be noted that the other programs, referenced previously, will continue to ensure CO concentrations remain at healthy levels.

The requirement for an oxyfuel program applies to certain counties in New York because portions of the State are included in the New York City CO nonattainment area which had a design value for CO above 9.5 ppm (that is, levels which exceed the NAAQS). The New York nonattainment area includes the counties of Bronx, Kings, Queens, New York, Richmond, Westchester and Nassau. Because the CAA section 211(m) requirement applies to the Consolidated Metropolitan Statistical Areas (CMSA) in which the nonattainment area is located, the oxyfuel requirement for the area applies throughout the larger CMSA. New York's portion of the larger CMSA, within which the sale of oxyfuel is required, consists of the following counties: Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk.

On November 13, 1992, New York submitted to EPA its oxyfuel program contained in New York Subpart 225–3, ''Fuel Composition and Use—Gasoline'' (originally adopted September 17, 1992). On July 25, 1996, EPA approved New York's oxyfuel program into the SIP for the control period November 1 through the last day of February (61 FR 38594). EPA also approved Connecticut's oxyfuel program on that date for the same four-month control period (61 FR 38574). On February 12, 1996, EPA approved New Jersey's oxyfuel program into the State's SIP for that same control period (61 FR 5299). At the time of the New York and Connecticut approvals, EPA made a final determination that November 1 through the end of February is the control period when the New York City area is prone to high ambient CO concentrations (61 FR 38594).

3. What Is the Purpose and Content of New York's SIP Revision?

New York submitted a proposed CO SIP revision to EPA on August 30, 1999. That submittal proposes to revise the SIP to remove New York's oxyfuel program as a CO control measure. The submittal also proposes to: redesignate New York's portion of the New York City nonattainment area to attainment for CO, modify the Downtown Brooklyn Master Plan to remove certain transportation control measures that have not yet been implemented and are no longer necessary to provide for attainment in that area, and to establish transportation conformity emission budgets for CO. EPA is proposing action on these other proposed SIP revisions in a separate notice which will be published in the **Federal Register** shortly. Neither New York's redesignation request nor any of the other elements are directly related to, or required for, the action EPA is proposing today.

On September 7, 1999, the New York State Department of Environmental Conservation (NYSDEC) held a public hearing to take comment on the State's proposed SIP revision to remove its oxyfuel program from the applicable SIP and on its proposed redesignation request.

The August 30, 1999 CO SIP revision contains the following elements, on which EPA is proposing action today:

(1) Air quality monitoring data and modeling data demonstrating that the New York portion of the New York City nonattainment area attains the NAAQS for carbon monoxide, without oxyfuel benefits;

(2) The request to remove New York's oxyfuel program regulations from the applicable SIP.

Removal of the oxyfuel program is supported by the State's demonstration, using monitored air quality data and vehicle emission modeling data, that the area is attaining the CO NAAQS, and will continue to attain even without implementation of the oxyfuel program in the New York City area. In a similar proposal designed to remove New Jersey's oxyfuel program published on September 9, 1999 (64 FR 48790), EPA provided a discussion of an analysis of multi-state air quality and impacts of oxyfuel removal from the New York City area. The New Jersey proposal includes discussion of an analysis of certain congested intersections in New York City. In the New Jersey proposal, EPA concluded that based on the analyses, the area has been demonstrated to attain the CO NAAQS without oxyfuel anywhere in the New York City area. For further detail regarding analysis of that technical demonstration, the reader is referred to the September 9, 1999 New Jersey proposal at 64 FR 48790 and to the technical support document for today's proposal.

Based on EPA's determination that the New York City area is attaining the CO NAAQS, and the demonstration of maintenance for the area, EPA is proposing to approve New York's request to remove the State's oxyfuel program from its CO SIP.

4. What Is EPA's Authority for Approving Oxyfuel Removal?

Section 211(m) of the Clean Air Act (CAA) generally requires states to adopt oxygenated gasoline programs for certain areas that, as of 1990, failed to

meet the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). Section 211(m)(6) adds, however, that, ''Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is *in attainment* for carbon monoxide * * *'' (emphasis added). EPA interprets section 211(m)(6) to mean that once it determines that a CO nonattainment area is actually attaining the CO NAAQS, the State would be allowed to submit a SIP revision to remove the oxyfuel program so long as the area continues to maintain the CO standard. A more detailed discussion of this interpretation, and EPA's authority to remove New York's oxyfuel program from the SIP, can be found in the September 9, 1999 New Jersey proposal (64 FR 48790).

5. How Have the Criteria for Oxyfuel Removal Been Met?

To determine if a state can remove its oxyfuel program prior to redesignation for attainment, certain criteria must be met. These criteria, which are derived directly from our policy for section 211(m)(6) (discussed at 64 FR 48790), are stated below. Following each is a brief discussion of how New York has met these criteria. A more detailed technical discussion can be found in the technical support document for this **Federal Register** document.

A. Is the Entire Designated Nonattainment Area Actually Attaining the CO NAAQS?

The entire New York City CO nonattainment area has attained the CO NAAQS since 1995. The applicable CO NAAQS is 9 ppm averaged over an eight-hour period. The last CO NAAQS violation occurred in 1994.[2] A summary and discussion of the air quality monitoring data, for New Jersey, New York and Connecticut, which shows that the entire three-state area has attained the CO NAAQS, can be found in the September 9, 1999 New Jersey proposal (64 FR 48790). Complete data and a detailed discussion of it can be found in the technical support document for this proposal.

[2] A violation occurs when two non-overlapping exceedances are recorded at the same monitoring site during the same calendar year. An exceedance occurs when an average CO concentration greater than or equal to 9.5 ppm is recorded over an eight-hour period.

B. Is the Program To Be Removed Already Approved Into the SIP? If so, Has the State Submitted a SIP Revision Request, Which Complies With CAA Section 110(l), To Remove the Oxyfuel Program From the SIP?

The oxyfuel program was approved into the New York SIP on July 25, 1996. Subsequently, New York submitted a SIP revision on August 30, 1999 to remove New York's oxyfuel program as a CO control measure from the SIP. CAA section 110(l) requires that a state's SIP revision cannot interfere with a state's attainment or rate of progress toward attainment. EPA has determined that New York's August 30, 1999 SIP revision meets the requirements of section 110(l) because it has been demonstrated that removal of the oxyfuel program from the SIP will not interfere with any state's CO attainment (see the following subsection). This action will also not interfere with any state's attainment of any other criteria pollutants.

C. Is Maintenance of the CO NAAQS, Without Implementation of Oxyfuel, Demonstrated for the Entire Area?

Attainment has been demonstrated in the entire area (New York, New Jersey and Connecticut) without the use of oxygenated fuels. New York submitted an attainment demonstration which shows that CO emissions will not exceed health-related air quality standards now or in the future. Levels in its portion of the area. In addition, EPA's proposed approval of removal of oxyfuel in New Jersey includes an analysis for certain congested intersections in New York City demonstrating attainment of the CO standard at those intersections without the oxyfuel program. A summary and discussion of the modeled air quality findings for the New Jersey, New York and Connecticut portions of the area can be found in the September 9, 1999 New Jersey proposal (64 FR 48790). Additional details regarding these analyses can be found in the technical support document for this notice.

6. How Is EPA Expediting the Processing of New York's Request?

This revision is being proposed using an expedited procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for revising its SIP. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New York and submitted formally to EPA for incorporation into the SIP.

7. Conclusion

EPA is proposing to approve New York's August 30, 1999 SIP revision to remove the State's oxygenated gasoline program from the federally approved State Implementation Plan. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

EPA is able to approve removal of the oxyfuel program in New York pursuant to CAA section 211(m)(6) only because EPA has determined that the area is actually attaining the CO NAAQS. In the unlikely event that the New York City CO nonattainment area subsequently records a violation of the CO NAAQS, EPA's basis for approving the removal of the oxyfuel program would no longer exist and the requirements of section 211(m) would again become effective for New York. This means that the State would need to implement an oxyfuel program in accordance with the requirements of CAA section 211(m).

8. Administrative Requirements

A. Executive Order 12866

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

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

develop an effective process permitting elected officials and other representatives of state, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

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

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in Executive Order 12612. The rule affects only two states, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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 Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed SIP revision is not subject to Executive Order 13045 because it proposes approval of a state program revision, and it is not economically significant under Executive Order 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. If EPA the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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 Executive Order 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 proposed 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 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 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. *Union Electric Co.*, versus *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 proposed approval action 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 proposes to approve amendments to State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

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

Dated: September 29, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–26510 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 98–54; FCC 99–258]

1998 Biennial Review—Part 76 Cable Television Service Pleading and Complaint Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: By this document, the Commission denies the petition by EchoStar Communications Corporation to reconsider changes made to the procedural rules for filing petitions and complaints pursuant to part 76.

EchoStar argues that the changes imposed new obligations on part 76 complainants. The Commission finds that the rule changes clarify the procedural requirements of the existing rules, but do not impose any new obligations.

FOR FURTHER INFORMATION CONTACT: Thomas Horan, Cable Services Bureau, (202) 418–7200.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CS Docket No. 98–54, FCC 99–258, adopted September 23, 1999, released September 29, 1999. The complete text may be purchased from the Commission's copy contractor, International Transcription Services, 1231 20th Street, NW, Washington, DC 20036, telephone (202) 857–3800, facsimile (202) 857–3805. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or mcontee@fcc.gov. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th St., SW, Room CY-A257, Washington, DC 20054. The full text of the Order on Reconsideration can also be downloaded at: http://www.fcc.gov/Bureaus/Cable/Orders/1999/fcc99258.txt or http://www.fcc.gov/Bureaus/Cable/Orders/1999/fcc99258.wp

Summary of the Order on Reconsideration

1. EchoStar Communications Corporation (EchoStar) filed a petition requesting that the Commission reconsider recent amendments to 47 CFR 76.1003(f), 76.1302(e), and 76.1513(g). These amendments and several other rule changes were adopted in the Commission's Report and Order in this proceeding, 64 FR 6565 (February 10, 1999). The amendments at issue clarified the time period for filing complaints pursuant to the existing program access, program carriage and open video system rules. EchoStar argues that the amendment of these rules is inconsistent with the Administrative Procedure Act (APA) because substantive changes, imposing new obligations on part 76 complainants, were made to the Commission's rules without providing notice and opportunity for comment.

2. In denying the petition, the Commission finds that the amendments conform with the APA requirements. Section 553 of the APA (5 USC 553) excepts interpretative and procedural rules from the notice and comment requirements. The amendments are not substantive rule changes that impose new obligations, but at most clarify how to file complaints under the existing rules, and thus, are interpretive and/or procedural rules that are excepted from the notice and comment requirements.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–26120 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 661

[Docket No. FTA–99–5709]

RIN 2132–AA68

Buy America Requirements; Permanent Waiver for Microcomputers

AGENCY: Federal Transit Administration, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In 1986, the Federal Transit Administration (FTA) adopted a waiver of its Buy America requirements for the purchase of microcomputers. FTA has been asked to review whether this waiver should be retained, revoked, or modified in light of changes in the computer industry since then. This Advance Notice of Proposed Rulemaking (ANPRM) solicits public comment on this question.

DATES: Comments on this ANPRM must be submitted by December 7, 1999.

ADDRESSES: Written comments must refer to the docket number appearing above and must be submitted to the Docket Clerk, United States Department of Transportation, Central Dockets Office, PL–401, Nassif Building, 400 Seventh Street SW, Washington, DC 20590. All comments received will be available for examination at the above address. Docket hours at the Nassif Building are from 10:00 a.m. to 5:00 p.m., Monday through Friday, except Federal holidays. Those desiring agency notification of receipt of their comments should include a self-addressed stamped envelope or postcard with their comments.

FOR FURTHER INFORMATION CONTACT: For legal issues: Meghan G. Ludtke, Office of Chief Counsel, Federal Transit Administration, Room 9316, (202) 366–4011 (telephone) or (202) 366–3809 (fax) program/technical issues: Spiro M. Colivas, Office of Program Management, Acting Director, Office of Engineering, Federal Transit Administration, same address, Room 9311, (202) 493–0107 (telephone) or (202) 366–7951 (fax). Electronic access to this and other rules may be obtained through the FTA World Wide Web home page at http://www.fta.dot.gov, or by using the Universal Resources Locator (URL); both services are available seven days a week.

SUPPLEMENTARY INFORMATION:

I. Background

In section 401 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–594, 92 Stat. 2689), Congress first enacted the Buy America legislation applicable to the expenditure of Federal funds by recipients under FTA grant programs. FTA's implementing regulation was issued at 49 Part CFR 661. In January 1983, Congress repealed section 401 and substituted section 165 of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424, 96 Stat. 2097). On July 5, 1994, section 165 was codified at 49 U.S.C. 5323(j).

The FTA Buy America Regulations, 49 CFR Part 661, apply to all federally assisted procurements using funds authorized by the Federal transit laws, 49 U.S.C. Chapter 53. The general Buy America requirement is that all manufactured products procured in projects funded under the Federal transit laws be produced in the United States. In 1986 under 49 U.S.C. 5323(j)(2)(A) and (B) and the implementing regulations at 49 CFR 661.7(b) and (c). FTA granted a general waiver of the Buy America requirements for microcomputer equipment and software of foreign origin. 49 CFR 661.7, Appendix A(d).

On February 26, 1999, FTA received a request from Prima Facie, Inc. (petitioner) to re-examine the permanent waiver for microcomputers to determine if the basis for the subject waiver still exists, and, if not, whether it is appropriate for FTA to revoke the general waiver. Additionally, petitioner requests that FTA seek comments on whether modification of the waiver to include only selected types of microcomputer equipment is necessary and whether the inclusion of a microcomputer (chip) in a manufactured product should result in the entire product's being considered a microcomputer.

II. Petition for Removal or Modification of Permanent Waiver for Microcomputers

A. History of the Permanent Waiver

Under 49 U.S.C. 5323(j), FTA may not obligate Federal funds for mass transportation projects unless all iron, steel, and manufactured products used in the project are produced in the United States. This requirement can be waived if, *inter alia*, its application would be inconsistent with the public interest (section 5323(j)(2)(A)) or if the goods are not reasonably available from domestic sources (section 5323(j)(2)(3)).

On January 5, 1985, in response to a request from the American Association of State Highway and Transportation Officials (AASHTO), FTA solicited comments from interested parties regarding the question of whether its grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs (50 FR 1156). AASHTO requested that FTA amend its Buy America rule, arguing that small transit systems were unable to procure domestically produced equipment because chips and some other major components were not made in the United States. Because the rule required transit systems to obtain individual non-availability waivers, which was burdensome, AASHTO requested a general waiver. After reviewing the comments received, FTA provided a one-year waiver from the Buy America requirement for microcomputers because of the rapid technological changes in an expanding market for domestically produced computers (50 FR 18760). That waiver was extended for a second comment period a year later and subsequently made permanent (51 FR 19653, 51 FR 36126). FTA noted that while new technology had increased the availability of hardware and software components, many product components were still made and assembled abroad, and it would be difficult to determine when, if ever, microcomputer component manufacturing would be relocated to the United States.

B. The Petition

The petition from Prima Facie, Inc. is as follows:

ECKERT SEAMANS CHERIN & MELLOT, LLC

February 26, 1999

Patrick Reilly,
Chief Counsel, Federal Transit Administration, 400 7th Street, SW, Washington, DC 20590.

Dear Mr. Reilly: Under the provisions of 49 U.S.C. 5323(j)(3)(2)(A) and (B) and implementing regulations set forth at 49 CFR 661.7(b) and (c), the Federal Transit Administration (FTA) has granted a general waiver of the Buy America requirements for microcomputer equipment of foreign origin. This waiver is set forth in Appendix A of 49 CFR 661.7.

It is clear that, without the waiver, microcomputer equipment would have to meet the requirements of 49 U.S.C. 5323(j)(1) and the implementing regulations at 49 CFR 661.5 which require that no FTA funds may be obligated for the procurement of manufactured products unless such manufactured products are produced in the United States.

On behalf of Prima Facie, Inc., this letter will serve as a petition to the FTA to re-examine the subject waiver to determine if the basis for the waiver that existed at the time it was originally granted still exists; and, if not, whether it is appropriate for the FTA to revoke the general waiver.

The original petition for the general waiver was made by the American Association of State Highway and Transportation Officials (AASHTO) to FTA's predecessor agency (the Urban Mass Transportation Administration [UMTA]) in 1985. The petition was based on the fact that many smaller transit systems were using microcomputers for their daily transit planning and daily programming needs and were unable to procure domestically produced equipment since chips and some major components were not made in the United States. AASHTO indicated that the public interest would be best served by the granting of a general public interest waiver. AASHTO stated that since transit systems were required to seek individual ''non-availability'' waivers, the purchasing process for transit systems who would need or expect to need microcomputer equipment would be streamlined by the granting of the general waiver.

It should be noted that UMTA originally granted the public interest waiver for a one-year period because of the ''rapid technological changes in an expanding market for domestically produced computers.''

The waiver was made permanent in 1986, and has not been re-examined since that time. At the time that the permanent waiver was granted, UMTA stated that the waiver was being made permanent because ''although new technology had increased the availability of hardware and software components, many product component(s) (microchips) are still made and assembled abroad.'' UMTA further stated that it would be difficult to estimate when, if ever, microcomputer component manufacturing would be relocated to the United States.

''Microcomputer'' was defined in the original waiver as ''[a] computer system whose processing unit is a microprocessor. A basic microcomputer includes a microprocessor, storage, and input/output facility, which may or may not be on one chip.'' In addition, ''computer system'' was defined as

''[a] functional unit consisting of one or more computers and associated software that uses common storage for all or part of a program and also for all or part of the data necessary for the execution of the program; executes user-written or user-designated programs; performs user-designated data manipulation, including arithmetic operations and logic operations; and that can execute programs that modify themselves during their executions. A computer system may be a stand-alone unit or may consist of several interconnected units. Synonymous with ADP system, computing system.''

Prima Facie believes that it is appropriate to re-examine the permanent waiver at this time for several reasons. First, the state of the microcomputer and microprocessor industry in the United States today is significantly different than when the waiver was originally issued in 1985/86. Second, the original intent of the waiver was to address the procurement of a significantly different type of equipment (the traditional ''desk-top'' computer) than recent application of the waiver by FTA (i.e., digital recording equipment). Third, the definition cited above may not be appropriate for the myriad of products to which the general waiver now applies under FTA's current application.

A logical extension of FTA's current application of the waiver would be that any manufactured product that contains a data storage or processing unit should be granted a waiver from the Buy America requirements. This, in effect, would mean the almost total waiving of the Buy America requirements since the vast majority of products used today by transit systems contain some type of microprocessor which is significantly different than the microcomputer that was granted a waiver in 1985 (e.g., the following types of equipment all contain microprocessors—fare collection equipment; bus destination signs; rail car train control systems; radios; and bus diesel engines). As indicated above, in granting the original waiver, UMTA was examining the traditional ''desk-top'' computer—it was not examining the types of equipment cited in the previous sentence because the usage of microprocessors in that equipment just simply did not exist in general, broad application in 1985.

In petitioning for the re-examination of the general waiver, Prima Facie specifically requests that FTA seek public comment on the following issues:

- Is the waiver out of date?
- Should the waiver, apply, if at all, only to selected types of microcomputer equipment?
- Is there any necessity for a waiver since the domestic market has changed so dramatically since 1985?
- Should the inclusion of a microcomputer (chip) in a manufactured product result in the entire product being considered as a microcomputer?

Prima Facie certainly appreciates your immediate attention to this request. If I can provide any more information at this time, please do not hesitate to contact me.

Sincerely,

Edward J. Gill, Jr.
On Behalf of Prima Facie, Inc.

cc: Shawn Marcell

III. Issues for Comment

FTA invites public comment on the following issues:

A. Is the microcomputer waiver out of date? The Petitioner believes that the state of the microcomputer as well as the microcomputer industry in the United States is significantly different today that when the waiver was issued in 1986.

B. What are these differences, and are they relevant to the existing waiver?

C. Should the permanent microcomputer waiver apply only to selected types of microcomputer equipment? The Petitioner asserts that the original intent of the waiver was to address the procurement of a significantly different type of equipment, specifically, the ''desk-top'' computer. The recent application of the microcomputer waiver has been extended to such items as digital recording equipment.

D. How is the use to which a microcomputer is put relevant to FTA's Buy America requirements?

E. Petitioner asserts that the logical extension of FTA's current application of the permanent microcomputer waiver would be that any manufactured product that contains a data storage or processing unit qualifies for the permanent microcomputer waiver from the Buy America requirements. Further, petitioner asserts that such an application by FTA is essentially a total waiving of Buy America requirements, since the vast majority of manufactured products used by transit systems contain some type or form of microprocessor, and that is radically different than the microcomputer waiver that was granted by FTA in 1985.

IV. Regulatory Analyses and Notices

It does not appear, at this point, that any regulatory action with respect to the existing microcomputer waiver would be significant under Executive order 12866 or under the Department's Regulatory Policies and Procedures. We further believe that such action would require the preparation of a Federalism Assessment. We also do not believe that it would have a significant economic impact on a substantial number of transit systems because of the changes in the computer industry. This notice does not propose or contemplate new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, nor would any subsequent action pursuant to this notice likely do so.

Issued on: October 4, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–26285 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–57–U

Notices

Federal Register
Vol. 64, No. 195
Friday, October 8, 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

Agricultural Marketing Service

[TM–00–01]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: October 25, 1999, from 1 p.m. to 6 p.m.; October 26, 1999, from 9 a.m. to 5 p.m.; October 27, 1999, from 9 a.m. to 5 p.m.; and October 28, 1999, from 9 a.m. to 5 p.m. (Eastern Standard Time each day).

PLACE: U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Room 3501-South Building, Washington, D.C. 20250. Phone: (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2945-South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, D.C. 20090–6456. Phone: (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. The NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing; Livestock Standards; Accreditation; Materials; and, International Issues.

In August 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time has submitted 30 addenda to the recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held June 8–10, 1999, in Washington, D.C.

The Department of Agriculture (USDA) published its proposed NOP rule in the **Federal Register** on December 16, 1997 (62 FR 65849). A notice extending the comment period on the proposed rule was published in the **Federal Register** on February 9, 1998 (63 FR 6498–6499). The comment period was extended until April 30, 1998. On October 28, 1998, three issue papers for which public comment was requested by USDA were published in the **Federal Register** (63 FR 57624–57626). These papers addressed certain issues raised during the comment period. The issue papers were: Issue Paper 1—Livestock Confinement in Organic Production Systems; Issue Paper 2—The Use of Antibiotics and Parasiticides in Organic Livestock Production; and Issue Paper 3—Termination of Certification by Private Certifiers. Comments received on these papers will be considered during the development of a revised NOP proposed rule. The comment period for the issue papers closed December 14, 1998.

Purpose and Agenda

The principal purpose of this meeting is to provide an opportunity for the NOSB to receive committee reports from its standing and ad hoc committees and to review and make recommendations on 16 materials to be included on the proposed National List. The 16 materials are: Crop Production Materials: Potassium Bicarbonate (only for control of crop disease); Amino Acids (for use in soil fertility management); and Ethylene (only with activated charcoal for pineapple fruit induction). Livestock Production Materials: Glycerin (only as a topical antiseptic); Lanolin Creme (only as a topical antiseptic); Phosphoric Acid (as a sanitizer); Amino Acids (as feed additives); Chlorhexidine (only as a teat dip); Enzymes (as feed additives); and Parasiticides (such as Fenbenadazole, Lvermectin, and Levasole). Processing Materials: Amino Acids; Plant and Yeast Enzymes; Ethylene (only for use on tropical dried fruit); Waxes (including shellac, beeswax, and ammonium soaps); Magnesium Chloride (natural and refined) and Phospolic Acid (as a sanitizer). Copies of the NOSB meeting agenda can be requested from Mrs. Toni Strother, Room 2510-South Building, U.S. Department of Agriculture, AMS, T&M, NOP, P.O. Box 96456, Washington, D.C. 20090–6456, by phone at (202) 720–3252 or by accessing the NOP website at: http://www.ams.usda.gov/nop after October 7, 1999.

Type of Meeting

All meetings will be open to the public. The NOSB has scheduled time for public input on Monday, October 25, 1999, from 1:15 p.m. until 5:00 p.m. in Room 3501-So. Individuals and organizations wishing to make an oral presentation at the meeting should forward the request to Mrs. Strother at the above address or by FAX to (202) 205–7808 by close of business October 21, 1999. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during that allotted time period and will help the NOSB to better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to present their views. All persons making an oral presentation are requested to provide their comments in writing, if possible. Written submissions may supplement the oral presentation with additional material. Attendees who do not wish to make an oral presentation are invited to submit written comments to the NOSB at the meeting or to Mrs. Strother after the meeting at the above address. All persons submitting written comments should provide 20 copies.

Dated: October 6, 1999.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 99–26511 Filed 10–7–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–079–1]

Commodity Pest Risk Analysis Process

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: We are seeking comments on several issues related to commodity pest risk analysis process used by the Agency's Plant Protection and Quarantine's program, including several recommendations made in a report on Plant Protection and Quarantine safeguarding system. We will use the information gathered through this notice as we consider options to improve public involvement in the process and public access to information about new and pending pest risk analyses.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by December 7, 1999. We will also consider comments made at a public meeting that will be held in Washington, DC, on November 10, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–079–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–079–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

The public meeting will be held at the Washington Court Hotel, Sagamore Hill Room, 525 New Jersey Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Michael A. Lidsky, Assistant Director, Regulatory Coordination, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5371.

SUPPLEMENTARY INFORMATION:

Safeguarding System Review

In October 1998, the Plant Protection and Quarantine (PPQ) program of the Animal and Plant Health Inspection Service (APHIS) asked the National Plant Board to review its efforts to safeguard American agriculture and plant resources. The National Plant Board assembled a group of 43 stakeholders from States, industry, academia, and environmental groups. The Safeguarding Review Group, through extensive research, interviews, site visits, and other interactions with APHIS and its stakeholders, prepared a thorough analysis of the challenges facing the safeguarding system in four major areas: Pest exclusion, international information, pest permits, and pest detection and response. The Safeguarding Review Group identified a number of opportunities to enhance the safeguarding system, which are outlined in the group's final report, ''Safeguarding American Plant Resources: A Stakeholder Review of the APHIS-PPQ Safeguarding System,'' which was submitted to PPQ on July 1, 1999. (The report may be viewed in its entirety on APHIS' Internet website, located at www.aphis.usda.gov.) PPQ is now working with its employees and stakeholders to address the report's more than 300 recommendations on how the current safeguarding system can be improved.

One subject that was examined in the safeguarding review was the use of risk analysis, which is composed of risk assessment, risk mitigation, and risk communication, within PPQ programs. While the final report did discuss the role of risk analysis in managing resources—*e.g.*, as a basis for adjusting staffing levels at a particular port of entry—considerably more attention was paid to PPQ's pest risk analysis activities relating to international trade and our obligations under international agreements, with a particular focus on the role of pest risk analysis in supporting decisions and justifying quarantine actions regarding the importation of plants and plant parts for propagation or consumption. While the role of pest risk analysis in PPQ's biotechnology and organism permitting program areas was noted in the report, there was no detailed discussion of those aspects of PPQ's risk analysis activities. The higher visibility accorded to PPQ's commodity pest risk analysis process can be attributed to the important role that pest risk analyses play in supporting the regulatory changes that are necessary before a new commodity from a particular foreign region may be imported into the United States. Indeed, many of the issues raised in the safeguarding report are similar to issues raised in comments submitted pursuant to specific proposed regulatory changes and in other correspondence directed to PPQ.

Response to Report

PPQ has already taken steps to begin to address the risk-analysis-related concerns raised in the report by asking the APHIS Business Practices Team to commence a PPQ-wide review of the program's risk analysis processes. This has resulted in the formation of three working groups that are responsible for addressing the following areas:

- Benchmarking (i.e., how do the risk analysis processes in PPQ compare to one another and to those of other APHIS program areas, as well as to those of other government agencies and nongovernmental entities?);
- Obtaining customer and stakeholder feedback on ways to improve PPQ's risk analysis processes (e.g., risk assessment methodologies, risk communication strategies, etc.); and
- Documenting PPQ's risk analysis processes in order to identify any redundant or unnecessary activities and to provide a starting point for the design and implementation of subsequent process improvements.

In addition to this business practices review initiative, we are also forming a group to evaluate all of the safeguarding report's specific recommendations that relate to pest risk analysis. This group will work closely with the Business Practices Team.

With regard to the benchmarking aspect of our review activities, we are considering convening a symposium to review and discuss the existing international standards for pest risk analysis and the current ''state of the art'' relative to conducting pest risk analyses. We envision that this symposium would also include a report by APHIS on the comments received in response to this notice and an update on any improvements being made to our risk analysis processes resulting from the review by the Business Practices Team. We are currently planning to convene the pest risk analysis symposium during the first quarter of calendar year 2000. Once more specific information becomes available, we will publish a notice in the **Federal Register** concerning the dates and location, as well as a draft agenda, for the symposium.

Improving Transparency and Participation

In considering PPQ's commodity pest risk analysis process as it relates to rulemaking, the safeguarding review team concluded that the process is hampered by inadequate risk communication on the part of APHIS, which leads to conflicting interpretations about the nature and significance of risks. The final report recommended that PPQ incorporate stakeholder collaboration and scientific consultation into its pest risk analysis process. By increasing the transparency of the process and providing an opportunity for interested parties to participate prior to rulemaking, this collaboration and consultation would likely increase the amount and quality of information available to the risk assessors.

As a first step in our initiative to obtain customer and stakeholder feedback on ways to improve PPQ's commodity pest risk analysis process, we are soliciting public comment on these subjects. With regard to the preparation of commodity pest risk assessments, we are particularly interested in comments in the following areas:

- *Qualitative versus quantitative risk assessments.* The qualitative and quantitative pest risk assessments prepared by PPQ are similar in most respects. Both types of assessment identify quarantine pests and utilize qualitative ratings in their assessments of the consequences of introduction. Where they differ is in assessing the likelihood of introduction: Qualitative assessments utilize qualitative ratings for the likelihood of introduction, while quantitative assessments estimate the likelihood of introduction using scenario analysis and Monte Carlo simulation to arrive at a numerically expressed distribution of estimates (e.g., mean, mode, median, 95th percentile) for the likelihood of pest introduction. The safeguarding report notes that PPQ currently uses the less complex qualitative pest risk assessments for routine commodity import decisions and quantitative pest risk assessments for more complex commodity import decisions. However, in the absence of specific criteria for differentiating between routine and complex commodity import decisions, PPQ managers must rely on their judgment in determining what type of pest risk assessment should be used. With that in mind, what specific criteria could be used for determining which type of risk assessment is appropriate in a given situation?
- *Preparation of assessments.* The safeguarding report recommended allowing exporters or exporting countries to conduct pest risk assessments under APHIS guidance as a means of expediting the handling of requests for commodities to be allowed entry into the United States. Would this be acceptable, or would the perception that there is an inherent conflict of interest be too great? Would strict adherence by the preparer to the risk assessment guidelines of the United Nations Food and Agriculture Organization and subsequent APHIS review and approval be enough to overcome that perception?

With regard to the issue of transparency and public participation, we are particularly interested in comments in the following areas:

- *Notification of the initiation of a pest risk analysis.* It has been suggested that APHIS publish a notice in the **Federal Register** to notify the public whenever PPQ initiates a pest risk analysis pursuant to a request for a commodity to be allowed entry into the United States. Would such a notification mechanism be useful? Should notice be given of all requests received, *i.e.*, those involving both routine and nonroutine decisions, or should such **Federal Register** notices be reserved for the more complex nonroutine decisions? Could this notification be satisfactorily provided through means other than the **Federal Register**?
- *Web-based tracking system.* PPQ's plant pest and biotechnology permitting staffs currently administer Internet-accessible tracking systems that allow the public to check on the status of permit applications submitted to those staffs. (The tracking systems of the plant pest and biotechnology permitting staffs may be found on APHIS' Internet home page at www.aphis.usda.gov/ppq/bats/permits/query-permits.html and www.aphis.usda.gov/bbep/bp/status.html, respectively.) We believe that a similar web-based tracking system could be used to enhance the transparency of, and facilitate participation in, the commodity pest risk analysis development process. Such a system would provide the public with timely information about the receipt of import petitions, the status of those petitions, and the status of their associated pest risk analyses, and could provide a mechanism for the public to offer information and feedback regarding those petitions and pest risk analyses. Would such a tracking system be useful? Would the existence of a web-based tracking system preclude the need for APHIS to publish notices in the **Federal Register** as discussed in the previous item?

You may submit your written comments to the address provided at the beginning of this notice under the heading **ADDRESSES.** In addition, we will be hosting a public meeting to provide interested persons a full opportunity to orally present any data, views, suggestions, and questions. The public meeting will be held on November 10, 1999, at the Washington Court Hotel, Sagamore Hill Room, 525 New Jersey Avenue, NW., Washington, DC.

A representative of APHIS will preside at the public meeting. Any interested person may appear and be heard in person, by attorney, or by other representative. Written statements may be submitted and will be made part of the meeting record. Persons who wish to speak at the meeting will be asked to provide their name and organization. We ask that anyone who reads a statement or submits a written statement provide two copies to the presiding officer at the meeting.

Registration for the public meeting will take place from 9:30 to 10:00 a.m. at the meeting room. The public meeting will begin at 10 a.m. and is scheduled to end at 5 p.m., local time. However, the meeting may be terminated at any time after it begins if all persons desiring to speak have been heard. If the number of speakers at the meeting warrants it, the presiding officer may limit the time for presentations so that everyone wishing to speak has the opportunity.

We welcome all comments on the issues discussed above and encourage the submission of ideas on any associated topics or other suggestions for the evaluation of risk and the improvement of our risk analysis processes. We will consider all comments and recommendations we receive in response to this notice as part of our Business Practices Team review initiative and the related safeguarding report implementation efforts.

Done in Washington, DC, this 4th day of October, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–26360 Filed 10–7–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

East Slate Project; Idaho Panhandle National Forests, Shoshone County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The St. Joe Ranger District of the Idaho Panhandle National Forest is considering vegetation activities in the East Slate Project. The project area is located approximately one mile west of the town of Avery on the St. Joe River.

The interdisciplinary team has reviewed the current conditions which indicated the project area could benefit from treatment. The purpose and need is summarized below.

1. Reduce the risk of blending genetic material from poorly adapted, non-local ponderosa pine trees planted earlier this century with that of the native ponderosa pine. Replace the poorly adapted trees with more sustainable native species.

2. Speed development of larger stand structures with large trees and reverse the trend toward increasing dominance by mid and late succession species.

3. Maintain larch dominance where it is a significant stand component.

4. Promote vegetation structures and compositions that are more consistent with those which naturally occur under fire and pathogen disturbance regimes.

5. Restore western white pine.

6. Contribute wood to the local timber supply when timber is feasible and cost effective and can help achieve landscape objectives.

7. Improve big game wildlife habitat.

8. Promote conditions for safe and effective control of prescribed fires and wildfires.

9. Provide a safer vehicle turn-around at gate on Road #1934.

The project consists of vegetation management, including timber harvesting and associated road construction and prescribed burning. It also plans for wildlife habitat improvement and natural fuels reduction through burning.

DATES: Comments should be postmarked on or before November 8, 1999. Please include your name and address and the name of the project you are commenting on.

ADDRESSES: Submit written comments and suggestions on the proposed management activities or request to be placed on Project mailing list to George Bain, District Ranger, St. Joe Ranger District, PO Box 407, St. Maries, ID 83802. George Bain is the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Pete Ratcliffe, Project Team Leader, St. Joe Ranger District, (208) 245–4517.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

SUPPLEMENTARY INFORMATION:

Vegetation Management

Vegetation management under this proposal is designed to meet several needs, including providing timber products to local markets, protecting and enhancing wildlife forage and cover needs, providing for long term growth and yield as directed in the Idaho Panhandle National Forests Forest Plan, increasing fire resiliency, reducing fire hazards, and moving the vegetation to the conditions the area historically had in terms of tree species composition and density. Treatment include:

Approximately 406 acres of commercial timber harvesting including commercial thinning, shelterwood preparation and seed cuttings, liberation cuts, sanitation cuts and clearcuts. This would include an estimated 235 acres of clearcuts with reserves, 86 acres of commercial thimming, 18 acres of liberation cuts, 21 acres of sanitation salvage, 19 acres of seedtree harvest and 27 acres of shelterwood harvest with reserves.

Approximately 240 acres of brush field burning for maintenance of big game browse and wildlife habitat improvement.

Approximately 203 acres would be treated for natural fuels reduction.

Approximately 1.6 miles of road construction to access timber harvesting units.

Preliminary Issues

We expect issues and concerns with this project to include the impacts on wildlife, fish, water quality, and recreation, as well as road construction, clearcutting and economic feasibility. Issues will be developed and analyzed based on public comment and the interdisciplinary team's analysis of effects on reasoures. Alternatives will be developed to modify or eliminate the impacts from proposed activities and still meet the purpose for this project.

Additionally, some of the vegetation treatment may result in opening of over 60 acres. While we would like comments that would affect alternatives early, comments on the size of openings and their effects will be accepted for 60 days after publication of this notice.

The draft environmental impact statement is expected to be filed with the Environment Protection Agency (EPA) and available for public review in December 1999. The final environmental impact statement is expected to be completed in March 2000.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful an alerts and agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: September 29, 1999.

George Bain,

St. Joe District Ranger.

[FR Doc. 99–26242 Filed 10–7–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, October 13, and Thursday, October 14, 1999. Wednesday's meeting will start at the Lake County Special Districts Office, 230 N. Main Street, Lakeport, California. This meeting will consist of a field trip, starting from the office at 10:00 a.m. and adjourning at 4:00 p.m. The objective of the field trip is to view the watershed restoration projects and discuss the siltation issues at Rodman Slough, and Scotts and Middle Creeks. The meeting on Thursday will start at 9:00 a.m. at the Ukiah Bureau of Land Management Field Office, 2550 North State Street, Ukiah, California. An update on Northwest Forest Plan activities in Portland and preparation for the Redding meeting of the Northwest Sacramento PAC are on the agenda. Public comment periods will be held throughout both days. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468; TDD (530) 841–4573; email: chendryx/r5__klamath@fs.fed.us.

Dated: October 1, 1999.

Nancy J. Gibson,

Administrative Officer.

[FR Doc. 99–26282 Filed 10–7–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 8, 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.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities 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 commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities 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 commodities 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 commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Postage Meter

7490–00–NSH–0001
NPA: Southeast Keller Corporation, Houston, Texas

Bag, Waste Receptacle

8105–01–284–2924
NPA: Vantech Enterprises, Vancouver, Washington

Services

Base Supply Center and Operation of Individual Equipment Element Store

Little Rock Air Force Base, Arkansas
NPA: Alphapointe Association for the Blind, Kansas City, Missouri

Food Service Attendant

Delaware Air National Guard Base, New Castle County Airport, New Castle, Delaware
NPA: Elwyn, Inc., Concordville, Pennsylvania at its facility in Aston, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–26369 Filed 10–7–99; 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: November 8, 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 July 23, August 13 and 27, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 F.R. 39968, 44198 and 46880) of proposed additions 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:

Administrative Services

Office of the U.S. Trade Representative, 1724 F Street, NW and 600 17th Street, NW, Washington, DC

Grounds Maintenance

Fox Island Acoustic Laboratory, 630 3rd Avenue, Fox Island, Washington

Janitorial/Custodial

U.S. Geological Survey, 1209 Orca Street, Anchorage, Alaska

Janitorial/Custodial

Buildings 1714, 1830 and 1831, Fort Polk, Louisiana

Operation of Individual Equipment Element Store

Randolph Air Force Base, Texas

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. 99–26370 Filed 10–7–99; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: October 13, 1999; 9 a.m.–10:30 a.m.; October 14, 1999; 8:30 a.m.–12:00 noon.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW, Washington, DC 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b(c)(1) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindberg at (202) 401–3736.

Dated: October 6, 1999.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc 99–26566 Filed 10–6–99; 3:14 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed disposals of excess commodities currently held in the National Defense Stockpile under the Fiscal Year 2001 Annual Materials Plan (AMP) and revisions to commodity disposals approved under the FY 2000 AMP.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the potential market impact of proposed disposals of excess materials from the National Defense Stockpile as set forth in Attachment 1 to this notice.

DATES: Comments must be received by November 8, 1999.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; FAX (202) 482–5650.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile

Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

Attachment 1 lists the current FY 2000 AMP quantities, the proposed revisions to the FY 2000 AMP quantities, and the proposed FY 2001 AMP. The Committee is seeking public comment on the potential market impact of the sale of these materials as proposed in the revised FY 2000 AMP and FY 2001 AMP.

The quantities listed in Attachment 1 are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by November 8, 1999 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: October 5, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

Attachment 1

PROPOSED ANNUAL MATERIAL PLANS FOR FY 2001 AND REVISED FY 2000

Material	Units	Current FY 2000 quantity	Revised FY 2000 quantity	Proposed FY 2001 quantity
Aluminum Oxide, Abrasive	ST	6,000	6,000	6,000
Aluminum Oxide, Fused Crude	ST	65,000	65,000	5,000
Analgesics	AMA Lb	[1] 2,815	[1] 2,815	[1] 2,815
Antimony	ST	5,000	5,000	5,000
Asbestos (all types)	ST	20,000	20,000	0
Bauxite, Metallurgical (Jamaican)	LDT	2,000,000	2,000,000	2,000,000
Bauxite, Metallurgical (Surinam)	LDT	1,500,000	1,500,000	[1] 1,000,000
Bauxite, Refractory	LCT	[1] 4,000	[1] 4,000	[1] 4,000
Beryl Ore	ST	2,000	4,000	4,000
Beryllium Metal	ST	40	40	40
Beryllium Copper Master Alloy	ST	1,250	1,500	1,500
Cadmium	LB	1,200,000	1,200,000	1,200,000
Celestite	SDT	3,600	3,600	3,600
Chromite, Chemical	SDT	100,000	100,000	[1] 100,000
Chromite, Metallurgical	SDT	250,000	250,000	[1] 250,000
Chromite, Refractory	SDT	100,000	100,000	100,000
Chromium, Ferro	ST	150,000	150,000	150,000
Chromium, Metal	ST	0	500	500
Cobalt	LB Co	6,000,000	6,000,000	6,000,000
Columbium, Carbide Powder	LB Cb	21,500	21,500	[1] 21,500
Columbium Concentrates (Minerals)	LB Cb	200,000	200,000	200,000
Columbium, Ferro	LB Cb	400,000	400,000	[1] 300,000
Columbium Metal Ingots	LB Cb	20,000	20,000	20,000
Diamond Bort	CT	[1] 65,000	[1] 0	.....
Diamond Dies	PC	[1] 5,000	[1] 5,000	[1] 5,000
Diamond Stone	CT	1,000,000	1,000,000	1,000,000
Fluorspar, Metallurgical	SDT	50,000	60,000	60,000
Germanium	KG	8,000	8,000	8,000
Graphite	ST	3,760	3,760	3,760
Iodine	LB	1,000,000	1,000,000	1,000,000
Jewel Bearings	PC	56,000,000	56,000,000	56,000,000
Kyanite	SDT	150	150	[1] 150
Lead	ST	60,000	60,000	60,000

PROPOSED ANNUAL MATERIAL PLANS FOR FY 2001 AND REVISED FY 2000—Continued

Material	Units	Current FY 2000 quantity	Revised FY 2000 quantity	Proposed FY 2001 quantity
Manganese, Battery Grade Natural	SDT	30,000	30,000	30,000
Manganese, Battery Grade Synthetic	SDT	3,011	[1] 3,011	[1] 3,011
Manganese, Chemical Grade	SDT	40,000	40,000	40,000
Manganese, Ferro	ST	50,000	50,000	50,000
Manganese, Metal Electrolytic	ST	2,000	2,000	2,000
Manganese, Metallurgical Grade	SDT	250,000	250,000	250,000
Mica (All Types)	LB	2,260,000	2,260,000	2,260,000
Palladium	TR Oz	200,000	200,000	200,000
Platinum	TR Oz	125,000	125,000	125,000
Platinum-Iridium	TR Oz	[1] 4,450	[1] 1,000	[1] 1,000
Quinidine	Oz	750,000	750,000	750,000
Quinine	Oz	750,000	1,000,000	[1] 1,000,000
Sebacic Acid	LB	400,000	400,000	400,000
Silver (for coinage)	Tr Oz	10,000,000	10,000,000	10,000,000
Talc	ST	1,000	1,000	1,000
Tantalum Carbide Powder	LB Ta	4,000	4,000	4,000
Tantalum Metal Ingots	LB Ta	40,000	40,000	40,000
Tantalum Metal Powder	LB Ta	50,000	50,000	50,000
Tantalum Minerals	LB Ta	200,000	200,000	200,000
Tantalum Oxide	LB Ta	20,000	20,000	20,000
Thorium Nitrate [3]	LB	6,494,891	6,494,891	[1] 7,091,891
Tin	MT	12,000	12,000	12,000
Titanium Sponge	ST	5,000	5,000	5,000
Tungsten, Carbide Powder	LB W	1,000,000	1,000,000	1,000,000
Tungsten, Ferro	LB W	300,000	300,000	300,000
Tungsten, Metal Powder	LB W	150,000	150,000	150,000
Tungsten Ores & Concentrates	LB W	3,000,000	3,000,000	3,000,000
Vegetable Tannin Extract, Chestnut	LT	[1] 1,100	[1] 1,100	[1] 1,100
Vegetable Tannin Extract, Quebrac.	LT	16,000	16,000	16,000
Vegetable Tannin Extract, Wattle	LT	[1] 6,500	[1] 6,500	[1] 6,500
Zinc	ST	50,000	50,000	50,000
Zirconium (Baddeleyite)	SDT	17,383	17,383	[1] 17,383

Notes:
[1] FY 2000 entries (current or proposed revision) are an adjustment to available inventory. For FY 2001 entries, actual quantity will be limited to remaining sales authority or inventory.
[2] The radioactive nature of this material may restrict sales or disposal options.

[FR Doc. 99–26394 Filed 10–7–99; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092899E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Law Enforcement Advisory Panel (AP).

DATES: This meeting will be held on October 21, 1999, from 1:00 p.m. to 5:00 p.m.

ADDRESSES: This meeting will be held at the Casino Magic - Biloxi, 195 Beach Boulevard, Biloxi, MS 39530; telephone: 800–562–4425.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Law Enforcement AP will convene to review a discussion paper for vessel monitoring systems (VMS) and possible applications to fisheries in the Gulf of Mexico. The Law Enforcement AP will also be provided with a presentation of potential VMS operations by the NMFS. The Law Enforcement AP will also review an Options Paper for Additional Bycatch Reduction Requirements in the Eastern Gulf and an Options Paper to Implement a Moratorium on the Issuance of Additional Charter Boat Permits. Other topics of interest are a discussion of requiring operators of shrimp and reef fish vessels in the eastern Gulf to have a federally issued permit, as well as status reports on the implementation of various amendments and regulatory amendments to fishery management plans previously approved by the Council.

The Law Enforcement AP consists of chief enforcement agents for the state and Federal fishery agencies in the Gulf area who advise the Council on fishery issues.

Although non-emergency issues not contained in this agenda may come before the panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for

sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 14, 1999.

Dated: September 30, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–26391 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100499F]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Advisory Subpanel (HMSAS) will hold a working meeting which is open to the public.

DATES: The HMSAS working meeting will begin at 10 a.m. on Friday, October 22, 1999 and will continue until 5 p.m.

ADDRESSES: The meeting will be held at NMFS Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA; telephone: (562) 980-4000.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Larry Six, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the meeting is to review public comments from scoping sessions and make recommendations to the Council regarding issues to be addressed in the fishery management plan for highly migratory species of the West Coast.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: October 5, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–26389 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100599E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting via conference call of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: This meeting will be via conference call on October 22, 1999, beginning at 10:00 a.m.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of listening stations.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steve Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The listening stations are as follows:

1. NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702

Contact: Georgia Cranmore; telephone: 727–570–5305.

2. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408

Contact: Herb Kumpf; telephone: 850–234–6541.

The RFSAP will evaluate new information on gag biology that was presented to the Council during its development of the revised Regulatory Amendment to Set 1999 Gag/Black Grouper Management Measures. This new information includes reports prepared by Dr. Chris Koenig (Florida State University, Dr. Robert Chapman (South Carolina Department of Natural Resources), and other academic and state scientists; plus an evaluation and response to the analyses prepared for Southeastern Fisheries Association by Dr. Trevor Kenchington (Gadus Associates) and other independent scientists retained by Dr. Kenchington. A review of these materials was originally scheduled to be conducted during a September 20–24, 1999 meeting of the RFSAP, but was deferred due to time constraints. The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before the RFSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the RFSAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The listening stations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by October 15, 1999.

Dated: October 5, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–26409 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080599C]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of a modification to a letter of authorization.

SUMMARY: NMFS has amended the Letter of Authorization (LOA) issued on April 2, 1999, to the 30th Space Wing, U.S. Air Force at Vandenberg Air Force Base, California (Vandenberg), to include an additional rocket type to its list of launch vehicles authorized to harass seals and sea lions incidental to launch activities.

DATES: Effective from October 14, 1999, through April 2, 2000.

ADDRESSES: A copy of the request for modification, the LOA and the supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Christina Fahy, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; the MMPA) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg were published on March 1, 1999 (64 FR 9925), and remain in effect until December 31, 2003.

In accordance with the MMPA, as amended, and implementing regulations, a 1-year LOA to take small numbers of seals and sea lions was issued on April 2, 1999, to the 30th Space Wing (64 FR 17145, April 8, 1999). On August 3, 1999, the 30th Space Wing requested NMFS to amend the LOA to include a new rocket, the Minotaur, to the list of rockets authorized to take harbor seals and California sea lions incidental to activities at Vandenberg. The U.S. Air Force did not request NMFS to increase the number of annual launches from Vandenberg that are authorized to take marine mammals under the LOA.

Comments and Responses

On August 18, 1999 (64 FR 44893), NMFS published a notice of receipt of, and requested public comment on, the request. During the 15-day public comment period, one letter was received. The U.S. Marine Mammal Commission noted that it had no objection to NMFS' issuance of the requested modification.

Discussion and Analysis

Spaceport Systems International (SSI) wants to begin launching the OSP Space Launch Vehicle, the Minotaur rocket, from the California Commercial Spaceport (CCS) on Vandenberg. The Minotaur contains 2 segments of Minuteman II solid-fuel motors and 2 Orion upperstage motors. According to SSI, the sound emitted during the launch should be no more than what a Minuteman II would emit.

Because this is a new launch vehicle, it was not included in the LOA issued to Vandenberg on April 2, 1999. Therefore, in order for NMFS to authorize the takings by harassment incidental to this new rocket, NMFS must be assured that the takings will not exceed the level of incidental harassment considered when it made its negligible impact finding on March 1, 1999 (64 FR 9925). First, Vandenberg is authorized to harass pinnipeds incidental to 10 missile launches from North Vandenberg and 20 rocket launches annually from South Vandenberg. This authorized level of launches for incidental takes of marine mammals will not be modified by NMFS to add this additional rocket to the LOA. Second, as mentioned previously, the Minotaur rocket consists of the first two segments of Minuteman II solid-fuel motors and two Orion upperstage motors. For incidental takes of pinnipeds on the Vandenberg coastline, only the first one or two motors are important for assessing impacts along the California coast. The Minotaur, like the Minuteman II missiles launched from North Vandenberg, use Thiokol first-stage rocket motor with 202,600 pounds (lbs) of thrust and a second-stage motor made by Aerojet with 60,000 lbs of thrust. As a result, launch noises would be similar to those expected at North Vandenberg during a Minuteman II launch.

Third, Vandenberg has requested a small take of harbor seals (and possibly a few California sea lions) by incidental harassment for this rocket launched from the CCS, an area close to Space Launch Complex (SLC)–6. While the CCS was identified in the 30th Space Wing's July 11, 1997, application for a small take authorization and in the U.S. Air Force's Programmatic Operations Environmental Assessment for small takes of marine mammals, because the CCS was under construction at the time, no rocket types were identified for launching at that time of the application to NMFS. As a result, an incidental take assessment could not be made for this location by either NMFS or the 30th Space Wing during the rulemaking. However, impacts to pinnipeds from launches at nearby SLC–6 by Lockheed Martin's family of Athena rockets was analyzed on July 21, 1998 (63 FR 39055) and previously (see 60 FR 24840, May 10, 1995).

Finally, because the Minotaur rocket's first stage solid-fuel booster is half the size of the first-stage booster of the Athena 1 launched from SLC–6, it can be expected to impact the nearby harbor seal haulouts to a lesser, but unknown, level than the Athena. NMFS estimated that the Athena rocket would, under typical conditions, result in a sound pressure level of 127 dB (107 dBA) re 20 μPa at the harbor seal haulouts at Rocky

Point, which are about 1.5 mi (2.4 km) to the south and southwest of SLC–6. This level is sufficient to cause harbor seals to leave the beach at Point Arguello, Rocky Point, and Boathouse Flats. However, because the CCS is only 1 mile (1.6 km) from the closest haulout at Rocky Point whereas SLC–6 is approximately 2.5 mi (4.0 km) away from the nearest haulout, NMFS expects that SPLs from the launch of the Minotaur will be similar to levels expected from the Athena rocket at the Rocky Point haulout.

Because the addition of the Minotaur rocket to the launch list at Vandenberg will not result in an increase in the

number of launches authorized to take pinnipeds under the LOA, NMFS does not expect additional cumulative impacts to occur and therefore, NMFS has determined that the takes will remain small and not have more than a negligible impact on seals and sea lions at Vandenberg.

Monitoring and Reporting

Because this is a new launch vehicle, the 30th Space Wing is required under the LOA to measure the noise profiles from the rocket at the time of its first launch and to monitor impacts on marine mammals at nearby active, pinniped haulouts.

Dated: October 4, 1999.

Art Jeffers,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–26390 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Czech Republic and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following limits:

Category	Twelve-month restraint limit
410	1,641,811 square meters.
433	6,448 dozen.
435	4,242 dozen.
443	78,604 numbers.
624	2,533,942 square meters.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated October 1, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26376 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and guaranteed access levels for textile products, produced or manufactured in Guatemala and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 2000.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	1,640,336 dozen.
347/348	1,964,113 dozen.
351/651	346,020 dozen.
443	73,453 numbers.
448	46,022 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 4, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 2000, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in Guatemala from fabric formed and cut in the United States and re-exported to the United States from Guatemala during the period January 1, 2000 through December 31, 2000:

Category	Guaranteed Access Level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 (55 FR 3079), as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26375 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Hungary and exported during the period January 1, 2000 through December 31, 2000 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2000 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
351/651	318,273 dozen.
410	965,844 square meters.
433	18,316 dozen.
434	15,541 dozen.
435	26,863 dozen.
443	172,060 numbers.
444	55,504 numbers.
448	23,740 dozen.
604	1,575,278 kilograms.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 3, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such

products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26377 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC), a Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Uruguay Round Agreement on Textiles and Clothing (ATC); a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia, and an exchange of notes dated December 10, 1997 and January 9, 1998, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	992,654 kilograms.
219	11,026,801 square meters.
225	7,721,621 square meters.
300/301	4,718,769 kilograms.
313–O [1]	20,008,013 square meters.
314–O [2]	69,862,978 square meters.
315–O [3]	31,744,437 square meters.
317–O [4]/326–O [5]/617	30,660,549 square meters of which not more than 4,530,430 square meters shall be in Category 326–O.
331/631	2,815,582 dozen pairs.
334/335	258,011 dozen.
336/636	720,688 dozen.
338/339	1,393,324 dozen.
340/640	1,715,914 dozen.
341	1,032,040 dozen.
342/642	428,979 dozen.
345	498,981 dozen.
347/348	1,887,507 dozen.
350/650	198,191 dozen.
351/651	557,672 dozen.
359–C/659–C [6]	1,630,120 kilograms.
359–S/659–S [7]	1,715,914 kilograms.
360	1,527,158 numbers.
361	1,527,158 numbers.
369–S [8]	1,053,304 kilograms.
433	11,831 dozen.
443	87,774 numbers.
445/446	58,817 dozen.
447	17,556 dozen.
448	21,618 dozen.
604–A [9]	819,231 kilograms.
611–O [10]	5,137,462 square meters.
613/614/615	29,084,768 square meters.
618–O [11]	6,863,663 square meters.
619/620	10,638,677 square meters.
625/626/627/628/629–O [12].	32,461,033 square meters.
634/635	343,183 dozen.
638/639	1,784,554 dozen.
641	2,616,261 dozen.
643	381,791 numbers.
644	534,505 numbers.
645/646	903,036 dozen.
647/648	3,741,152 dozen.
847	472,685 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [13], 332, 333, 352, 359–O [14], 362, 363, 369–O [15], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [16], 464, 469pt. [17], 603, 604–O [18], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [19], 666, 669–O [20], 670–O [21], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [22], as a group.	118,530,622 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	3,098,225 square meters equivalent.

Category	Twelve-month restraint limit
In Group II subgroup 435	48,639 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[8] Category 369–S: only HTS number 6307.10.2005.

[9] Category 604–A: only HTS number 5509.32.0000.

[10] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[11] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[12] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[13] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[14] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[15] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[16] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[17] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[18] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

Category	Twelve-month restraint limit

[19] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[20] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[21] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[22] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated December 8, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26378 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated November 6, 1996 and June 20, 1997, between the Governments of the United States and Nepal establish limits for the period January 1, 2000 through December 31, 2000.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1,

1986, as amended and extended; and Memoranda of Understanding dated November 6, 1996 and June 20, 1997 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	263,163 dozen.
340	380,091 dozen.
341	1,220,891 dozen.
342/642	331,734 dozen.
347/348	856,133 dozen.
363	7,741,604 numbers.
369–S [1]	983,454 kilograms.
640	191,297 dozen.
641	431,328 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 12, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26381 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in the Philippines and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in the Philippines and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
237	2,101,683 dozen.
331/631	6,805,914 dozen pairs.
333/334	329,232 dozen of which not more than 47,265 dozen shall be in Category 333.
335	214,297 dozen.
336	779,844 dozen.
338/339	2,468,749 dozen.
340/640	1,096,268 dozen.
341/641	989,244 dozen.
342/642	674,526 dozen.
345	200,872 dozen.
347/348	2,363,165 dozen.
350	177,825 dozen.
351/651	735,704 dozen.
352/652	2,889,301 dozen.
359–C/659–C [1]	999,564 kilograms.
361	2,246,217 numbers.
369–S [2]	509,161 kilograms.
431	175,567 dozen pairs.
433	3,457 dozen.
443	41,802 numbers.
445/446	28,552 dozen.
447	7,938 dozen.
611	6,741,076 square meters.
633	43,463 dozen.
634	539,257 dozen.
635	367,697 dozen.
636	2,032,320 dozen.
638/639	2,536,077 dozen.
643	1,038,146 numbers.
645/646	868,058 dozen.
647/648	1,425,910 dozen.
649	8,760,377 dozen.
650	127,275 dozen.
659–H [3]	1,674,606 kilograms.
847	1,110,735 dozen.

Category	Twelve-month restraint limit
Group II	
200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	218,442,547 square meters equivalent.
Sublevel in Group II	
604	2,381,417 kilograms.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC, administrative arrangements notified to the Textiles Monitoring Body and a Memorandum of Understanding dated August 19, 1998 between the Governments of the United States and the Republic of the Philippines.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated November 30, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26382 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Poland and exported during the period January 1, 2000 through December 31, 2000 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 2000 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	238,407 dozen.
338/339	2,567,466 dozen.
410	2,775,164 square meters.
433	19,598 dozen.
434	10,689 dozen.
435	13,988 dozen.
443	233,114 numbers.
611	7,338,371 square meters.
645/646	375,951 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated October 1, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26384 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

October 4, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 2000 through December 31, 2000 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 2000 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Information regarding the 2000 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 4, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
222	595,249 kilograms.
237	313,668 dozen.
239pt. [1]	208,308 kilograms.
331	557,105 dozen pairs.
334	81,577 dozen.
335	245,386 dozen.
338/339	1,594,588 dozen of which not more than 931,892 dozen shall be in Category 338 and not more than 1,036,148 dozen shall be in Category 339.
340	1,115,975 dozen.
341	280,613 dozen.
342	172,683 dozen.
347/348	1,148,357 dozen of which not more than 717,722 dozen shall be in Category 347 and not more than 558,230 dozen shall be in Category 348.
435	7,114 dozen.
604	1,027,303 kilograms.
631	647,568 dozen pairs.
634	311,448 dozen.
635	318,717 dozen.
638	1,143,898 dozen.
639	3,763,427 dozen.
640	237,916 dozen.
641	388,066 dozen.
642	391,415 dozen.
645/646	175,445 dozen.
647	703,937 dozen.
648	1,597,310 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1999 shall be charged to the applicable category limits for that year (see directive dated December 8, 1998) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–26383 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 7, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Headquarters U.S. Army, ROTC Cadet Command, Marketing Directorate, Fort Monroe, Virginia 23651, Attn: (CPT Eric Miller, Jr.). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Army ROTC Referral Information, ROTC CDT CMD Form 155–R.

Needs and Uses: The Army ROTC Program produces approximately 75 percent of the newly commissioned officers for the U.S. Army. Army ROTC must have the ability to attract quality men and women who will pursue college degrees. Currently, there are 13 Recruiting Teams (Goldminers) located in various places across the United States aiding in this cause. Their mission is to refer quality high school students to colleges and universities offering Army ROTC. Goldminers, two officer personnel, will collect ROTC Referral information at a high school campus and document it on ROTC Cadet Command Form 155–R.

Affected Public: Individuals or households.

Annual Burden hours: 4,075.

Number of Respondents: 16,300.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The purpose of the information is to provide prospect referral data to a Professor of Military Science to contact individuals who have expressed an interest in Army ROTC. If Goldminers did not collect referral information, we would suffer a negative impact on the recruiting effort and subsequent commissioning of new officers for the U.S. Army.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–26280 Filed 10–7–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement (DEIS) for the Disposal and Reuse of Naval Station (NAVSTA) Brooklyn, NY

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a DEIS for the disposal and reuse of NAVSTA Brooklyn, New York, New York. Public hearings will be held for the purpose of receiving oral and written comments on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearings.

DATES AND ADDRESSES: The public hearing will be held on October 21, 1999 at 7:00 p.m. in Brooklyn Borough Hall, 209 Joralemon Street, Brooklyn, New York 11201.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Ostermueller, telephone (610) 595–0759.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a DEIS for the disposal and reuse of NAVSTA Brooklyn, New York, New York.

A Notice of Intent for this DEIS was published in the **Federal Register** on January 31, 1997. A public scoping meeting was held in Brooklyn, New York, on February 13, 1997.

The proposed action is the disposal of Navy property for subsequent reuse and redevelopment, in accordance with the Defense Base Closure and Realignment Act of 1990, as amended, and the 1988 Defense Secretary's Commission recommendation that NAVSTA Brooklyn be closed and its functions be relocated to the new NAVSTA New York on Staten Island. Approximately 23.8 acres of land are available for disposal and are the focus of this DEIS. Naval Station Brooklyn was operationally closed on May 1, 1993 and approximately 5.0 acres of the total 28.8 acres of land have been transferred to the Department of Justice.

With respect to the Stewart B. McKinney Homeless Assistance Act and its 1994 amendment, the City of New York has reached an agreement with the U.S. Department of Housing and Urban Development to enable HELP Homeless Service Corporation develop transitional housing and support services at the Manhattan Children's Psychiatric Center on Wards Island, instead of the NAVSTA Brooklyn site. In March 1996, the New York City Mayor's Office of Planning and Community Relations, acting as the local reuse authority (LRA), adopted a proposed reuse plan titled Redevelopment Plan for Naval Station Brooklyn, New York. This plan is presented as the preferred reuse alternative that, along with its alternatives, is analyzed in the DEIS.

The DEIS evaluates four reuse alternatives: the Reuse Plan (Preferred Alternative), the Residential Alternative, the Museum Alternative, and the As-of-Right Alternative. A fifth alternative, the No Action Alternative, assumes no disposal of property and retention of the property by the U.S. Navy in caretaker status.

The Reuse Plan Alternative, prepared by the LRA, capitalizes on NAVSTA Brooklyn's assets in terms of its industrial facilities and proximity to the rest of the Brooklyn Navy Yard, and seeks to minimize any impacts on the historic campus of the hospital. No new construction is proposed; rather, the plan calls for the reuse, for industrial or commercial activity, of buildings used by the Navy for such purposes, and the adaptive reuse of residential and hospital facilities for community institutional purposes.

Potential impacts evaluated in the DEIS include, but are not limited to: Land use, socioeconomics, community facilities/services, transportation, air quality, noise, infrastructure, cultural resources, natural resources, petroleum and hazardous substances. Issue analysis includes an evaluation of the direct, indirect, short-term, and cumulative impacts; and irreversible and irretrievable commitment of resources associated with the proposed action.

No decision on the proposed action will be made until the NEPA process has been completed and the Secretary of the Navy, or a designated representative, releases the Record of Decision.

The DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The

DEIS is also available for public review at the following libraries:

—Brooklyn Public Library, Central Library, Grand Army Plaza, Brooklyn, New York.

—Brooklyn Public Library, Williamsburg Branch, 240 Division Avenue, Brooklyn, New York.

Navy will conduct one public hearing to receive oral and written comments concerning the DEIS. A brief presentation will precede a request for public information and comments. Navy representatives will be available at the hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearing. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be heard and transcribed by a stenographer.

To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Commanding Officer, Northern Division, Naval Facilities Engineering Command, Code 202, 10 Industrial Highway, Lester, Pennsylvania 19113, (Attn. Mr. Robert Ostermueller, telephone (610) 595–0759, facsimile (610) 595–0778). Written comments are requested not later than Monday, November 15, 1999.

Dated: October 4, 1999.

Nieva K. Van Leer,

Lieutenant, Judge Advocate General's Corps, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 99–26388 Filed 10–7–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Tuesday, November 2, 1999, beginning at 8:30 a.m. and ending at 6:00 p.m., but closed from approximately 4:30 p.m. to 6:00 p.m.; and Wednesday, November 3, 1999, beginning at 8:30 a.m. and ending at approximately 2:00 p.m.

ADDRESSES: Wyndham City Center Hotel, New Hampshire III Room, 1143 New Hampshire Avenue, NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW, Suite 601, Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs; and minimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as, Performance-Based Organization (PBO); Modernization; Technology; Simplification of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes—(a) presentations and discussion sessions by congressional members and staff, Department of Education officials (ED), and presidential associations regarding progress to date on the implementation of the PBO and modernization; (b) presentations and discussion sessions focusing on distance education and GearUp; and (c) a planning session on the Committee's agenda for fiscal year 2000 and other Committee business (e.g., personnel matters, the budget, etc). Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at ADV__COMSFA@ED.gov or Tracy__Deanna__Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Monday, October 25, 1999.

The Advisory Committee will meet in Washington, DC on November 2, 1999, from 8:30 a.m. to approximately 6:00 p.m., and on November 3, from 8:30 a.m. to approximately 2:00 p.m. The meeting will be closed to the public on November 2, from approximately 4:30 p.m. to 6:00 p.m. to discuss personnel matters. The ensuing discussions will relate to internal personnel rules and practices an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by

exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days after the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW, Suite 601, Washington, DC from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: October 5, 1999.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 99–26361 Filed 10–7–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Request for Proposals for Financial Assistance: Agenda 2020—Forest Products Industries of the Future

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Request for applications for research and development projects in support of the Agenda 2020 program.

SUMMARY: The DOE Office of Industrial Technologies (OIT) is funding a competitive financial assistance program in support of Agenda 2020, a research agenda which outlines the needs of the forest products industry to allow it to pursue a sustainable future. Proposals are requested under a DOE solicitation that is anticipated to result in the award of one or more cooperative agreements early in Fiscal Year 2001.

DATES: The two-page proposals should be submitted as described in the Solicitation by November 15, 1999.

SUPPLEMENTARY INFORMATION:

Background Information

The Department of Energy (DOE), Office of Industrial Technologies (OIT), is requesting applications for research and development projects in support of the Agenda 2020 program. In 1994, the American Forest & Paper Association (AF&PA) released *Agenda 2020: A Technology Vision and Research Agenda for America's Forest, Wood, and Paper Industry,* which outlines the research needs of the forest products industry to allow it to pursue a sustainable future. At that time, the AF&PA and DOE signed an agreement to implement this research agenda. In 1996, the industry organized a process, under the aegis of the AF&PA Chief Technology Officers (CTO) Committee, to assist DOE in identifying research projects most important to the industry's Agenda 2020 Vision. Since that time, approximately 90 projects identified through this process have received DOE funding. For additional information on Agenda 2020, refer to the DOE Headquarters or Agenda 2020 website at *www.oit.doe.gov/forest* or *www.Agenda2020.org.*

Under the current Solicitation for Fiscal Year 2001 awards, three Agenda 2020 Task Groups are participating in this request for applications: sustainable forestry, capital effectiveness, and sensors and control. To be considered for the award of a DOE cooperative agreement in one of these three areas, a 2-page proposal is required as the initial step in the evaluation process. The Solicitation is available from the DOE Golden Field Office website at *www.eren.doe.gov/golden/solicitations.html* or from the DOE Headquarters website at *www.oit.doe.gov/forest* on October 4, 1999.

If unable to access the internet, you may obtain a copy of the Solicitation by calling Amy Castelli at (303) 275–4716, FAX (303) 275–4788.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401. The Project Engineer is Doug Hooker, at (303) 275–4780 or e-mail at doug__hooker@nrel.gov. The Contracting Officer is Beth Peterman, at (303) 275–4719 or e-mail at beth__peterman@nrel.gov. The Solicitation can be obtained from the GFO website at *www.eren.doe.gov/golden/solicitations.html* or from the DOE Headquarters website at *www.oit.doe.gov/forest.*

Issued in Golden, Colorado, on October 1, 1999.

Beth H. Peterman,

Contracting Officer, GO.

[FR Doc. 99–26322 Filed 10–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4020–000]

Allegheny Energy Supply Company; Notice of Issuance of Order

October 4, 1999.

Allegheny Energy Supply Company (AE Supply) is a subsidiary of Allegheny Energy, Inc., (Allegheny) the registered holding company for Monongahela Power Company, Potomac Edison Company and West Penn Power Company (collectively, APS Operating Companies). Allegheny is planning to transfer all of West Penn's generating units to AE Supply. On August 6, 1999, AE Supply filed an application seeking authorization to sell electric energy and capacity to the APS Operating Companies and others for resale at market-based rates. AE Supply also requested certain waivers and authorizations. In particular, AE Supply requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by AE Supply. On September 30, 1999, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's September 30, 1999 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by AE Supply should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, AE Supply is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of AE Supply, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further

showing that neither public nor private interests will be adversely affected by continued Commission approval of AE Supply's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 1, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order 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. 99–26257 Filed 10–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Aquamac Corporation; Notice of Authorization for Continued Project Operation

October 4, 1999.

On September 29, 1997, Aquamac Corporation licensee for the Aquamac Project No. 2927, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2927 is located on the Merrimack River in Essex County, Massachusetts.

The license for Project No. 2927 was issued for a period ending September 30, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2927 is issued to Aquamac Corporation for a period effective October 1, 1999, through September 30, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September 30, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Aquamac Corporation is authorized to continue operation of the Aquamac Project No. 2927 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 99–26261 Filed 10–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2032]

Lower Valley Power and Light, Inc.; Notice of Authorization for Continued Project Operation

October 4, 1999.

On September 25, 1996, Lower Valley Power and Light, Inc. licensee for the Strawberry Project No. 2032, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2032 is located on Strawberry Creek in Lincoln County, Wyoming.

The license for Project No. 2032 was issued for a period ending September 30, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 3032 is issued to Lower Valley Power and Light, Inc. for a period effective October 1, 1999, through September 30, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before September 30, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Lower Valley Power and Light, Inc. is authorized to continue operation of the Strawberry Project No. 2032 until such time as the Commission acts on its application for subsequent license.

David P. Boergers,

Secretary.

[FR Doc. 99–26260 Filed 10–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–95–000]

Southwest Power Pool, Inc. Complainant v. UtiliCorp United, Inc. and Sunflower Electric Power Corporation, Respondents; Notice of Complaint

October 4, 1999.

Take notice that on September 30, 1999, Southwest Power Pool, Inc. (SPP) filed a complaint against UtiliCorp United, Inc. and Sunflower Electric Power Corporation (collectively, Respondents) alleging that Respondents failed to pay charges due under the SPP

open access transmission tariff (Tariff) or comply with their obligations under the Agency Agreement between SPP each of the Respondents. SPP also seeks to terminate the service agreement between SPP and each of the Respondents, effective November 29, 1999.

Consistent with Rule 206(c) of the commission's Rules of Practice and Procedure, 18 CFR 385.206(c), copies of the complaint were served on Respondents and their counsel by facsimile, overnight or hand delivery, or electronic mail, simultaneously with the filing of this complaint.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before October 20, 1999. 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 this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before October 20, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–26321 Filed 10–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4346–000, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 30, 1999.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Company

[Docket No. ER99–4346–000]

Take notice that on September 24, 1999, Virginia Electric and Power Company tendered for filing a notice of withdrawal of its rate filing in the above captioned proceeding.

Comment date: October 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Company of New Mexico

[Docket No. ER99–4521–000]

Take notice that on September 24, 1999, Public Service Company of New Mexico (PNM) tendered for filing, Amendment Three (dated September 16, 1999) to the Palo Verde to Westwing Firm Point-to-Point Transmission Service Agreement (PNM Service Agreement No. 69), between PNM Transmission Development and Contracts (Transmission Provider) and PNM Wholesale Power Marketing (Transmission Customer).

The purpose of the Amendment is to change the amount of reserved transmission capacity provided in the Service Agreement beginning October 1, 1999, the requested effective date of the Amendment.

Copies of this filing have been provided to PNM Transmission Development and Contracts, PNM Wholesale Power Marketing, and the New Mexico Public Regulation Commission. PNM's filing is available for inspection at its offices in Albuquerque, New Mexico.

Comment date: October 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Bangor Hydro-Electric Company

[Docket No. ER99–4524–000]

Take notice that Bangor Hydro-Electric Company (Bangor Hydro), submitted for filing on September 24, 1999, a compliance filing to modify Bangor Hydro's Open Access Transmission Tariff to assure that charges associated with New England Power Pool (NEPOOL) Open Access Transmission Tariff Ancillary Service Schedules 2 through 7 are not being collected under the related schedules of Bangor Hydro's Open Access Transmission Tariff. Bangor Hydro submits this compliance filing pursuant to the ''Comprehensive Agreement Resolving All Issues Raised In This Proceeding Except For One Issue Raised By Great Bay Power Company'' filed on April 7, 1999, by NEPOOL in Docket Nos. OA97–237–007, ER97–1079–006, ER97–3574–005, OA97–608–005, ER97-4421–005, and ER98–499–004 and approved by the Commission on July 30, 1999, *New England Power Pool,* 88 FERC ¶ 61,140 (1999).

Comment date: October 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER99–4526–000]

Take notice that on September 24, 1999, New York State Electric & Gas Corporation (NYSEG) filed executed Network Service and Network Operating Agreements between NYSEG and County of Erie. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date of the Agreements of one day after receipt of the filing of the agreements with the Commission.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

Comment date: October 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. ISO New England Inc.

[Docket No. ER99–4527–000]

Take notice that on September 24, 1999, ISO New England Inc. (the ISO) submitted for filing, pursuant to Section 205 of the Federal Power Act, an emergency rule extending its authority to continue emergency actions with respect to the pricing in the New England Power Pool (NEPOOL) Operating Reserve Markets.

The ISO and the NEPOOL Executive Committee state that copies of these materials were sent to the Participants in the New England Power Pool, non-Participant transmission customers and to the New England state governors and regulatory commissions.

Comment date: October 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Commonwealth Edison Company

[Docket No. ER99–4528–000]

Take notice that on September 24, 1999, Commonwealth Edison Company (ComEd) submitted for filing a revised Firm Service Agreement with Alliant Bulk Power (Alliant) under the terms of ComEd's Open Access Transmission Tariff (OATT). ComEd also submits for filing three Non-Firm Service Agreements with Power Energy Partners, L.L.C. (PEP), Unicom Energy Inc. (UEI), and Nicor Energy, L.L.C. (NE), as customers under the terms of ComEd's OATT.

ComEd requests an effective date of September 24, 1999 for the service agreements with PEP, UEI and NE, and accordingly, seeks waiver of the Commission's notice requirements. ComEd requests an effective date of January 1, 2000 for the revised firm service agreement with Alliant.

Copies of this filing were served on Alliant, PEP, UEI and NE.

Comment date: October 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Montaup Electric Company

[Docket No. ER99–4529–000]

Take notice that on September 24, 1999 Montaup Electric Company filed a modification to its Open Access Transmission Tariff, Original Volume No. 7. The modification was made pursuant to the NEPOOL Settlement Agreement which was filed on April 7, 1999.

Comment date: October 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER99–4530–000]

Take notice that on September 24, 1999, Illinois Power Company (Illinois Power) tendered for filing revisions to terms and conditions contained in its Open Access Transmission Tariff (OATT), including such changes necessary to implement retail open access pursuant to Illinois law.

Comment date: October 14, 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, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions 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. 99–26256 Filed 10–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–94–000]

Florida Gas Transmission Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed FGT Phase Expansion Project

October 4, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft environmental impact statement (DEIS) on natural gas pipeline facilities proposed by Florida Gas Transmission Company (FGT) in the above-referenced docket.

The DEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The DEIS also evaluates alternatives to the proposal, including system alternatives.

Note: On August 23, 1999, FGT amended its application and withdrew the entire 45.1 miles of a new 16-inch-diameter pipeline in Lake, Seminole, and Volusia Counties in Florida (called the New Smyrna Beach Lateral) and its associated Duke Energy meter station; the entire 5.5 miles loop of the existing 30-inch-diameter pipeline in Suwannee and Columbia Counties in Florida (Mainline Loop 1); 7.9 out of the original 14.0 miles loop of the existing 30-inch-diameter pipeline in Bradford County, Florida (Mainline Loop 2) so that 6.1 miles of the loop are still proposed; the entire 6.0 mile loop of the existing 30-inch-diameter pipeline in Marion County, Florida (Mainline Loop 3); restaging of two compressor units and adding a gas scrubber and gas cooler at Compressor Station 11A in Mobile County, Alabama; addition of compression at the existing Compressor Station 13A in Washington County, Florida; and restaging of one compressor unit at the existing Compressor Station 15A in Taylor County, Florida. This DEIS has been updated to exclude those facilities from the proposed project.

The proposed action involves construction of pipeline, a new compressor station, and addition of compression at various existing compressor stations in Florida and Mississippi. FGI proposes to construct about 139.5 miles of pipeline. The DEIS assesses the potential environmental effects of the construction and operation of the following facilities in Florida and Mississippi:

- 15.4 miles of loop on FGT's existing mainline;
- 113.0 miles of new pipeline called the West Leg Extension;
- 11.1 miles of pipeline loop and extension on FGT's lateral systems;
- Install about 10,350 horsepower (hp) of compression at one new compressor station;
- Add 27,870 hp of additional compression at three existing compressor stations;
- Construct two new meter stations; and
- Miscellaneous facilities, including mainline valves, tie-ins, a crossover, two interconnections, and a tap valve and tie-in.

The purpose of the proposed project is to deliver natural gas largely for electric power generation.

Comment Procedures and Public Meetings

Any person wishing to comment on the DEIS may do so. Please carefully follow these instructions to ensure that your comments are received in time and are properly recorded:

- Send two copies of your comments to: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
- Reference Docket No. CP99–94–000.
- Mail your comments so that they will be received in Washington, DC on or before November 22, 1999.

In addition to written comments, we will hold three public meetings in the project area to receive comments on the DEIS. All meetings will begin at 7:00 p.m., and are scheduled as follows:

Date and Location

November 1, 1999
Holiday Inn in Lake City, Banquet Room, 4517 US Hwy West, Lake City, FL 32056, (904) 752–3436

November 2, 1999
City of Arcadia, Parks and Recreation Department, Margaret Way Building, 23 Pock Avenue, Arcadia, FL 34266, (941) 494–2000

November 3, 1999
1914 High School, 605 N. Collins Street, Plant City, FL 33566, (813) 757–9226

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impact

described in the DEIS. Transcripts of the meetings will be prepared.

Previously public scoping meetings were held in Gainesville, DeLand, Fort Myers, and Bartow, Florida. On August 23, 1999, FGT deleted some of the project facilities. Meeting locations have been selected to represent the project area and consequently, no meeting will be held in the DeLand area.

After these comments are reviewed, any significant new issues are investigated and modifications are made to the DEIS as necessary, a final EIS will be published and distributed by the staff. The final EIS will contain the staff's responses to timely comments received on the DEIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person may file a motion to intervene on the basis of the Commission Staff's DEIS (see Title 18 Code of Federal Regulations, Parts 380.106 and 385.214). You do not need intervenor status to have your comments considered.

All intervenors, agencies, elected officials, local governments, special interest groups, libraries, media, and anyone providing written comments on the DEIS will receive a copy of the final EIS. *If you do not wish to comment on the DEIS but wish to receive a copy of the final EIS, you must write to the Secretary of the Commission indicating this request.*

The DEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE Room 2A, Washington, DC 20426, (202) 208–1371.

A limited number of copies are available from the Public Reference and Files Maintenance Branch identified above. In addition, the DEIS has been mailed to Federal, state, and local agencies; public interest groups; individuals, and affected landowners who requested a copy of the DEIS; libraries; newspapers; and parties to this proceeding.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC website (www.ferc.fed.us), using the ''RIMS'' link to information on this docket number. For assistance with access to RIMS, the RIMS helpine can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpine can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–26258 Filed 10–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of an Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2005–007.

c. *Date Filed:* September 10, 1999.

d. *Applicant:* Oakdale Irrigation District and South San Joaquin Irrigation District.

e. *Name of Project:* Tri-Dam Project.

f. *Location:* On the Middle Fork Stanislaus River, in Calaveras and Tuolumne Counties, California.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Steve Felte, General Manager, Tri-Dam Project, P.O. Box 1158, Pinecrest, CA 95364, (209) 965–33996.

i. *FERC Contact:* Any questions on this notice should be addressed to Jake Tung at hong.tung@ferc.fed.us or 202–219–2663.

j. *Deadline for filing comments and/or motions:* November 15, 1999.

All documents (original and eight copies) should be filed by November 15, 1999, with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426. Please include the project number (2005–007) on any comments or motions filed.

k. *Description of Filing:* Oakdale Irrigation District and South San Joaquin Irrigation District, licensee of the Tri-Dam Project, made facility improvements that increased the generating capacity at its Donnells Powerhouse from 70,000 hp (52,500 kW) to 112,600 hp (84,450 kW). The licensee also states that the generating unit has not operated over 96,000 hp (72,000 kW) due to limitations of other components and contractual restraints. The original turbine hydraulic capacity was 525 cfs. At the current limitation on the unit, the turbine hydraulic capacity is 700 cfs.

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 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.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–26259 Filed 10–7–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6246–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed September 27, 1999 Through October 01, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990349, Draft EIS, FHW, NY, County Road (Mill Hill Road and Glen Road) Improvements, From Howard Drive to State Route 9N including a New Bridge over the East Branch of the Ausable River, Funding and COE section 404 Permit, Essex County, NY, Due: November 26, 1999, Contact: Stanley Gee (518) 431–4131.

EIS No. 990350, Draft EIS, AFS, MT, Clearwater Ecosystem Management and Timber Sale Project, Timber Harvesting, Burning, Weed Spraying and Road Management, Lola National Forest, Seeley Lake Ranger District, Missoula County, MT, Due: November 22, 1999, Contact: Sharon Klinkhammer (406) 677–3925.

EIS No. 990351, Final EIS, DOA, AR, Departee Creek Watershed Plan Flood Prevention, Implementation, COE Section 404 Permit, Independence and Jackson Counties, AR, Due: November 08, 1999, Contact: Kalven L. Trice (501) 301–3110.

EIS No. 990352, Final EIS, FAA, NY, LaGuardia Airport East End Roadway Improvements Project, Four New Ramps at the 102nd Street Bridge Construction, Airport Layout Plan Approval and Funding, Queens County, NY, Due: November 08, 1999, Contact: Robert Mendez (715) 553–3330.

EIS No. 990353, Final EIS, FHW, WI, WI–131 and WI–33 Transportation Improvement, Relocation and/or Reconstruction, between Village of Ontario and Community of Rockton, Funding and Possible COE 404 Permit, Vernon County, WI, Due: November 08, 1999, Contact: Eugene Hoelker (608) 829–7512.

EIS No. 990354, Draft EIS, FHW, NM, New Mexico Forest Highway 45 (Forest Road 537) known locally as the Sacremento River Road, Improvements from Sunspot to Timberon, Otero County, NM, Due: November 30, 1999, Contact: Robert Nestel (303) 716–2142.

EIS No. 990355, Draft EIS, FAA, CT, Tweed-New Haven Airport Runway Safety Area and Taxiway Improvements, Safety Improvements to Runway 2/20 and Taxiways ''B'' and ''E'', Funding, COE Section 10 and 404 Permits, New Haven County, CT, Due: November 22, 1999, Contact: John Silva (617) 423–3600.

EIS No. 990356, Draft EIS, FRC, FL, MS, Florida Gas Transmission Phase IV Expansion Project (Docket No. CP99–94–000), To Deliver Natural Gas to Electric Generator, FL and MS, Due: November 22, 1999, Contact: Paul McKee (202) 208–1088.

EIS No. 990357, Draft EIS, AFS, MT, Double Sec Timber Sale and Vegetation Management Project, Implementation, Beaverhead-Deerlodge National Forest, Pintler Ranger District, Deerlodge and Granite Counties, MT, Due: November 22, 1999, Contact: Bob Gilman (406) 859–3211.

Dated: October 5, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–26410 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6246–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 20, 1999 Through September 24, 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 10, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65311–MT Rating EC2, Good Creek Resource Management Project, Implementation, Vegetation Treatments and Other Activities to Restore Watershed, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT.

Summary: EPA expressed environmental concerns regarding increased water yield, channel erosion, and water quality impacts. EPA recommended that the Forest Service pick and chose and combine treatment methods and units from among alternatives to create a new modified preferred alternative to better optimize and balance resource and environmental trade offs. EPA requested additional information to help assess and mitigate potential impacts of the management actions.

ERP No. D–COE–E39050–FL Rating EC2, Herbert Hoover Dike Major Rehabilitation Evaluation Study, Improvements to the Breach of Reach One, Lake Okeechobee, FL.

Summary: EPA expressed concern regarding impacts to recreation/infrastructure features, erosion control and loss of project effectiveness during heavy rain/or backpumping. EPA requested that these issues be addressed in the final document.

ERP No. D–FHW–E40779–NC Rating EO2, Fayetteville Outer Loop Corridor Study, Transportation Improvement Program (TIP) Cape Fear River, Cumberland, Hoke and Robeson Counties, NC.

Summary: EPA expressed objections due to substantial impacts to water/wetland resources and social impacts (relocations, noise and community disruption). EPA is requesting further analysis of secondary project impacts, reconsideration of each interchange location and is requesting additional data on potential impacts to minority and low income neighborhood.

ERP No. DR–BIA–K61146–CA Rating EC2, Programmatic—Cabazon Resource Recovery Park Section 6 General Plan, Cabazon Indian Reservation, Implementation, Approval of Master Lease and NPDES Permit, the City of Mecca, Riverside County, CA.

Summary: EPA expressed environmental concerns regarding potential cumulative impacts associated with component facilities at the resource recovery park that may contaminate groundwater, emit hazardous air pollutants and/or generate hazardous waste. EPA requested a clear commitment that future site-specific facilities and projects raising these concerns are subject to subsequent environmental documentation under the National Environmental Policy Act.

ERP No. DS–IBR–K39045–CA Rating LO, Programmatic EIS—Central Valley Project Improvement Act (CVPIA) of 1992 Implementation, Additional Information for the Project Simulation Model (PROSIM) Hydrology, Central Valley, Trinity Contra Costa, Alamenda, Santa Clara and San Benito Counties, CA.

Summary: Because of the limited scope of the Supplemental DPEIS and the good description of implications of the revised PROSIM analysis, we have

not identified any potential environmental impacts and have no objections to the revised PROSIM analysis. This lack of objections does not extend to the Environmental Concerns expressed on the broader DPEIS CVPIA which evaluated potential effects of various CVPIA Alternatives.

Final EISs

ERP No. F–BLM–J65298–CO Yankee Gulch Sodium Minerals Project, To Produce Sodium Products, Piceance Basin, Right-of-Way Permit and COE Section 404 Permit, Rio Blanch County, CO.

Summary: EPA continues to express concern regarding the need to protect ground water from spills and to ensure adequate reclamation bonding coverage.

ERP No. F–COE–K67041–CA Morrison Creek Mining Reach Downstream (South) of Jackson Highway, Mining and Reclamation Project, COE Section 404 Permit Issuance, Sacramento County, CA.

Summary: EPA continues to object to the preferred alternative since it has not been demonstrated that the preferred alternative is the least damaging practicable alternative. EPA believes that other alternatives would have fewer impacts on waters of the United States

ERP No. F–GSA–E11044–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.

Summary: EPA continues to be concerned that all environmental impacts were not fully addressed. To this end, EPA looks forward to working with GSA in the future to help identify project-specific impacts and the avoidance, minimization and mitigation during the scoping and NEPA review process.

ERP No. F–NPS–A61319–00 Oregon, California, Mormon Pioneer and Pony Express National Historic Trails, Implementation, Comprehensive Management and Use Plan, OR, CA, MO, IA, IL, KS, NB, CO, WY, ID, WA, UT and NV.

Summary: EPA supports the preferred alternative.

Dated: October 5, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–26411 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00623; FRL–6387–7]

Rodenticides Risks to Birds and Non-Target Mammals; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is giving notice of an open meeting to discuss with the public and gather information regarding risks posed by rodenticides to birds and non-target mammals.

DATES: The meeting will be held on Tuesday, October 19, 1999, from 9:00 am to 3:00 pm.

ADDRESSES: The meeting will be held at: The National Rural Electric Cooperative Association Conference Center, 4301 Wilson Blvd., Arlington, Virginia 22203–1860.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Office of Pesticide Programs (7508C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Telephone number:(703) 308-8173. E-mail: deziel.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Document Apply to Me?

This document is directed to the public in general. This action may, however, be of interest to those effected by the Rodenticide Cluster Reregistration Eligibility Decision (RED) document and/or the Zinc Phosphide RED document. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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/.

As background information, electronic copies of the Rodenticide Cluster and Zinc Phosphide REDs and RED fact sheets are available on the internet. See http://www.epa.gov/REDs. Additional information concerning the schedule and agenda of this meeting will be posted on the Agency's web page (http://www.epa.gov/pesticides).

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPPTS-00623. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Rodenticide Cluster RED, including any information claimed as Confidential Business Information (CBI). This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

II. Meeting Information

A. What Will be Discussed at the Public Meeting?

The Agency notes in the Rodenticide Cluster Reregistration Eligibility Decision (RED) document that there are primary and secondary wildlife incidents involving rodenticides that the Agency would continue to evaluate before taking any further regulatory action. Since August 1998 the Agency has collected data and conducted further analysis. The Agency is initiating a one-day public meeting to discuss available data and to gather any further information regarding risks posed to birds and non-target mammals from rodenticides. Based on all available data, risk mitigation measures to protect birds and non-target mammals could be implemented in the amended RED this fall, if warranted.

The meeting will involve and potentially affect products with the following active ingredients: brodifacoum, bromadiolone, bromethalin, chlorophacinone, cholecalciferol, difethialone, diphacinone (and its sodium salt), pival (and its sodium salt), warfarin (and its sodium salt) and/or zinc phosphide.

Except for zinc phosphide, these rodenticides are used primarily for control of Norway rats, roof rats, and house mice in and around buildings, transport vehicles, and in sewers. Zinc phosphide is used mainly to control field rodents. Chlorophacinone and diphacinone also have some state special local need registrations for field uses. Anyone interested in these active ingredients is encouraged to attend. An opportunity will be provided at the meeting for interested parties to provide oral or written comments or submit additional information for the Agency to consider.

B. Where Will the Meeting Be Held?

The public meeting will be held from 9:00 a.m. to 3:00 p.m. on Tuesday, October 19, 1999, at The National Rural Electric Cooperative Association Conference Center, 4301 Wilson Blvd., Arlington, Virginia 22203–1860. The telephone number for the Conference Center is (703) 907–5500. Additional information about the Conference Center, including directions for getting there, have also been posted on the EPA internet www.epa.gov/pesticides/ppdc/rodent.

List of Subjects

Environmental protection.

Dated: October 1, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–26324 Filed 10–7–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00619; FRL–6381–4]

Tolerance Reassessment Advisory Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA)-U.S. Department of Agriculture (USDA) Tolerance Reassessment Advisory Committee (TRAC) will hold a public meeting on October 20-21, 1999. Among the agenda topics planned for discussion are the following: updates on tolerance reassessment progress, science policy issues and the worker risk assessment process; a status report on organophosphate pesticides, including a the pilot public participation process; transition strategies; and a discussion of options for continuing an open forum and transparent process to discuss tolerance reassessment and FQPA implementation issues.

TRAC was established in May 1998 as a subcommittee under the auspices of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT) in response to Vice President Gore's request for EPA and the USDA to work together to ensure implementation of the Food Quality Protection Act (FQPA).

DATES: The meeting will be held on Thursday, October 20, 1999 from 9:00 a.m. to 5:30 p.m. and Thursday, October 21, 1999 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Arlington Hilton, 950 North Stafford St., Arlington, VA; Ballston Metro Subway Station (703) 528–6000.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Karen Angulo, or Terria Northern, 7501C, Office of Pesticide Programs, EPA, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7090; fax number: (703) 308–4776; e-mail address: Fehrenbach.Margie@epa.gov or Angulo.Karen@epa.gov or Northern.Terria@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons interested in implementation of the Food Quality Protection Act (FQPA) (Public Law 104–170). Passed in 1996, this new law strengthens the nation's system for regulating pesticides on food. The TRAC was established by EPA and USDA to provide the following: policy guidance on sound science, ways to increase transparency in decision-making, strategies for a reasonable transition for agriculture and ways to enhance consultations with stakeholders, as pesticides tolerances are reassessed, including those for organophosphates.

The TRAC has been co-chaired by EPA's Deputy Administrator and USDA's Deputy Secretary. The TRAC is a diverse group representing a broad range of interests including: farmers and growers; public health officials including pediatricians; pesticide companies and trade associations; food processors and distributors, academicians; Federal agencies; and State, local and Tribal governments.

Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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/.

An agenda and background information are being developed and will be posted on the Agency's website one week prior to each meeting at: www.epa.gov/pesticides/trac.

2. *In person*. The Official record is available in the Docket for inspection during normal business hours, Monday - Friday, excluding Federal holidays, at the Office Pesticide Program, USEPA, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA 22202, telephone number (703) 305–5805.

The Agency has established an administrative record for this meeting under docket control number OPP–00619. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Tolerance Reassessment Advisory Committee. This administrative record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Request to Participate in this Meeting?

The TRAC meetings are open to the public under section 10(a)(2) of the Federal Advisory Committee Act, Public Law 92–463. Persons who wish to make oral statements do not need to request to participate in the meeting. Such

statements will be limited to 3–5 minutes by each person or organization. Any person who wishes to file a written statement may do so before or after a TRAC meeting. These statements will become part of the official record and will be provided to the TRAC members. The official record will be available for public inspection at the address listed under ''Addresses'' at the beginning of this document.

List of Subjects

Environmental protection, Agriculture, Chemical, Foods, Pesticides, Tolerance reassessment and Pests.

Dated: October 4, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–26371 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–894; FRL–6384–2]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–894, must be received on or before November 8, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–894 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Stanton, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5218; and e-mail address: stanton.susan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing 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 the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, 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*. The Agency has established an official record for this action under docket control number PF–894. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–894 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–894. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA 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. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer Corporation

PP 9F6011

EPA has received a pesticide petition (9F6011) from Bayer Corporation, 8400 Hawthorne Road, Kansas City, Missouri 64120-0013 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of flucarbazone sodium: 4,5-dihydro-3-methoxy-4-methyl-5-oxo-N-[[2-(trifluoromethoxy)phenyl]sulfonyl]-1H-1,2,4-triazole-1-carboxamide, sodium salt; and its N-desmethyl degradate, 4,5-dihydro-3-methoxy-5-oxo-N-[[2-(trifluoromethoxy)phenyl]sulfonyl]-1H-1,2,4-triazole-1-carboxamidein in or on the raw agricultural commodities (RACs):

Commodity	Parts per million
Wheat Forage	0.30
Wheat Hay	0.10
Wheat Straw	0.05
Wheat Grain	0.01
Milk	0.005
Meat (cattle, goats, sheep, horses, hogs).	0.01
Liver (cattle, goats, sheep, horses, hogs).	0.60

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of flucarbazone-sodium in wheat was rapid and extensive. Little or no parent flucarbazone-sodium was found in the RACs. A primary metabolic pathway in wheat involved the N-demethylation of flucarbazone-sodium to give N-desmethyl flucarbazone-sodium. N-desmethyl flucarbazone-sodium was found in all of the wheat RACs. The N-desmethyl flucarbazone-sodium was then either hydrolyzed or conjugated with glucose. Another primary metabolic pathway was hydrolysis of flucarbazone-sodium yielding sulfonic acid and sulfonamide which were isolated, and N,O-dimethyl triazolinone which was not isolated. Other metabolites were then subsequently formed by oxidative reactions, hydrolytic reactions, and conjugation.

2. *Analytical method—Plants*. The proposed tolerance expression is parent flucarbazone-sodium and N-desmethyl flucarbazone-sodium. An analytical method was developed to measure these two analytes in plant matrices. This method was validated in wheat tissues. The flucarbazone-sodium and N-desmethyl flucarbazone-sodium residues are extracted from the wheat samples with 0.05 M NH4 OH by accelerated solvent extraction (ASE). The extracts are purified by a combination of C-18 solid phase extraction (spe) and ethylene diamine-N-propyl (PSA) spe. The resultant analytes are detected by liquid chromatography/tandem mass spectroscopy (lc/ms/ms) and quantified against known amounts of deuterated internal standards. The method limit of quantitation (LOQ) is 0.01 milligram/kilogram (mg/kg) of either analyte in all wheat matrices. The method limit of detection (LOD) is 0.005 mg/kg of either analyte in all wheat matrices.

3. *Animals*. An analytical method was developed to measure the residues of flucarbazone-sodium in animal tissues and milk. Since the flucarbazone-sodium-related residues were present in ruminant tissues as a mixture of bound, conjugated, and unconjugated residues, a method was developed that simultaneously extracted and hydrolyzed the majority of the flucarbazone-sodium-related residues to flucarbazone-sodium sulfonamide. The flucarbazone-sodium residues are simultaneously hydrolyzed to flucarbazone-sodium sulfonamide and extracted from the animal tissues and milk by heating with 8% trifluoroacetic acid (TFA) in water. The analysis of fat was complicated by the large quantities of lipids that were released during

hydrolysis and extraction. Therefore, the flucarbazone-sodium residues are extracted into acetonitrile/water (9:1) before they are hydrolyzed to flucarbazone-sodium sulfonamide. After conversion to flucarbazone-sodium sulfonamide, the residues are purified and partitioned. The residues are detected by lc/ms/ms and quantified against known amounts of deuterated internal standards. The LOQ in the tissues and milk is 0.020 and 0.005 mg/kg, respectively. The estimated LOD (3x highest background response) in the liver, muscle, and milk is 0.014 0.002 and 0.004 mg/kg, respectively. The recoveries of flucarbazone-sodium were determined in all tissues and milk after fortification with flucarbazone-sodium. The average recoveries of flucarbazone-sodium from liver fortified at 0.020 and 0.100 mg/kg were 104% and 100%, respectively. The average recoveries of flucarbazone-sodium from muscle fortified at 0.020 and 0.100 mg/kg were 97% and 102%, respectively. In milk the average recoveries of flucarbazone-sodium at fortifications of 0.005, 0.010, and 0.050 mg/kg were 111% (after correction for background in the control samples, the average recovery was 92%), 97% and 91%, respectively. An independent laboratory validation of the analytical method was performed. The method was successfully validated indicating that the method could be satisfactorily run by following the written procedure.

3. *Magnitude of residues*. Field trials were conducted with wheat at 36 locations to evaluate the quantity of flucarbazone-sodium residues in wheat forage, hay, straw, and grain following treatment with flucarbazone-sodium 70WG at a rate of 30 grams active ingredient/hectacre (g ai/ha). The highest average field trial (HAFT) residue detected in forage, hay, and straw were 0.27, 0.08, and 0.04 mg/kg, respectively. Residues of flucarbazone-sodium were < 0.01 mg/kg in wheat grain.

B. Toxicological Profile

1. *Acute toxicity*—i. Flucarbazone-sodium is not toxic to fasted rats following a single oral administration. The oral lethal dose (LD_{50}) is > 5,000 mg/kg body weight (bwt) for males and females.

ii. Flucarbazone-sodium is not toxic to rats following a single dermal application. The dermal LD_{50} is > 5,000 mg/kg bwt for males and females.

iii. An acute inhalation study with rats showed low toxicity with a 4–hour dust aerosol lethal concentration (LC_{50}) > 5,130 mg/m^3 air for males and females.

iv. An eye irritation study in rabbits showed only very slight, reversible irritation.

v. A dermal irritation study in rabbits showed flucarbazone-sodium is not irritating to skin.

vi. Flucarbazone-sodium has no skin sensitizing potential under the conditions of the maximization test in guinea pigs.

2. *Genotoxicity*. The genotoxic action of flucarbazone-sodium was studied in bacteria and mammalian cells with the aid of various *in vitro* test systems (*Salmonella* microsome test, hypoxanthine guanine phophoribosyl transferase (HGPRT) test with Chinese hamster V79 cells, cytogenetic study with Chinese hamster V79 cells and unscheduled DNA synthesis test) and in one *in vivo* test (micronucleus test). None of the tests revealed any evidence of a mutagenic or genotoxic potential of flucarbazone-sodium. The compound did not induce point mutation, DNA damage, or chromosome aberration.

3. *Reproductive and developmental toxicity*. In a 2-generation reproduction study, Wistar rats were administered dietary levels of flucarbazone-sodium at levels of 0, 50, 4,000, and 20,000/12,000 (dose reduction week 6). The no observed adverse effect levels (NOAELs) for reproductive parameters was established at 4,000 ppm, based on slight reduction in pup weight development at 12,000 ppm. The NOAELs established for parental males and females were 4,000 ppm and 50 ppm, respectively.

i. A developmental toxicity study was conducted with Sprague-Dawley rats via oral gavage of flucarbazone-sodium at levels of 0, 100, 300, and 1,000 mg/kg bwt/day on days 6 through 19 of gestation. There were no signs of maternal toxicity, embryotoxicity, fetotoxicity, or teratogenicity at the level of 1,000 mg/kg bwt/day. Therefore, the maternal and developmental NOAELs for rats were established at 1,000 mg/kg bwt/day, the limit dose for this study type.

ii. Himalayan rabbits were administered flucarbazone-sodium at levels of 0, 100, 300, 500, or 1,000 mg/kg bwt by oral gavage days 6 through 28 post coitum in a test for developmental toxicity. A maternal NOAEL of 100 mg/kg bwt/day was established based on clinical findings, bwt loss, decreased feed consumption, gastrointestinal changes, increased liver weights and fatty liver changes at 300 mg/kg bwt/day. The gestation rate NOAEL of 100 mg/kg bwt/day was based on one abortion (assessed as secondary due to maternal toxicity) at 300 mg/kg bwt/day. The NOAEL for fetal parameters of 300 mg/kg bwt/day was based on decreased fetal weights and delayed ossification at 500 mg/kg bwt/day. No teratogenic potential of flucarbazone-sodium was evident in rabbits.

iii. A 90–day feeding study with male and female B6C3F1 mice established a NOAEL of 7,000 (equivalent to 2,083 and 3,051 mg/kg bwt/day for males and females, respectively). The dose of 7,000 ppm was the highest dose tested (HDT).

4. *Subchronic toxicity*—i. A 28–day dermal rat study established a systemic NOAEL of 1,000 mg/kg bwt/day (the dermal limit dose) for males and females. The local dermal effects, skin thickening, seen at 1,000 mg/kg were regarded as a result of mechanical friction and of no toxicological relevance.

ii. A 90–day rat feeding study defined a NOAEL at 250 ppm (17.6 mg/kg bwt/day) for males and 1,000 ppm (101.7 mg/kg bwt/day) for females based on a decreased spleen weight in males at 1,000 ppm and on immunologic changes at 4,000 ppm in females.

iii. A 90–day feeding study with male and female B6C3F1 mice established a NOAEL of 7,000 ppm (equivalent to 2,083, and 3,051 mg/kg bwt/day for males and females, respectively). The dose of 7,000 ppm was the HDT.

iv. A 90–day dog feeding study at levels of 0, 1,000, 5,000, and 50,000 ppm established a NOAEL of 1,000 ppm (equivalent to 33.8 mg/kg bwt/day in males and 35.2 mg/kg bwt/day in females) based on decreased thyroxine levels and increased thyroxine-binding capacity, macroscopic and microscopic effects on the gastric mucosa and an eosinophilic hepatocellular cytoplasm occurring at 5,000 ppm and above. The liver enzyme induction at 1,000 ppm was assessed as a slight adaptive response in the detoxification process of flucarbazone-sodium but not as an adverse effect, due to the absence of clinical chemical changes that would indicate liver damage and due to the absence of any histopathologic liver changes at this dietary level.

5. *Chronic toxicity*—i. A 2–year chronic toxicity/oncogenicity study was conducted with male and female Wistar rats at dietary levels of 0, 2.5, 7.5, 125, and 1,000 mg/kg bwt. A NOAEL of 125 mg/kg was established based on increased food consumption (both sexes) and lower bwts (females) at 1,000 mg/kg. No carcinogenic potential was indicated.

ii. B6C3F1 mice were administered flucarbazone-sodium via the diet at levels of 0, 50, 1,000, and 7,000 ppm in a 2–year carcinogenicity study. The NOAEL was established in males and females at 1,000 ppm (equivalent to

274.5 and 458.9 mg/kg bwt/day, respectively) based on reduced bwt gain in both sexes and on increased feed consumption in males at the 7,000 ppm level. No carcinogenic potential was indicated.

iii. A 1–year feeding study in dogs at levels of 0, 200, 1,000, and 5,000 ppm established a NOAEL of 1,000 ppm for males (equal to 35.87 mg/kg bwt/day) based on decreased bwt development, increased ALAT- and ASAT-levels and slightly increased N-demethylase levels. The NOAEL of 200 ppm for females (equal to 7.43 mg/kg bwt/day) was based on elevated ALAT-, ASAT-, and GLDH-levels at 1,000 ppm in one female. Histopathology revealed no treatment-related effects.

6. *Animal metabolism*. Flucarbazone-sodium was metabolized via two pathways. The major pathway involved the hydrolysis of the urea linkage forming sulfonamide and N,O-dimethyltriazolinone. The sulfonamide was shown to be the major metabolite in the blood, fat, liver, and muscle at 4 to 6 hours following oral administration of [phenyl-UL-$_{14}$C] flucarbazone-sodium. The sulfonamide was conjugated with glucuronic acid or acetate [sulfonamide N-glucuronide or N-acetyl sulfonamide] or hydroxylated and then conjugated with glucuronic acid to form hydroxysulfonamide-O-glucuronide prior to elimination in the urine. A minor pathway involved N-demethylation of flucarbazone-sodium to form N-desmethyl flucarbazone-sodium followed by hydrolysis to form the sulfonamide and O-methyltriazolinone. Demethylation of N,O-dimethyltriazolinone led to the formation of N-methyltriazolinone, O-methyltriazolinone, and ultimately, urazole; methyl urethane was probably formed from the cleavage of O-methyltriazolinone.

7. *Metabolite toxicology*—i. The animal and plant metabolite flucarbazone-sodium sulfonamide (trifluoromethoxysulfonamide) has a low acute oral toxicity (LD_{50} > 2,000 mg/kg bwt) in fasted rats.

ii. The plant metabolite flucarbazone-sodium sulfonamide lactate conjugate has no acute oral toxicity (NOAEL: 5,000 mg/kg bwt) in fasted rats.

iii. The plant metabolite flucarbazone-sodium sulfonamide alanine has no acute oral toxicity (NOAEL: 5,000 mg/kg bwt) in fasted rats.

iv. The soil metabolite O-desmethyl flucarbazone-sodium has an acute oral LD_{50} value in fasted male and female rats of > 2,500 - < 5,000 mg/kg bwt.

v. The plant, animal, and soil metabolite, MKH 10868 (flucarbazone-sodium sulfonic acid Na-salt), has no acute oral toxicity (LD_{50} > 5,000 mg/kg bwt) in fasted male and female rats.

vi. MKH 10868 was considered non-mutagenic with and without S9 mix in the plate incorporation as well as in the preincubation modification of the *Salmonella*/microsome test.

8. *Endocrine disruption*. There is no evidence to suggest that flucarbazone-sodium has an effect on the endocrine system. Studies in this data base include evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following short- and long-term exposure. These studies revealed no endocrine effects due to flucarbazone-sodium.

9. *Other studies*—i. An acute neurotoxicity screening study in rats established an overall NOAEL for males and females of 500 mg/kg based on transient neurobehavioral effects. Evidence of toxicity was only slight at a limit dose of 2,000 mg/kg and complete recovery occurred within 7 days following treatment.

ii. A subchronic neurotoxicity screening study in rats established an overall NOAEL of 2,000 ppm for males (equal to 147 mg/kg bwt/day) and 20,000 ppm (equal to 1,730 mg/kg bwt/day) for females based on a slight decrease in bwt and food consumption. The NOAEL for microscopic lesions was 20,000 ppm for males and females, the highest dose tested (HDT). There was no evidence of neurotoxicity at any dietary level.

iii. A plaque-forming-cell assay (to investigate immunotoxicological potential) was performed on rats after a 4–week dietary exposure. The NOAEL of 20,000 ppm (equivalent to 2,205, or 2,556 mg/kg bwt/day in males or females, respectively) was based on the lack of specific effects in the HGT.

iv. The immunotoxicity potential of flucarbazone-sodium was additionally investigated in antibody plaque-cell forming assays and in assays examining splenic T-cells, B-cells, and NK-cells after 4–week dietary administrations in male and female rats at levels up to and including 1,000 mg/kg bwt/day. There was no statistically significant effect on the humoral immune system and no effects on splenic cell populations, cell-mediated immune response or the innate immune response in males or females. The NOAEL for immunotoxicity from these studies was 1,000 mg/kg bwt/day, the immunotoxicity limit dose.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Estimates of chronic dietary exposure to residues of flucarbazone-sodium utilized the proposed tolerance-level residues for wheat forage, wheat hay, wheat straw, wheat grain, meat, liver, and milk of 0.30, 0.10, 0.05, 0.01, 0.01, 0.60, and 0.005 ppm, respectively. Other assumptions were that 100% of the target crop would be treated with flucarbazone-sodium and that no loss of residue would occur due to processing and or cooking. A reference dose (RfD) of 0.04 mg/kg/day was assumed based on the NOAEL of 4 mg/kg/day from the 2-generation study in Wistar rats. A safety factor of 100 was used based on interspecies extrapolation (10x) and intraspecies variability (10x). Using these conservative assumptions, dietary residues of flucarbazone-sodium contribute 0.0002 mg/kg/day (0.5% of the RfD) for children 1-6 years, the most sensitive sub-population. For the U.S. population the exposure was 0.00008 mg/kg/day (0.2% of the RfD). For acute dietary exposure, the same conservative assumptions were made. Based on the NOAEL of 500 mg/kg/day from the acute neurotoxicity study, the calculated MOE's for acute risk from flucarbazone-sodium and its degradates for the general U.S. population was 386,108 and for the most exposed subgroup, children 1-6 years the margin of exposure (MOE) was 141,262. These figures are well above 100 which is the level of concern based on interspecies extrapolation (10x) and intraspecies variability (10x).

ii. *Drinking water*. Given the post-emergence application pattern, low use rates and rapid soil degradation of flucarbazone-sodium, the risk of ground and surface water contamination and exposure via drinking water is negligible. The surface water model generic expected environment concentration (GENEEC) and the ground water model SCI-GROW were used to determine whether drinking water from surface or ground water sources represented a worst-case exposure scenario. These models predict residues of flucarbazone-sodium would be higher in surface water. Assuming a worst-case GENEEC scenario where residues of flucarbazone-sodium occur in surface water used for drinking water at the highest predicted acute and chronic concentrations, the risk from exposure to residues of flucarbazone-sodium are well within EPA's acceptable limits.

The GENEEC model predicted an acute surface water concentration of flucarbazone-sodium of 1.22 µg/L. Assuming a 70 kg adult drinks 2 liters/day containing 1.22 µg/L, the acute exposure would be 0.0000349 mg/kg/day for adults. Assuming a 10 kg child drinks 1 liter/day containing 1.22 µg/L, the exposure would be 0.000122 mg/kg/

day. Based on the the NOAEL of 500 mg/kg/day from the acute oral neurotoxicity screening study in rats and assuming a safety of 100 (10x for interaspecies variability and 10x for interspecies extrapolation), the MOE for adults of 143,000 and for children of 41,000 do not exceed EPA's level of concern for adults or children. This assessment is based on the GENEEC highest predicted acute concentration of flucarbazone-sodium in drinking water using worst-case assumptions.

Using GENEEC, the highest predicted chronic concentration of flucarbazone-sodium was 1.14 µg/L. Assuming a 70 kg adult consumes 2 L of water per day containing 1.14 µg/L of flucarbazone-sodium residues for a period of 70 years, less than 0.04% of the RfD was consumed from residues of flucarbazone-sodium in surface water used for drinking water (worst-case scenario). For a 10 kg child drinking 1 L of water per day containing 1.14 µg/L of flucarbazone-sodium residues only 0.15% of the RfD was consumed by drinking water.

2. *Non-dietary exposure*. There are no current non-food uses for flucarbazone-sodium registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. No non-food uses are proposed for flucarbazone-sodium. No non-dietary exposures are expected for the general population.

D. Cumulative Effects

Flucarbazone-sodium falls into the category of sulfonamide herbicides. There is no information to suggest that any of this class of herbicides has a common mechanism of mammalian toxicity or even produce similar effects so it is not appropriate to combine exposures of flucarbazone-sodium with other herbicides. Bayer Corporation is considering only the potential risk of flucarbazone-sodium.

E. Safety Determination

1. *U.S. population*. As presented previously, the exposure of the U.S. general population to flucarbazone-sodium is low, and the risks, based on comparisons to the reference dose, are minimal. The margins of safety from the use of flucarbazone-sodium are well within EPA's acceptable limits. Bayer Corporation concludes that there is a reasonable certainty that no harm will result to the U.S. population from aggregate exposure to flucarbazone-sodium residues.

2. *Infants and children*. The complete toxicological data base including the developmental toxicity and 2-generation reproduction studies were considered in assessing the potential for additional sensitivity of infants and children to residues of flucarbazone-sodium. The developmental toxicity studies in rats and rabbits revealed no increased sensitivity of rats or rabbits to *in-utero* exposure to flucarbazone-sodium. The 2-generation reproduction study did not reveal any increased sensitivity of rats to *in-utero* or postnatal exposure to flucarbazone-sodium. Furthermore, none of the other toxicology studies revealed any data demonstrating that young animals were more sensitive to flucarbazone-sodium than adult animals. The data taken collectively clearly demonstrate that application of a Food Quality Protection Act (FQPA) uncertainty factor for increased sensitivity of infants and children is not necessary for flucarbazone-sodium.

F. International Tolerances

There are currently no international (Codex) tolerances established for flucarbazone-sodium. It is not currently registered in any other countries. There are no harmonized Maximum Residue Levels (MRLs) at the European Union level at present. Petitions for MRLs for flucarbazone-sodium in/on wheat, meat, milk, and liver have been submitted to the Pesticide Management Regulatory Agency in Canada.

[FR Doc. 99–26335 Filed 10–7–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6454–3]

Peer Reviews Associated With the Guide for Industrial Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: On June 11, 1999, the EPA released for public comment a draft guidance document entitled ''Guide for Industrial Waste Management.'' The purpose of the draft voluntary Guide is to assist facility managers, State and Tribal environmental managers, and the public in evaluating and choosing protective practices regarding the management of non-hazardous industrial wastes. The Guide is available on a CD–ROM format. The CD–ROM also contains user-friendly ground-water and air models. The ground-water model is called the Industrial Waste Evaluation model, while the air model is called the Industrial Waste Air Model. When the draft Guide, CD–ROM, and models were noticed for comment in June, the EPA stated that both models would undergo peer review by independent experts. These peer reviews have been completed and the EPA is making the comments developed by the peer reviewers publicly available by this notice. Persons wishing to comment on the models may wish to review the independent peer review comments.

DATES: Public comments on the draft ''Guide for Industrial Waste Management'', the CD–ROM, and the models are due on or before December 13, 1999.

ADDRESSES: Any public comments received to date on the draft Guide, the CD–ROM, or the models and these peer review comments are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials (docket number F–1999–IDWA–FFFFF), it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The index and some supporting material are available electronically.

These peer review comments are also available on the Internet. Follow these instructions to access the information electronically.

WWW: http://www.epa.gov/industrialwaste
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in pub/epaoswer.

FOR FURTHER INFORMATION CONTACT: For general information and copies of the Ground-Water peer review comments or the Air peer review comments, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323. A limited number of paper copies of the peer review comments are available for distribution. These are available on a first-come first-serve basis.

Questions regarding any aspect of the Ground-Water peer review comments may be directed to Virginia Colten-Bradley (703–308–8613) while questions regarding the Air peer review comments should be directed to Charlotte Bertrand (703–308–9053). Questions for these individuals can also be e-mailed to their e-mail address:

colten-bradley.virginia@epamail.epa.gov
bertrand.charlotte@epamail.epa.gov

SUPPLEMENTARY INFORMATION:

Customer Service

How can I influence the development of the final ground-water and air models that will be developed for the final Guide for Industrial Waste Management? You can influence the development of the final ground-water and air models by reviewing the peer review comments and the draft models and providing your written comments regarding these models to EPA. Your comments will be most effective if you follow the suggestions below:

Explain your views as clearly as possible and why you feel that way;
Provide solid technical data to support your views;
Tell us which parts you support, as well as those you disagree with;
Provide specific examples to illustrate your concerns; and
Offer specific alternatives.

Background and Overview

The EPA, with assistance from State representatives, who serve as members of a Task Force from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), industry, and public interest stakeholders, has developed a draft voluntary ''Guide for Industrial Waste Management.'' The Guide recommends best management practices and key factors to take into account in siting, operating, designing, monitoring, and performing corrective action and closure and post closure care. The Guide is available in both paper copy and CD–ROM. The CD–ROM also incorporates both the ground-water and air models that can be used to evaluate potential risks and choose appropriate facility designs.

The air model, called the Industrial Waste Air Model (IWAIR), contains three modeling components. The first is an emissions model that estimates emissions of specific constituents from the unit into the atmosphere. The second component of the model estimates atmospheric dispersion of constituents and ambient air concentrations at a specific receptor point. The third component combines constituent concentrations at the specified receptor point with receptor exposure factors and toxicity benchmarks to estimate risk. IWAIR can be used two ways. Forward calculation uses known constituent concentrations in a waste to calculate risk to receptors at specified locations. Backward calculation starts with a target risk level at a specified receptor location. The model then calculates the concentration levels in a waste that can be protectively managed in a unit without exceeding a pre-selected target risk level.

The ground-water model, called the Industrial Waste Evaluation Model, identifies a benchmark concentration (Maximum Contaminant Level or Health-Based Number) for each constituent in a receptor well associated with a waste management unit. The goal is not to exceed the benchmark concentrations in the receptor well (defined as a monitoring well). The model starts from this benchmark concentration in the receptor well and uses the effects of dilution and attenuation and leakage rate from a unit to determine the maximum concentration for constituents that can be protectively managed in a particular unit design. In a similar fashion, the model determines the maximum leachate concentration for constituents that can be considered for land application.

The IWAIR model and the IWEM have both undergone independent peer reviews. The peer review summaries contain a summary of the actual peer review comments and identification of the peer reviewers and their qualifications. The individual peer reviews are included as attachments to the peer review summaries. The EPA believes that these peer review summaries are useful documents for people to review as they formulate their own comments on the models. The EPA believes that announcing these peer review summaries now provides adequate time for the general public to review the summaries and formulate their own comments on the models; therefore, the December 13, 1999 deadline for receipt of comments on the draft Guide, CD–ROM, and models is not being extended. After the December deadline, the EPA will again begin to work with State, industry, and environmental representatives in assessing the comments and determining the best course of action. This work will continue through the next calendar year; therefore, if it is not possible to submit your comments or concerns regarding the draft Guide, CD–ROM, or models on time, you are still encouraged to submit comments/concerns as soon after the deadline as possible. The EPA will make all reasonable efforts to consider late comments.

Dated: September 29, 1999.

Elizabeth Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 99–26334 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6450–8]

Proposed Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Administrative Cost Recovery Settlement; Continental Chemical Corporation Superfund Site

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 cost recovery settlement concerning the Continental Chemical Corporation Superfund site in Terre Haute, Vigo County, Indiana, which was signed by the EPA Superfund Division Director, Region 5, on September 24, 1999. The settlement resolves an EPA claim under section 107(a) of CERCLA against The 1439 Ash Street Company, Continental Chemical Corporation, New Concepts, Incorporated, Abraham Ashkin, Ronald Ashkin and Stephen Ashkin (who are alleged to be past and current owners and operators of the Site), for the costs expended by EPA in conducting a removal action at the Site. The settlement requires the settling parties to pay $80,000.00 to the Hazardous Substance Superfund, to be applied toward reimbursement of approximately $461,332.00 in past response costs incurred by EPA in conducting the removal action. The settlement amount is based on an analysis of the parties' ability to pay. The Site is not on the NPL and no further response action is anticipated at this time.

For thirty (30) days following the date of publicaction of this notice, 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 the Superfund Records Center, 7th floor, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before November 8, 1999.

ADDRESSES: The proposed settlement agreement is available for public inspection at the Superfund Records Center at the address specified above. A copy of the proposed settlement may be obtained from Deborah Garber, Office of Regional Counsel (C–14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone: (312) 886–6610. Comments should reference the continental Chemical Superfund Site and should be addressed to Deborah Garber, Office of Regional Counsel (C–14J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Deborah Garber at the address specified immediately above; telephone: (312) 886–6610.

Dated: September 24, 1999.

William E. Muno,

Director, Superfund Division.

[FR Doc. 99–26331 Filed 10–7–99; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of submission for OMB review.

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC) has submitted a request for clearance of the information collection described below to the Office of Management and Budget (OMB). A notice that the EEOC would be submitting this request was published in the **Federal Register** on July 21, 1999, allowing for a 60-day public comment period. No public comments were received.

DATES: Written comments on this final notice must be submitted on or before November 8, 1999.

ADDRESSES: Comments on this final notice should be submitted to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer for the U.S. Equal Employment Opportunity Commission, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or electronically mailed to DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection request should be addressed to Mr. Neckere at the address below.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9222, Washington, DC 20507, (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION:

Collection Title: Employer Information Report (EEO–1).

OMB-Number: 0346–0007.

Frequency of Report: Annual.

Type of Respondent: Private employer with 100 or more employees and some federal government contractors and first-tier contractors with 50 or more employees.

Description of Affected Public: Private industry employers and businesses, private institutions and organizations, and farms.

Number of Responses: 170,000 (revised).

Reporting Hours: 402,700 (revised).

Number of Forms: 1.

Federal Cost: $834,635.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirements for various kinds of employers. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential.

EEO–1 data are used by the EEOC to investigate charges of discrimination against employers in private industry. In addition, the data are used to support EEOC decisions and conciliations, and for research. The data are shared with the Office of Federal Contract Compliance Programs (OFCCP) in the U.S. Department of Labor, and several other federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of responses per respondent averages between 3 and 4 EEO–1 reports. The number of annual responses is approximately 170,000 hours and the total annual burden is estimated to be 402,700 hours. This represents a reduction of 61,000 hours from the previous EEO–1 information collection request and is due to increased computerization. In order to help further reduce burden, respondents are encouraged to report data on electronic media such as magnetic tapes or interactive diskettes.

For the Commission.

Dated: October 4, 1999.

Ida L. Castro,

Chairwoman.

[FR Doc. 99–26239 Filed 10–7–99; 8:45 am]

BILLING CODE 6750–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

National Bioethics Advisory Commission Membership; Request for Nominations

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Request for nominations.

SUMMARY: The Office of Science and Technology Policy (OSTP) is requesting nominations of candidates for consideration for membership on the National Bioethics Advisory Commission within the Executive Branch. The Commission considers issues of bioethics arising from research on human biology and behavior, and the applications of that research.

DATES: Nominations must be received on or before December 10, 1999.

ADDRESSES: All nominations should be sent by mail to: Bioethics Docket, Office of Science and Technology Policy, Room 436, OEOB, Washington, D.C. 20502, or by FAX to: 202–456–6027.

FOR FURTHER INFORMATION CONTACT: By mail: Rachel E. Levinson, Assistant Director for Life Sciences, Office of Science and Technology Policy, Room 436, OEOB, Washington, D.C. 20502. Office telephone number: 202–456–6130.

SUPPLEMENTARY INFORMATION: On October 3, 1995, the President signed Executive Order 12975, establishing the National Bioethics Advisory Commission (NBAC), to consider bioethical issues arising from research on human biology and behavior, including clinical research, and the applications of such research. The Commission, a panel of non-government experts in the relevant scientific disciplines, law, philosophy and theology, as well as community representatives, provides advice and recommendations to the Federal

government. The Commission reports to the President's National Science and Technology Council and operates under the provisions of the Federal Advisory Committee Act. The Commission's purview includes the appropriateness of departmental, agency, or other governmental programs, policies, assignments, missions, guidelines, and regulations as they relate to bioethical issues arising from research on human biology and behavior, and applications of that research. The Commission is not responsible for the review and approval of individual projects.

The charter for NBAC charges the Commission to consider issues in the protection of the rights and welfare of human research subjects, and issues in the management and use of genetic information, including but not limited to, human gene patenting. The Commission is also charged with the responsibility to consider current and prospective issues pertinent to the conduct of research on human biology and behavior, identifying broad, overarching principles to govern the ethical conduct of such research. The Commission has the authority to establish its own priorities and agenda, in accordance with four criteria described in the charter, and subject to the approval of the National Science and Technology Council.

Criteria for Members

The National Bioethics Advisory Commission consists of 18 members, including the Chairperson. Its members are appointed by the President, who shall select from knowledgeable non-Government experts and community representatives with special qualifications and competence to deal effectively with bioethical issues of concern to the participating departments and agencies. With the exception of community representatives, nominees should have expertise in at least one of the following areas: (i) Bioethics/theology; (ii) social/behavioral science; (iii) law; (iv) medicine/allied health professions; and (v) biological research. Members shall be appointed for two-year terms. Members may be compensated at a rate not to exceed the maximum pay authorized by 5 U.S.C. 3109, plus per diem and travel expenses as in accordance with standard government travel regulations.

Nomination Procedures

Interested persons may nominate one or more qualified individuals for consideration for membership on the Commission. The nominee's mailing address, telephone number, and curriculum vitae must accompany the nomination.

Dated: October 4, 1999.

Barbara Ann Ferguson,

Administrative Officer, Office of Science and Technology Policy.

[FR Doc. 99–26319 Filed 10–7–99; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–2071]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On October 4, 1999, the Commission released a public notice announcing the October 19 and 20, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda. This notice of the October 19–20, 1999, NANC meeting is being published in the **Federal Register** less than 15 days prior to the meeting due to a delay in finalizing the October NANC agenda. *See* 41 CFR 101–6.1015(b)(2).

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: October 4, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, October 19, 1999, from 8:30 a.m., until 3:30 p.m., and on Wednesday, October 20, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW–C305, Washington, DC 20554. This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—October 19, 1999

1. Approval of September 28–29, 1999, meeting minutes.

2. North American Numbering Plan Administrator (NANPA) Report. Status of central office code (CO) assignments in the 602 NPA; update on Minnesota 3-way geographic split; refinements to NANP Exhaust model assumptions, and discussion of facilitation of NPA relief planning meetings.

3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Discussion regarding repeated applications for NXX assignments and their effect on the current fixed price contract bid for NANP administration.

4. Numbering Resource Optimization (NRO) Working Group Report. Consideration of a proposed NRO work plan.

5. Local Number Portability Administration (LNPA) Working Group Report.

6. Discussion of NANC oversight responsibilities and the LNPA Limited Liability Corporations' Number Portability Administration Centers (NPACs).

7. Cost Recovery Working Group Report. Recommendation for budget year 2000 audit costs.

8. Audits Issue Management Group (IMG) Report.

Wednesday, October 20, 1999

9. Steering Group Report.

10. Number Pooling Issue Management Group (IMG) Report. Information regarding Y2K pooling costs.

11. North American Billing and Collection update.

12. Other Business.

Federal Communications Commission.

Kurt A. Schroeder,

Acting Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–26509 Filed 10–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1302–DR]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–1302–DR), dated September 23, 1999, and related determinations.

EFFECTIVE DATE: September 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Connecticut, resulting from high winds, heavy rain, and flooding associated with Tropical Storm Floyd on September 16, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sharon L. Stoffel of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared major disaster:

Fairfield and Hartford Counties for Individual Assistance.

All counties within the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–26347 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1302–DR]

Connecticut; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Connecticut (FEMA–1302–DR), dated September 23, 1999, and related determinations.

EFFECTIVE DATE: September 27, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 21, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26348 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3143–EM]

Florida; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida (FEMA–3143–EM), dated September 14, 1999, and related determinations.

EFFECTIVE DATE: September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 16, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26340 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1300–DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1300–DR), dated September 22, 1999, and related determinations.

EFFECTIVE DATE: September 22, 1999

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 22, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Floyd on September 13, 1999, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, including direct Federal assistance, or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Brevard, Duval, Flagler, Indian River, Martin, Nassau, St. Johns, St. Lucie, and Volusia Counties for Public Assistance.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–26343 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1300–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1300–DR), dated September 22, 1999, and related determinations.

EFFECTIVE DATE: September 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 25, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26344 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1300–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida, (FEMA–1300–DR), dated September 22, 1999, and related determinations.

EFFECTIVE DATE: September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1999:

Glades and Highlands Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26345 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3144–EM]

Georgia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Georgia (FEMA–3144–EM), dated September 14, 1999, and related determinations.

EFFECTIVE DATE: September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 17, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26341 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1303–DR]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1303–DR), dated September 24, 1999, and related determinations.

EFFECTIVE DATE: September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 24, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maryland, resulting from Hurricane Floyd on September 16–20, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Curtis D. Musgrave of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared major disaster:

Anne Arundel, Calvert, Caroline, Cecil, Charles, Harford, Kent, Queen Anne's, Somerset, St. Mary's, and Talbot Counties for Individual Assistance.

Caroline, Cecil, Charles, Harford, Kent, and Queen Anne's Counties for Public Assistance.

All counties within the State of Maryland are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–26349 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1303–DR]

Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland, (FEMA–1303–DR), dated September 24, 1999, and related determinations.

EFFECTIVE DATE: September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maryland is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 1999:

Somerset and Talbot Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26350 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1303–DR]

Maryland; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maryland, (FEMA–1303–DR), dated September 24, 1999, and related determinations.

EFFECTIVE DATE: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Maryland is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 24, 1999:

Calvert and St. Mary's Counties for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26351 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1301–DR]

New Mexico; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1301–DR), dated September 22, 1999, and related determinations.

EFFECTIVE DATE: September 22, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 22, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Mexico, resulting from severe storms and flooding beginning on July 16, 1999, and continuing through August 7, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Joe D. Bray of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Mexico to have been affected adversely by this declared major disaster:

The counties of Dona Ana, Luna, Mora, Rio Arriba, San Juan, Sandoval, and Sierra, and the Mescalero Apache Reservation.

All counties within the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–26346 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1296–DR]

New York; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1296–DR), dated September 19, 1999, and related determinations.

EFFECTIVE DATE: September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 1999:

Albany, Dutchess, Greene, Rensselaer, Schenectady, and Ulster Counties for Individual Assistance.

Albany, Greene, Schoharie, Ulster, and Warren for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26337 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1294–DR]

Commonwealth of Pennsylvania; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania (FEMA–1294–DR), dated September 18, 1999, and related determinations.

EFFECTIVE DATE: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 29, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26336 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1298–DR]

Commonwealth of Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Pennsylvania, (FEMA–1298–DR), dated September 22, 1999, and related determinations.

EFFECTIVE DATE: September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Pennsylvania is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 22, 1999:

Dauphin County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26338 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1299–DR]

South Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Carolina, (FEMA–1299–DR), dated September 21, 1999, and related determinations.

EFFECTIVE DATE: September 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 21, 1999:

Berkeley, Colleton, and Marion Counties for Individual Assistance (already designated for Public Assistance).

Williamsburg County for Individual Assistance and Public Assistance.

Allendale, Bamberg, Barnwell, Calhoun, Chesterfield, Clarendon, Darlington, Dillon, Dorchester, Florence, Hampton, Kershaw, Lee, Lexington, Marlboro, Orangeburg, Richland, and Sumter Counties for Categories A and B (debris removal and emergency protective measures) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26339 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3145–EM]

South Carolina; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of South Carolina (FEMA–3145–EM), dated September 15, 1999, and related determinations.

EFFECTIVE DATE: September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 25, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–26342 Filed 10–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices

of the Board of Governors. Comments must be received not later than October 22, 1999.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Jo Bess Jackson, Dallas, Texas; to acquire additional voting shares of First Sonora Bancshares, Inc., Sonora, Texas, and thereby indirectly acquire additional voting shares of First National Bank, Sonora, Texas.

Board of Governors of the Federal Reserve System, October 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–26255 Filed 10–7–99; 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: 10:00 a.m., Wednesday, October 13, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 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: October 6, 1999

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–26479 Filed 10–6–99; 10:19 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

DEPARTMENT OF THE TREASURY

OFFICE OF MANAGEMENT AND BUDGET

Federal Accounting Standards Advisory Board; Approval of Statements of Federal Financial Accounting Concepts and Standards

AGENCY: GAO, Treasury, OMB.

ACTION: Notice.

SUMMARY: The General Accounting Office, the Department of the Treasury, and the Office of Management and Budget (the FASAB principals) are announcing that they have agreed to modify their Memorandum of Understanding of October 1990, which established the Federal Accounting Standards Advisory Board (FASAB), to revise its accounting standard-setting process. The revised procedures provide that a Statement of Federal Financial Accounting Standards or Concepts will become final 90 days after FASAB has transmitted its proposed concept or standard to each of the three FASAB principals, so long as no principal, during that 90-day period, advises FASAB of an objection.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tingley, Federal Accounting Standards Advisory Board, 441 G Street, NW, Washington, DC 20548; 202 512–7350.

SUPPLEMENTARY INFORMATION: The Federal Accounting Standards Advisory Board FASAB or the Board) was established by Memorandum of Understanding of the Secretary of the Treasury, the Comptroller General, and the Director of the Office of Management and Budget (the Board's principals) in October 1990 to consider and recommend accounting concepts and standards for the Federal Government. The Memorandum of Understanding directed the Board to determine detailed procedures to implement an accounting standard-setting process. In 1991, the Board issued its Rules of Procedure, which were approved by its three principals.

The Secretary of the Treasury, the Comptroller General, and the Director of the Office of Management and Budget have agreed to modify their Memorandum of Understanding of October, 1990 and the Board has determined to revise its rules of Procedure for implementing an accounting standard-setting process as follows. When the Board has developed a proposed concept or standard, the Board shall submit it to the Comptroller General, the Secretary of the Treasury, and the Director of OMB for their review. If, within 90 days after its submission, any one of these officials objects to the proposed concept or standard, then it shall be returned to the Board for further consideration. If, within 90 days after its submission, none of these officials objects to the proposed concept or standard, then it shall become a final concept or standard of the Board. The Board will publish notice of final concepts and standards in the **Federal Register.**

The principals agree that standards set and promulgated following the Board's Rules of Procedure are recognized to have substantial authoritative support, and those accounting standards contrary to such promulgation are not. In accepting the revisions to the Memorandum of Understanding and the Board's Rules of Procedure, the principals retain their authorities, separately and jointly, to establish and adopt accounting standards for the Federal Government.

Dated: October 4, 1999.

Philip T. Calder,

Chief Accountant, General Accounting Office.

Dated: October 4, 1999.

Robert N. Reid,

Deputy Assistant Secretary for Accounting Operations, Department of the Treasury.

Dated: October 4, 1999.

Sheila O. Conley,

Acting Controller, Office of Management and Budget.

[FR Doc. 99–26265 Filed 10–7–99; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–01–00]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Evaluation of the Effectiveness of Targeted Lookback for Identifying Transfusion Recipients Who Receive Blood That May Have Contained Hepatitis C Virus—NEW—National Center for Infectious Disease (NCID)—The Food and Drug Administration (FDA) has recently issued guidelines for notification of persons who received blood or blood components from donors who subsequently tested positive for antibody to hepatitis C virus (anti-HCV) using a licensed multiantigen assay.[1] Blood collection establishments will identify potentially HCV-contaminated blood products and inform transfusion services of these units. The transfusion services will then attempt to notify the recipients of these products and encourage these recipients to be tested for HCV infection. CDC, in collaboration with the Agency for Health Care Policy and Research (AHCPR) and the FDA, has been charged with the responsibility of evaluating this nationwide notification process. The objective of this study is to evaluate the effectiveness of the targeted lookback for identifying persons infected with HCV, obtaining appropriate medical follow-up, and promoting healthy lifestyles and behaviors. The evaluation has three specific aims:

1. Determine the effectiveness of targeted lookback for identifying prior transfusion recipients with HCV infection, including the proportion of recipients identified who are ultimately tested, the proportion of those tested who are HCV positive, the reasons persons do not receive notification, and the reasons persons do not avail themselves of testing.

2. Determine the effectiveness of targeted lookback for encouraging and obtaining appropriate medical follow-up and promoting healthy lifestyles and behaviors among persons found positive for HCV infection, including proportion of HCV-positive persons who seek medical evaluation and outcome of that evaluation (severity of liver disease, anti-viral therapy, quality of counseling), and reactions/impact of notification on HCV-negative persons.

3. Determine the cost-effectiveness of targeted lookback, including resources (cost, personnel, etc.) utilized by blood collection groups and transfusion services for implementation and costs of medical evaluation and management.

The evaluation will comprise the following components:

1. A nationwide survey of blood collection establishments.

2. A nationwide survey of transfusion services.

3. A follow-up study of transfusion recipients presumed to have been notified of their potential HCV exposure. This detailed study will involve contacting and interviewing transfusion recipients from a sample of transfusion services in defined geographic areas.

4. A follow-up study of notified transfusion recipients who obtain HCV testing offered by blood collection centers.

The total annual burden hours are 12,040.

Respondents	Number of respondents	Number of responses/respondents	Avg. burden/response (in hours)
Blood collection establishments	140	1	5
Transfusion services	5,000	1	5
Transfusion recipients (first telephone contact)	5,000	1	0.2
Transfusion recipients (second telephone contact)	2,000	1	0.5
Transfusion recipients (follow-up interview and study)	200	3	0.5
Transfusion recipients (first interview of recipients tested at ARC/ABC)	500	1	0.2
Transfusion recipients (follow-up interview and study of recipients tested at ARC/ABC)	100	3	0.5

Dated: October 4, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–26272 Filed 10–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0780]

Agency Information Collection Activities; Announcement of OMB Approval; Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 26, 1999 (64 FR 40377), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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

[1] Food and Drug Administration. Guidance For Industry. Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV. Rockville, MD: Center for Biologics Evaluation and Research, FDA; September 1998.

number. OMB has now approved the information collection and has assigned OMB control number 0910–0037. The approval expires on September 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: September 30, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–26221 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0926]

Agency Information Collection Activities; Announcement of OMB Approval; Regulations Under the Federal Import Milk Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Regulations Under the Federal Import Milk Act'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 12, 1999 (64 FR 44019), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0212. The approval expires on September 30, 2002. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: September 30, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 99–26223 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Training on Electronic Records; Electronic Signatures; Satellite Conference; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of satellite conference and public meeting.

The Food and Drug Administration (FDA) (Office of Regulatory Affairs, Center for Biologics Evaluation and Research, Center for Food Safety and Applied Nutrition, Center for Drug Evaluation and Research, Center for Devices and Radiological Health, and the Center for Veterinary Medicine) is announcing the following satellite conference and public meeting entitled ''Industry Training on 21 CFR Part 11.'' The topics to be discussed are current good manufacturing practices, electronic recordkeeping requirements, validation of electronic recordkeeping systems, and the answers to frequently asked questions.

Date and Time: The satellite conference and public meeting will be held on Thursday, October 21, 1999, 1 p.m. to 4 p.m., eastern standard time.

Contact: Laura C. Woolf, Center for Biologics Evaluation and Research (HFM–40), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–3840, FAX 301–827–3843, e-mail: woolf@cber.fda.gov.

SUPPLEMENTARY INFORMATION: The satellite conference announced in this document is a repeat of the satellite conference at the public meeting announced in the **Federal Register** of December 14, 1998 (63 FR 68778). The satellite conference is intended to inform FDA-regulated industries, and especially, small business about the requirements for electronic recordkeeping according to 21 CFR part 11 and to provide for a dialogue with FDA. The satellite conference addresses the requirements of both the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) that mandates outreach activities by Government agencies directed to small businesses and section 406(b) of the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115) that calls for involvement of FDA with its stakeholders in cooperative activities to ensure the quality of marketed products.

There are no meeting sites and registration is not necessary for the satellite conference and public meeting. To view the satellite conference, companies with satellite capability will need to downlink the coordinates. The coordinates are as follows: C Band Galaxy 6 @ 99 west Transponder 20.

Dated: September 30, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–26222 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Clinical Chemistry and Clinical Toxicology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 28, 1999, 8:30 a.m. to 5 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Veronica J. Calvin, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12514. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on a premarket notification for an over-the-

counter device that measures triglycerides from whole blood fingersticks.

Procedure: On October 28, 1999, from 9 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 15, 1999. Oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:15 a.m. and between approximately 1:45 p.m. and 2:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 15, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 28, 1999, from 8:30 a.m. to 9 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information regarding pending and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 30, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–26219 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4130]

Medical Devices; Draft Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X–Ray Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems.'' This draft guidance document provides guidance to industry on certain information about assembly, installation, adjustment, and testing that original equipment manufacturers must disclose at cost to users and assemblers of diagnostic x-ray equipment systems. The scope of the disclosure requirement needs clarification due to the development of computerized technology and inclusion in software of specific information that some manufacturers consider proprietary. This draft guidance explains what information must be disclosed to ensure that diagnostic x-ray components or diagnostic x-ray systems are able to meet applicable Federal performance standards that reduce or maintain x-ray exposure to the patient and operator at the lowest possible level.

DATES: Written comments concerning this draft guidance must be submitted by January 6, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance must be submitted to the Dockets Management Branch, (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Thomas M. Jakub, Center for Devices and Radiological Health (HFZ–322), Food and Drug Administration, 9024 Gaither Rd., Rockville, MD 20850, 301–594–4591.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Radiation Control for Health and Safety Act of 1968 (RCHSA) Public Law 90–602, is to protect the public from the unnecessary or dangerous electronic product radiation by establishing performance standards. Under the authority of RCHSA, now incorporated into the Federal Food, Drug, and Cosmetic Act (the act) at section 532 (21 U.S.C. 360ii), FDA issued regulations that require manufacturers to provide information to assemblers, users, and any one else upon request, that is needed to ensure compliance with applicable federal performance standards. The performance standards establish calculated criteria that reduce or maintain x-ray exposure to the patient and operator at the lowest possible level. The scope of information that manufacturers must provide includes instructions, installation, adjustment, and testing (AIAT) of x-ray components (21 CFR 1020.30(g)). With the advancement of technology, use of computers and corresponding software, manufacturers need clarification about what information must be disclosed to satisfy the requirements of AIAT disclosure. The regulation states that manufacturers shall provide AIAT information, ''* * * at cost not to exceed the cost of publication and distribution* * *.'' The cost manufacturers charge for AIAT software required under the guidance document should permit the manufacturer to recover its expenses in producing the additional unit of the software, but should not include initial development costs or a profit margin. FDA is especially interested in receiving comments from interested parties on the issue of cost under the performance standard.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on information disclosure by manufacturers to assemblers for diagnostic x-ray systems. 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 applicable statute, regulations, or both. The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems'' via your fax machine, call the CDRH Facts–On–Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second

voice prompt press 2, and then enter the document number (2619) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes ''Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance on Information Disclosure by Manufacturers to Assemblers for Diagnostic X-ray Systems'' will be available at http://www.fda.gov/cdrh/oc.

IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 23, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–26220 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–3028]

Medical Devices: Draft Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) That Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) That Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease.'' This draft guidance is intended to provide current insights on the design, data collection, and data analysis of studies that are important to the premarket approval application (PMA) approval process for in vitro diagnostic (IVD) devices pertaining to HCV. This draft guidance document represents the agency's current thinking regarding PMA's for IVD devices that pertain to HCV infection. This draft guidance is neither final nor is it in effect at this time.

DATES: Written comments concerning this draft guidance must be submitted by January 6, 2000.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5″ diskette of the draft guidance entitled ''Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) That Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance is intended to provide recommendations for studies to demonstrate performance of assays for detecting evidence of infection with HCV. A meeting of the Microbiology Devices Advisory Panel was held on February 12, 1998, to obtain suggestions and recommendations from the panel regarding scientific information necessary for premarket approval of tests for hepatitis viruses. Following the panel meeting and subsequent discussions between FDA and representatives of the Health Industry Manufacturers Association (HIMA), HIMA developed a draft guidance document for tests to detect HCV and submitted it to FDA. This draft guidance document issued by FDA reflects modifications to HIMA's proposed document and, therefore, does not necessarily reflect HIMA's original or current position.

II. Significance of Guidance

This draft guidance represents the agency's current thinking regarding the content of PMA's for IVD devices pertaining to HCV. 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 applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive the draft guidance entitled ''Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) That Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at the second voice prompt press 2, and then enter the document number (1353) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the draft guidance entitled ''Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) That Are Indicated for Diagnosis or Monitoring of HCV Infection or Associated Disease,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. The ''Guidance on Premarket Approval Applications for Assays Pertaining to Hepatitis C Viruses (HCV) That Are Indicated for Diagnosis on Monitoring of HCV Infection on Associated Diseases'' will be available at http://www.fda.gov/cdrh.

IV. Comments

Interested persons may, on or before January 6, 2000, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. 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 brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 13, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–26303 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0265]

Guidance for Industry on Qualifying for Pediatric Exclusivity; Availability; Revised

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised guidance for industry entitled ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act.'' FDA is publishing this revised guidance to assist industry in interpreting provisions of the Food and Drug Administration Modernization Act of 1997 (Modernization Act). This guidance will remain in effect until superseded by regulations or new guidance.

DATES: Comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Manufacturers Assistance and Communications Staff (HFM–42), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT:

Terrie L. Crescenzi, Center for Drug Evaluation and Research (HFD–2), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–7337, FAX 301–594–6197, e-mail ''crescenzit@cder.fda.gov'', or

Elaine C. Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852,301–827–0641, FAX 301–827–0644, e-mail ''esber@cber.fda.gov''.

SUPPLEMENTARY INFORMATION:

I. Description of the Guidance

FDA is announcing the availability of a revised guidance for industry entitled ''Qualifying for Pediatric Exclusivity Under Section 505A of the Federal Food, Drug, and Cosmetic Act.'' Section 111 of the Modernization Act (Public Law 105–115), signed into law by President Clinton on November 21, 1997, created section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a). Section 505A of the act permits certain applications to obtain an additional 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits information relating to the use of the drug in the pediatric population. FDA plans to issue regulations through notice-and-comment rulemaking to implement the pediatric exclusivity provisions of the Modernization Act. The agency is publishing this procedural guidance to explain how the agency intends to implement section 505A of the act in the interim. The guidance will be updated as appropriate. This guidance will remain in effect until superseded by regulations or new guidance.

This guidance describes FDA's current thinking on how sponsors may qualify for pediatric exclusivity under section 505A of the act. The guidance includes the following topics: (1) Whether studies for certain drugs will be requested under section 505A(a) or (c), (2) the definition of pediatric studies, (3) the content and format of an FDA request for pediatric studies, (4) how an applicant can obtain an FDA written request, (5) the content of a written agreement for the conduct of pediatric studies, (6) the definition of commonly accepted scientific principles, (7) the filing of reports of studies, (8) acceptance of studies by FDA, (9) scope and nature of pediatric exclusivity, (10) publication of exclusivity determinations, (11) treatment of information submitted in support of a request for pediatric exclusivity, (12) how pediatric studies required under FDA regulations may qualify for pediatric exclusivity, and (13) what happens after January 1, 2002, the sunset date for the pediatric exclusivity provisions of the Modernization Act.

This level 1 guidance document is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on the implementation of section 505A of the

act and pediatric exclusivity. 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 requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

II. Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for proposed pediatric studies is already covered by the collection of information on investigational new drug application regulations (21 CFR part 312) submitted to the Office of Management and Budget (OMB) for review and clearance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB approved the information collection and assigned OMB control number 0910–0014. The approval expires on December 31, 1999.

III. Electronic Access

Copies of this guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' and at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: September 28, 1999.

Margaret M. Dotzel,

Acting Associate Commssioner for Policy.

[FR Doc. 99–26224 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995.

Proposed Project: Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms (OMB No. 0915–0044)—Revision

The HPSL Program provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The deferment form (HRSA form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR—HRSA form 501) provides the Federal Government with information from participating and non-participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The estimate of burden is as follows:

Form No.	Number of respondents	Response per response	Total annual respondents	Hours per respondents	Total burden hours
Defer–HRSA–519	10,358	1	10,358	[1] 10	1,726
AOR–HRSA–501	1,302	1	1,302	[2] 4	5,208
Total Burden	11,660		11,660		6,934

[1] Minutes.
[2] Hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: September 30, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–26225 Filed 10–7–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G–Education,.

Date: November 3–5, 1999.

Agenda: 1 p.m. to 12 p.m.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave, NW., Washington, DC 20007.

Contact Person: Harvey P. Stein, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rm. 611B, Rockville, MD 20892, 301–496–7481.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 30, 1999.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–26238 Filed 10–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, U24 Cooperative Agreement.

Date: October 7, 1999.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Rockledge Center II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Terry Bishop , Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7210, Bethesda, MD 20892–7924, (301) 435–0303.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 30, 1999.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–26237 Filed 10–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 1, 1999.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 12, 1999.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean G. Noronha, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 15, 1999.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 23, 1999.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 30, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9606, 301–443–4728.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 2, 1999.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell E. Martenson, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated October 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–26233 Filed 10–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: November 17, 1999.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca H. Hackett, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–26234 Filed 10–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secret as or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 9–10, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Houmam Araj, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 15, 1999.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: L.R. Stanford, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 2, 1999.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Contact Person: Jean G. Noronha, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–26235 Filed 10–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical Aging Review Committee, October 24, 1999, 6 p.m. to October 25, 1999, 5 p.m. Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD, 20814 which was published in the **Federal Register** on September 28, 1999, 64FR52337.

The meeting will be held on October 24 starting at 7 p.m. The meeting is closed to the public.

Dated: October 1, 1999.

Nancy Middendorf,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–26236 Filed 10–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–40]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 8, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been

determined suitable or unsuitable this week.

Dated: September 30, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–25832 Filed 10–7–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by November 8, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Coordinator). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679–7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: *Applicant:* Dr. Margaret Devall, USDA Forest Service, Center for Bottomland Hardwood Research, Stoneville, Mississippi, TE017374–0.

The applicant requests authorization to collect seeds of the endangered pondberry, Lindera melissifolia, for propagation and research on federal properties throughout Mississippi and Arkansas for the purpose of enhancement of survival of the species.

Applicant: Paul E. Durfield and Jeremy Poirier, International Paper, Bainbridge, Georgia, TE017004–0

The applicant requests authorization to take (capture for banding and harass during translocation, nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas, and Tennessee for the purpose of enhancement of survival of the species.

Dated: October 1, 1999.

Sam D. Hamilton,

Regional Director.

[FR Doc. 99–26273 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

U,S. Fish and Wildlife Service

[I.D. 092799C]

Marine Mammals; File No. 960–1528

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and wildlife Service (FWS), Interior.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that the University of California Museum of Natural History Collections, Department for Environmental Studies, Santa Cruz, CA 95064, has applied in due form for a permit to take all species of Cetacea, Pinnipedia, and Sirenia for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before November 8, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment. (See SUPPLEMENTARY INFORMATION).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Applicant requests authorization to import marine mammal parts from salvaged specimens worldwide. No specimens will be collected from live animals in the wild. Only specimens from salvaged animals dead at sea or on shore, dead incidental to a commercial fishery where such fishery is legal, and dead as a result of natural causes. Specimens will be deposited in the Museum for scientific study that will contribute to baseline data on the distribution, age and growth, assimilation of environmental contaminants, DNA analysis reproductive and other biological aspects of marine mammals.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents associated with this application are in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA, 98115–0070 (206/526–6150);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Arlington, VA 22203 (1–800–358–2104).

Dated: September 28, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: September 30, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 99–26408 Filed 10–7–99; 8:45 am]

BILLING CODE 3510–22–F, 4310–55–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–065–1220–AA]

Closure and Restriction Order; Salmon River Corridor

AGENCY: Bureau of Land Management, Upper Columbia-Salmon Clearwater District, Idaho.

ACTION: Notice of Closure and Restriction Order for BLM Lands in Salmon River Corridor, Order No. ID–060–20.

SUMMARY: By order, the following closures and restrictions apply to the area known as: the ''Salmon River Corridor,'' described as all public land administered by the Bureau of Land Management within ¼ mile of either side of the Salmon River from Vinegar Creek (River Mile 112) to Eagle Creek (River Mile 12) located within Idaho and Nez Perce Counties.

(1) The possession of an alcoholic beverage by a person under 21 years of age is prohibited.

(2) The sale or gift of an alcoholic beverage to a person under 21 years of age is prohibited.

The authority for establishing these closures and restrictions is Title 43, Code of Federal Regulations, Section 8364.1.

The Closures and restrictions become effective immediately and shall remain in effect until revoked and/or replaced with supplemental rules.

The closures and restrictions are necessary to protect persons, property, and public lands and resources. Minors abusing alcohol cause a public disturbance and create a risk to other persons on public lands.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed one year.

FOR FURTHER INFORMATION CONTACT: Greg Yuncevich, Field Manager, Bureau of Land Management, Cottonwood Field Office, Rt. 3, Box 181, Cottonwood, ID 83522.

Dated: October 1, 1999.

Ted Graf,

Acting District Manager.

[FR Doc. 99–26397 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–GG–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–018–1430–01; CACA 38618]

Notice of Public Meeting; Proposed Land Withdrawal for the South Fork of the American River, El Dorado County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice announces the forthcoming public meeting that will provide an opportunity for public involvement regarding the Department of the Interior, Bureau of Land Management's application for protective withdrawal for the BLM lands along the South Fork of the American River.

DATES: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: John Beck, Realty Specialist, BLM Folsom Field Office, (916) 985–4474.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a public meeting will be held to provide an opportunity for public comment regarding the application by the Department of the Interior, Bureau of Land Management for a 50-year protective withdrawal on 3,368.85 acres of land along the South Fork of the American River. On December 3, 1997, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the land from settlement, sale location, or entry under the general land laws, including the mining laws, subject to valid existing rights. The Notice of the proposal was published in the **Federal Register** and the Mountain Democrat newspaper on December 15, 1997, and January 19, 1998, respectively.

The purpose of the proposed withdrawal is to assure long term protection and preservation of the riparian areas, wildlife habitat, scenic quality, and high recreation values of the public lands, newly acquired lands, and lands proposed to be acquired in the corridor of the South Fork of the American River.

The meeting will begin at 7 p.m., Monday, November 8, 1999, at the Best Western Motel, 6850 Greenleaf Rd., Placerville, CA. The agenda will include: (1) An information briefing by the Bureau of Land Management; (2) Oral Statements by interested parties; (3) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting. All statements received will be considered by the BLM before any recommendation concerning the proposed withdrawal is submitted to the Secretary of the Interior for final action under the authority of Section 204 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1714).

Dated: October 1, 1999.

D.K. Swickard,

Field Manager, Folsom Field Office.

[FR Doc. 99–26396 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–EI: CACA 39394]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 39394 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 39394 effective May 1, 1999, subject to the original

terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: September 30, 1999.

Sean E. Hagerty,

Acting Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 99–26244 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–EI: CACA 39395]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 39395 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 39395 effective May 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: September 30, 1999.

Sean E. Hagerty,

Acting Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 99–26245 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–EI: CACA 39396]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 39396 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rental and royalties a the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register.**

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 39396 effective May 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office, (916) 978–4370.

Dated: September 30, 1999.

Sean E. Hagerty,

Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 99–26246 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–EI: CACA 39397]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 39397 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 39397 effective May 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: September 30, 1999.

Sean E. Hagerty,

Acting Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 99–26247 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–EI: CACA 39398]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 39398 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 39398 effective May 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: September 30, 1999.

Sean E. Hagerty,

Acting Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 99–26248 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–EI: CACA 39407]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 39407 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from May 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 39407 effective May 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: September 30, 1999.

Sean E. Hagerty,

Acting Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 99–26249 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW133228]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW133228 for lands in Washakie County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW133228 effective July 1,1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Theresa M. Stevens,

Acting Chief, Leasable Minerals Section.

[FR Doc. 99–26240 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska Arctic Pipeline Workshop

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of public workshop.

SUMMARY: This notice announces a public workshop to be conducted by the Center for Cold Ocean Resources and Engineering (C–CORE), St. John's, Newfoundland, Canada, under sponsorship of MMS to facilitate the exchange of technical information on Arctic offshore pipelines. The objective of the workshop is to bring together a group of experts with skills related to offshore pipeline design, operation, maintenance, and inspection, to examine the current state of practice for Arctic pipeline alternatives under consideration for Alaska's offshore oil and gas reserves.

DATES: The public workshop will be held on November 8 and 9, 1999, from 8:30 a.m. to 5:30 p.m., each day, at the location listed in the address section.

ADDRESSES: The workshop will be held in the ballroom of The Hotel Captain Cook, 939 West Fifth Avenue, Anchorage, Alaska 99501. Phone: (907) 276–6000, Email: info@captaincook.com, Reservations: 1–800–323–7500 (Preferred Hotels) or 1–800–843–1950 (Hotel Captain Cook).

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Smith, MMS, Engineering and Research Branch, phone: (703) 787–1580, fax: (703) 787–1549, or email: robert.w.smith@mms.gov. For registration, please see below.

SUPPLEMENTARY INFORMATION: MMS issued the Record of Decision and Approval Letter for the Development and Production Plan (DPP) for the BP Exploration Alaska Northstar Project on September 3, 1999. The approval covered the Federal portion of the joint State/Federal project, and is the first development plan approved for the Federal OCS offshore Alaska. The DPP provides for drilling up to seven wells from the Northstar Island into two OCS leases. MMS is reviewing the proposed Liberty DPP for a facility on the Beaufort Sea OCS. BP Exploration (Alaska) Inc. submitted the plan and the associated Oil Spill Contingency Plan (OSCP) to MMS in February 1998. The Liberty development project is located in the Beaufort Sea approximately 20 miles east of Prudhoe Bay. The DPP and associated OSCP are presently under regulatory and environmental review.

As a result of these two offshore developments, MMS awarded a research effort titled ''An Engineering Assessment Of Double Wall Versus Single Wall Designs For Offshore Pipelines In An Arctic Environment'' to C-CORE, St. John's, Newfoundland, Canada, to independently evaluate specific pipeline alternatives. In an effort to further develop an understanding of Arctic offshore pipeline issues, this workshop was initiated as part of the research effort to facilitate the exchange of information between the public, engineering community and regulatory agencies. Below is a preliminary agenda.

Preliminary Agenda

Introduction
- Overview of Arctic offshore activities and current MMS initiatives.
- Objectives of workshop

Challenges for Arctic Offshore Pipeline Developments
- To set scene and focus for workshop discussions

Arctic Offshore Pipelines Comparative Assessment

Project overview
Pipeline Design, Construction and Operation
- Comparison of strain and stress criteria
- Northstar & Liberty Pipelines (Heavy wall Pipelines)
- Colville River Crossing Cased Pipeline
- Cook Inlet Pipelines

Pipeline Technology
- Pipeline configuration alternatives—overview
- Insulated Pipe-in-pipe (as used in deepwater Gulf of Mexico)
- Flexible Pipe (as used for flexible rises and jumpers on subsea pipelines)
- Pipe Bundles, including BPX Troika
- Petrochemical applications (for containment)

Pipeline Operational Monitoring Technology
- LEOS leak detection system
- SCADA based detection technology
- Position monitoring by pigging
- Monitoring & leak detection with smart pigging

Pipeline Risk Analysis
- PIRAMID Program
- Pipeline defect assessment
- Risk management system
- RAM Pipe, inc corrosion
- Life cycle costs vs. perceived risk

Regulations Panel Discussions
This session will have the regulatory agencies (responsible for reviewing and monitoring pipeline-related functions) making presentations about their regulatory requirements.
- Department of Transportation
- Alaska Department of Environmental Conservation
- State Pipeline Coordinator's Office
- Minerals Management Service

Breakout sessions for discussion (3 or 4 groups)
Consensus building of appropriate technologies & techniques for Arctic offshore pipelines.

Summary & Concluding Remarks
Including discussion leader summaries.

Registration: The workshop will not have a registration fee. However, to assess the probable number of attendees, MMS asks attendees to register by contacting Dr. Ryan Phillips, C-CORE Workshop Coordinator at: (709) 737–8354, fax: (709) 737–4706, or email: ryanp@morgan.ucs.mun.ca.

Dated: September 30, 1999.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–26243 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the National Preservation Technology and Training Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board will meet on November 8, 9, and 10, 1999, in New Orleans, Louisiana.

The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training, as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board will meet in a meeting room on the 11th floor of the Pan-American Life Insurance Company building, 601 Poydras Street in New Orleans. Matters to be discussed will include, officer and committee reports; Northwestern University report; staff program updates; the establishment of non-Federal support for the Center's programs; budget review; grant program, cooperating organizations, task forces reports on NCPTT development and systems, and Millenium projects.

Monday, November 8 the meeting will start at 9 a.m. and end at 5 p.m. On Tuesday, November 9 the meeting will start at 9 a.m. and end at 5 p.m. On Wednesday, November 10, the meeting will be begin at 8:30 a.m. and end at 11:30 a.m. Meetings will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Elizabeth A. Lyon, Chair, National Preservation Technology and Training Board, P.O. Box 1269, Flowery Branch, Georgia 30542.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, 1849 C Street NW, Washington, DC 20240, telephone: (202) 343–9573. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Preservation Assistance Division, Suite 200, 800 North Capitol Street, Washington, DC.

Dated: October 4, 1999.

E. Blaine Cliver,

Chief, HABS/HAER, Designated Federal Official, National Park Service.

[FR Doc. 99–26392 Filed 10–7–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,019]

Georgia-Pacific Corporation, Bemidji Hardboard Plant, Bemidji, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 12, 1999 in response to a worker petition which was filed on behalf of workers at Georgia-Pacific Corporation, Bemidji Hardboard Plant, Bemidji, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 16th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–26364 Filed 10–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 211(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than October 18, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 7th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 09/07/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,792	Lapine Forestry Service (Comp)	Lapine, OR	08/23/1999	Post and Poles.
36,793	McWilliam Forge (Comp)	Rockaway, NJ	08/19/1999	Forged Aerospace Products.
36,794	C and K Components, Inc. (Comp)	Clayton, NC	08/23/1999	Electro Mechanical Switches.
36,795	Dresser-Roots (Wrks)	Connersville, IN	08/23/1999	Truck Mount Totary Positive Blowers.
36,796	Keepshapes, Inc. (Wrks)	Bronx, NY	08/21/1999	Shoulder Pads.
36,797	Regional Recycling LLC (USWA)	Attalla, AL	08/23/1999	Scrap Steel for Recycling Purposes.
36,798	Koul Apparel Ind, Inc. (Comp)	Notasulga, AL	08/23/1999	Women's Pull-On Pants.
36,799	Marijon Dyeing/Finishing (UNITE)	East Rutherford, NJ	08/17/1999	Color and Finish Greige Goods.
36,800	JW Stanndard (Wrks)	Largo, FL	08/17/1999	Wind Chimes.
36,801	Case Corp. (UAW)	Racine, WI	08/20/1999	Agricultural Equipment.
36,802	U.S. Sports, Inc. (Wrks)	Huntingdon, PA	08/20/1999	Canvas Footwear and Slippers.
36,802A	U.S. Sports, Inc. (Wrks)	Lake Worth, FL	08/20/1999	Canvas Footwear and Slippers.
36,803	Nine West Group, Inc. (Comp)	Vanceburg, KY	08/23/1999	Women's Shoes.
36,804	Key Manufacturing Co. (Comp)	Jasper, AL	08/24/1999	Wooden Furniture Parts.
36,805	Uni-Tone Soles and Heels (Wrks)	Hanover, PA	08/24/1999	Abacus Shoe Soles.
36,806	Rexam Medical Packaging (Wrks)	Madison, WI	08/24/1999	Sterilizable Paper Medical Bags.
36,807	Island Creek Coal Co. (UMWA)	Oakwood, VA	08/20/1999	Coal.
36,808	Dor-O-Matic (Wrks)	Greendale, WI	08/20/1999	Architectural Hardware.
36,809	Bayer Diagnostics (Comp)	Oberlin, OH	08/26/1999	Blood Analyzers.
36,810	Ikon Office Solutions (Wrks)	Jefferson City, MO	08/24/1999	Copy Machines.
36,811	John E. Fox Co. (Wrks)	El Paso, TX	08/19/1999	Sewing Machines and Parts.
36,812	Woodward and Dickerson (Wrks)	Salem, OR	08/21/1999	Secondary Wood Products.
36,813	Thomson Financial Co. (Wrks)	Boston, MA	08/23/1999	Mini Financial Reports.
36,814	Grand Rapids Die Cast (UAW)	Walker, MI	08/27/1999	Plumbing Fixtures.
36,815	Glamis Gold (Comp)	Valmy, NV	08/26/1999	Gold.
36,816	Barrick Bullfrog, Inc. (Comp)	Beatty, NV	08/26/1999	Gold and Silver Dore.
36,817	Dynegy, Inc. (Wrks)	Houston, TX	08/23/1999	Natural Gas Liquids.
36,818	Chevron Pipeline Co. (Comp)	New Orleans, LA	08/24/1999	Admin. Services for Pipeline Trans.

[FR Doc. 99–26367 Filed 10–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitios have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistant, at the address show below, not later than October 18, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington DC 20210.

Signed at Washington, DC, this 13th day of September, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 09/13/1999]

TA–W	Subject firm (Petitioners)	Location	Date of petition	Product(s)
36,819	Mississippi Rags (Comp)	Meridian, MS	08/12/1999	rags.
36,820	L.B. Russell Chemicals (Comp)	Piscataway, NJ	08/24/1999	Photographic Chemical Solutions.
36,821	AMP, Inc (Wrks)	Glen Rock, PA	08/30/1999	Thermoplastics.
36,822	CTI Ancor (Wrks)	Greenway, WI	08/27/1999	Polycrete Unicells.
36,823	Furst McNess Co (Wrks)	Longview, TX	08/31/1999	Livestock Feed.
36,824	Cooper Industries (IBEW)	Syracuse, NY	09/01/1999	Commercial and Industrial Fittings.
36,825	Chahta Enterprise (Wrks)	Dekalb, MS	08/25/1999	Wire Harnesses.
36,826	UNITOG Co. (UNITE)	Warrensburg, MO	07/13/1999	Uniforms.

[FR Doc. 99–26368 Filed 10–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,437]

U.S. Can Company, Green Bay, WI; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the North U.S. Can Company, Green Bay, Wisconsin. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,437; U.S. Can Company
Green Bay, Wisconsin (September 29, 1999)

Signed at Washington, DC this 30th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–26366 Filed 10–7–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 18, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 30th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 08/30/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,752	Veritas DGC Land (Co.)	Houston, TX	07/06/1999	Seismic Data Analysis.
36,753	Sarah's Attic (Wkrs)	Chesaning, MI	08/18/1999	Extruded Rubber, Weatherstripping.
36,754	Lucas Varity (Co.)	Mt. Vernon, OH	08/11/1999	Brakes and Brake Parts.
36,755	BTR Sealing Systems (UNITE)	Maryville, TN	08/16/1999	Extruded Rubber Weatherstripping.
36,756	Walkin Shoe Co. (Co.)	Schuy'll Haven, PA	08/17/1999	Shoes.
36,757	Duro Industries—Pioneer (Co.)	Fall River, MS	08/05/1999	Dyed and Finished Fabrics.
36,758	Blount, Inc (Co.)	Spencer, WI	08/09/1999	Hydraulic Cylinders.
36,759	Worcester Co. (Co.)	N. Providence, RI	08/17/1999	Wool Fabric.
36,760	Pillowtex (Wkrs)	Opelika, AL	08/19/1999	Towels—Kitchen & Bath.
36,761	Hunter Sadler (Co.)	Tupelo, MS	08/18/1999	Men's Suits.
36,762	RESCO Products—Crescent (Wkrs)	East Canton, OH	08/17/1999	Refractory Brick.
36,763	American Power Conversion (Wkrs)	W. Kingston, RI	08/06/1999	Uninterruptable Power Supplies.
36,764	McKenica, Inc. (Wkrs)	Buffalo, NY	08/16/1999	Heat Exchange Products.
36,765	Toyoshima Indiana, Inc. (Wkrs)	Indianapolis, IN	08/14/1999	Leaf Springs for Semitrucks.
36,766	Mobile Drilling (Wkrs)	Indianapolis, IN	08/17/1999	Drilling Rigs & Tooling Equipment.
36,767	Diesel Recon Co. (Co.)	Santa Fe Spring, CA	08/16/1999	Diesel Engines (Activities to Transfer).

APPENDIX—Continued

[Petitions instituted on 08/30/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,768	Funtime Sportswear (Wkrs)	Moscow, PA	08/09/1999	Exercise Sportswear.
36,769	American Meter Co. (IUE)	Erie, PA	08/13/1999	Machining Parts for meter Components.
36,770	Lawson Mardon Thermaplate (Co.)	Piscataway, NJ	08/13/1999	Thermoforned Plastic Trays.
36,771	AMRON L.L.C. (IAMAW)	Waukesha, WI	08/02/1999	Steel Canister.
36,772	Cross Country Apparel (Co.)	Savannah, TN	08/05/1999	Knit Apparel.
36,773	Eagle Geophysical (Co.)	Houston, TX	08/18/1999	Drilling and Exploration Service.
36,774	Gates Rubber (Co.)	Granite Falls, MN	08/10/1999	Lubrication Equip., Metal Stamping.
36,775	Hart Metals (Co.)	Tamaqua, PA	08/13/1999	Magnesium Powder.
36,776	Westwood LLC (Wkrs)	Southbridge, MA	08/09/1999	Textile Materials.
36,777	Candlewood Industries (UNITE)	Bayshore, NY	08/10/1999	Beachwear.
36,778	Brubaker Tool Co. (USWA)	Millersburg, PA	08/11/1999	Taps, End Mills, Cutting Tools.
36,779	DCB Corp. (Co.)	Madisonville, TN	08/09/1999	Boy's Military Style Pants.
36,780	Vans, Inc (Wkrs)	Santa Fe Spring, CA	07/30/1999	Casual Sport Footwear.
36,781	Armco, Inc. (USWA)	Mansfield, OH	08/04/1999	Stainless Steel Coils.
36,782	Durkopp Adler America (Co.)	Norcross, GA	08/19/1999	Industrial Sewing Equipment.
36,783	Boss Manufacturing (Co.)	Greenville, AL	08/19/1999	Work Gloves.
36,784	Dura Automative Systems (Co.)	Spring Lake, MI	08/18/1999	Spare Tire Carriers.
36,785	Marion Mills LLC (Wkrs)	Marion, NC	08/19/1999	Grey Goods.
36,786	EIEIO, Inc (Wkrs)	Fall River, MA	08/14/1999	Infants & Children's Apparel.
36,787	Siemens Westinghouse (Wkrs)	Glassport, PA	08/14/1999	Generator's Rotors, Excitors.
36,788	Deerlodge Apparel (Wkrs)	Deerlodge, TN	08/19/1999	Ladies' Apparel.
36,789	Darex Corp. (Wkrs)	Ashland, OR	08/18/1999	Drill Sharpeners.
36,790	Geissler Knitting Mills (Co.)	Hazelton, PA	08/18/1999	Knit Tee Shirts, Tank Tops.
36,791	MK Contract Services (Wkrs)	El Paso, TX	08/19/1999	Garments.

[FR Doc. 99–26365 Filed 10–7–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed consolidation and renewal of Job Corps applicant forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 7, 1999.

ADDRESSES: June P. Veach, Office of Job Corps, 200 Constitution Avenue N.W., Room N–4507, Washington, D.C. 20210. E-Mail Internet Address: Jveachj@doleta.gov; Telephone number: (202) 219–5556, ext. 129 (This is not a toll-free number); Fax number: (202) 501–5457 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Job Corps program is designed to serve low-income young women and men, 16 through 24, who are in need of additional vocational, educational and social skills training, and other support services in order to gain meaningful employment, return to school or enter the Armed Forces. Authorized by the Workforce Investment Act (WIA) of 1998. Job Corps is operated by the Department of Labor through a nationwide network of 118 Job Corps centers. The program is primarily a residential program operating 24 hours per day, 7 days per week, with non-resident enrollees limited by legislation to 20 percent of national enrollment. These centers presently accommodate more than 40,000 students. To ensure that the centers are filled with youth who are low-come, as well as capable of and committed to doing the work necessary to achieve the benefits of Job Corps, certain eligibility requirements have been established by the legislation.

The purpose of this collection is to gather information from applicants to the program in order to determine their eligibility for Job Corps. These forms are critical to the screening process. They are the initial forms completed by the Job Corps admissions counselors for each applicant.

The ETA 652, Job Corps Data Sheet, is used to obtain information for screening and enrollment purposes to determine eligibility for the Job Corps program in accordance with the requirements of the Workforce Investment Act. It is prepared electronically by an admissions counselor for each applicant. It also provides demographic characteristics for program reporting purposes. Data for the form are collected by interview. The information collected determines eligibility in regard to age, legal U.S. residency, family income/welfare status, school status, behavioral problems (if any), parental consent, and child care needs of each applicant.

The ETA 655, Statement from Courts or Other Agencies, and ETA 655A, Statement from Institution, collect essential information for determining an applicant's eligibility. They are used to document past behavior problems for all applicants, as well as provide a basis for projecting future behavior. If this

information were not obtained, serious problems could result from enrolling potentially harmful or disruptive individuals in Job Corps, which is a residential program. This could have legal implications for the Federal government.

The ETA 682, Child Care Certification, is used to certify an applicant's arrangements for care of a dependent child(ren) while the applicant is in Job Corps.

II. Review Focus

The Department of Labor 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 submissions of responses.

III. Current Actions

The following Job Corps application forms have expired. It was anticipated that the change to electronic collection would be completed much more quickly than has happened. The final version was not completed until October 1998. In addition, the anticipation and introduction of the Workforce Investment Act created an additional delay because of changes in Job Corps eligibility requirements mandated by that Act. Job Corps has continued to collect application data because it was necessary to the application process that youth receiving training on Job Corps centers be eligible for the benefits provided. No harm has been done while the forms were expired. No outreach and admissions reports have been submitted and/or developed for Congress during the period.

Job Corps has now implemented electronic collection of data during the Job Corps application process and the changes required by the WIA have been incorporated in the collection. We request that the following forms used in the application process be reinstated and consolidated under OMB 1205–0025:

- ETA 652, Job Corps Data Sheet (1205–0025);
- ETA 655, Statement from Court or Other Agency (1205–0026);
- ETA 655A, Statement from Institution (1205–0026); and
- ETA 682, Child Care Certification (1205–0033).

The ETA 682 was previously included with the ETA 653, Health Questionnaire, in 1205–0033, but was removed from that collection by OMB at Job Corps' request. In addition, several items from the ETA 660, Request for Readmission, in 1205–0031, have been moved to the ETA 652. The remainder of the information on the form is duplicated on other forms or is not necessary to the application process and we request that the ETA 660 be canceled as a separate form.

The overall result of these actions will be a reduction in paperwork burden hours and a streamlined electronic application. One other application form used to collect data for determining eligibility to Job Corps is the ETA 653, Health Questionnaire, which has previously been approved under 1205–0033. This will remain as a separate collection for OMB approval purposes, although it is collected electronically with the above forms at the time of application.

Type of Review: Reinstatement with change.

Agency: Employment and Training Administration.

Title: Application Data Collection.

OMB Numbers: 1205–0025.

Agency Numbers: ETA 652, ETA 655, ETA 655A, and ETA 682.

Recordkeeping: The applicant is not required to retain records; admissions counselors or contractor main offices are required to retain records of applicants who enroll in the program for 3 years from the date of application.

Affected Public: Individuals who apply to Job Corps; business or other for-profit/not-for-profit institutions; State, Local or Tribal Government.

CITE/REFERENCE/FORM/ETC

Title	Total respondents	Frequency	Average time per respondent	Burden
Job Corps Application: ETA 652	103,000	1/person	25 minutes	40,291
Statement from Court: ETA 655	103,000	1/person	5 minutes	8,608
Statement from Institution: ETA 655A	10,300	On occasion	5 minutes	861
Child Care Certification: ETA 682	7,000	On occasion	5 minutes	584
Total				50,334

Total Burden Cost (capital/startup): When the electronic system was initially piloted and implemented in 1996, the start-up costs totaled $2,680,000, including $2,000,000 for 925 computer workstations, $480,000 for training Job Corps admissions counselors and center staff and, in 1997, $200,000 for replacements and memory upgrades. These were one-time-only costs.

Total Burden Cost (operating/maintaining): Operating and maintenance services associated with these forms are contracted yearly by the Federal government with outreach and admissions contractors, according to designated recruiting areas. This is one of the many functions the contractors perform for which precise costs cannot be identified. Based on past experience of recruitment contractors, however, the annual cost for contractor staff and related costs is estimated to be about $771,750. An additional cost of $80,138 is added for the value of applicant time, making a total cost of $851,888. For the approximately 70 percent of Job Corps applicants who have never worked, no value is determined. For the remaining 30 percent of applicants who have been in the work force previously for any length of time, whether full-time or less, the current minimum wage of $5.15 is used to determine the value of applicant time (ETA 652, including the ETA 660: $66,744, ETA 655: $13,208, ETA 655A: $111; and ETA 682: $75).

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and

Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 4, 1999.

Mary H. Silva,

National Director, Job Corps.

[FR Doc. 99–26362 Filed 10–7–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3074]

Stan Lumsden Farm, Bloomfield, MO; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on April 6, 1998, in response to a petition filed on the same date on behalf of the owner of Stan Lumsden Farm, Bloomfield, Missouri.

The Department has been unable to locate principals of the firm or otherwise obtain information to reach a determination on worker eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of September 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–26363 Filed 10–7–99; 8:45 am]

BILLING CODE 4510–30–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 concerning provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. PA990063 dated March 12, 1999. See PA990052.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

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
- PA990005 (Mar. 12, 1999)
- PA990006 (Mar. 12, 1999)
- PA990008 (Mar. 12, 1999)
- PA990021 (Mar. 12, 1999)
- PA990024 (Mar. 12, 1999)
- PA990025 (Mar. 12, 1999)
- PA990029 (Mar. 12, 1999)
- PA990030 (Mar. 12, 1999)
- PA990047 (Mar. 12, 1999)
- PA990052 (Mar. 12, 1999)
- PA990061 (Mar. 12, 1999)
- PA990066 (Mar. 12, 1999)

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- FL990001 (Mar. 12, 1999)
- FL990009 (Mar. 12, 1999)
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MN990035 (Mar. 12, 1999)
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MN990059 (Mar. 12, 1999)
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Kansas
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KS990015 (Mar. 12, 1999)
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CO990006 (Mar. 12, 1999)
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 1st day of October 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–25968 Filed 10–7–99; 8:45 am]

BILLING CODE 4510–27–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

OFPP Policy Letter 99–1 on Small Business Procurement Goals

AGENCY: Executive Office of the President, Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP).

ACTION: Notice of final policy directive; rescission of OFPP Policy Letter 91–1.

SUMMARY: OFPP is issuing OFPP Policy Letter 99–1 which contains guidance on implementing government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses. The goals for each of these small business categories are stated as a percentage of overall Federal procurement dollars. The policy letter also provides guidance on reporting requirements that will help the Small Business Administration (SBA) determine whether executive agencies are reaching these goals. This policy letter supersedes OFPP Policy Letter 91–1. As a result of comments received following publication of the proposed policy letter in the **Federal Register** on April 2, 1999 (64 FR 16003), we are making minor changes to the policy letter as follows: (1) The title of the policy letter is shortened to read: ''Small Business Procurement Goals'' (2) A new subparagraph is added in Section 6 to make clear that—in addition to working with each agency to establish goals for awarding prime contracts—SBA also negotiates with the agencies goals for subcontract awards made by prime contractors; and (3) The last sentence in Section 7a.2 is revised to make clear that an agency's narrative report should include plans for improvement if the agency fails to achieve their small business goals.

EFFECTIVE DATE: November 8, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Gerich or Keith Coleman, OFPP, at 202–395–3501. To obtain a copy of this policy letter, please log on to the Acquisition Reform Network at: www.arnet.gov/References/Fwd__Index.html.

SUPPLEMENTARY INFORMATION:

A. Background

We issued an earlier Policy Letter, 91–1, entitled ''Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts'' on March 11, 1991. That policy letter addressed sections 502 and 503 of the Business Opportunity Development Act of 1988. Section 502 establishes goals for contract awards to small business concerns and small disadvantaged businesses. Section 503 requires the President to include the agencies' actual goal achievements in the ''State of Small Business'' report. The report also includes an analysis of an agency's failure to achieve the goals, and the number and dollar value of prime contracts awarded to small firms through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards.

We need to issue this new policy letter because of statutory changes made in 1994 and 1997. Section 7106 of the Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. Section 603 of the Small Business Reauthorization Act of 1997 increases the annual government-wide goal for prime contract awards to small business concerns from not less than 20 percent to not less than 23 percent. The Act also adds a 3 percent HUBZone small business goal phased-in over the next 5 years.

This policy letter supports SBA's policies of establishing its own guidance on the goals by: (1) Establishing with each agency separate goals for prime contracts and subcontracts in each of the small business categories; (2) Establishing for each agency goals for awards made under section 8(a) of the Small Business Act; (3) Requiring use of Federal procurement data in the Federal Procurement Data System (FPDS) to measure goal achievements rather than requiring agencies to provide this information in separate reports; and (4) Requiring that, prior to the beginning of each fiscal year, SBA mutually establish with each agency goals for each of the small business categories.

B. Comments

We received fourteen letters in response to the request for comments on proposed OFPP Policy Letter 99–1 (64 FR 16003; April 2, 1999). A summary of the main issues and concerns raised in the comments follows:

1. *Comment:* OFPP should cancel this policy letter because it is unnecessary since SBA issues its own guidance.

Response: This policy letter supports SBA's comprehensive policy guidance on establishing with each agency mutually acceptable prime and subcontract goals to implement statutory goaling requirements. The policy letter provides, among other things, guidance to implement the statutory five percent goals for small disadvantaged businesses (SDBs) and women-owned small businesses. The Small Business Act requires a goal of at least five percent for the combination of prime and subcontract awards. To implement this requirement, the policy letter establishes a separate five percent goal for prime contracts and a separate five percent goal for subcontracts for these two small business categories. This policy helps to promote small disadvantaged business and women-owned small business participation in federal contracting, and ensures easy and reasonable tracking of data to measure goal achievements. Therefore, we believe it is essential to issue this policy letter.

2. *Comment:* The policy letter should not impose mandatory goals for HUBZones until SBA certifies a significant number of HUBZone small businesses. Some commenters suggested that we consider an alternative phase-in process or rely on self-certification to implement the HUBZone goals.

Response: Section 603 of the Small Business Reauthorization Act of 1997 (Pub. L. 105–135) requires the three percent HUBZone small business goal to be phased in over five years beginning with one percent of prime contract awards to be awarded to such firms in fiscal year 1999. In addition, section 603 requires prime contractors to establish goals for subcontracts with HUBZone small businesses. While we realize that only a small number of HUBZone small businesses have been certified by SBA, the statute does not provide the authority to implement alternative dates. Further, the statute requires SBA to certify HUBZone small business concerns and maintain a list of all qualified firms. Therefore, agencies and prime contractors may not rely on self-certification to determine the status of HUBZone small business concerns.

3. *Comment:* For sake of brevity, the title of the policy letter should be shortened.

Response: We will change the title to read ''Small Business Procurement Goals.''

4. *Comment:* The chart in section 6b. of the policy letter that lists the statutorily-required goals and percentages should include all reportable goaling categories—even those without a statutorily established percentage, such as prime 8(a) awards and small business subcontract awards.

Response: The primary purpose of the policy letter is to provide guidance to implement the statutory government-wide small business goals, including goals for SDBs, women-owned small businesses, and HUBZone small business concerns. While agencies must

negotiate with SBA goals for 8(a) prime awards and subcontract goals for each small business category, we believe the charts in sections 6b. and 6c. should be limited to implementation of the statutory government-wide goals. However, we will add a new subparagraph in section 6 to make clear that agencies must establish goals for subcontract awards to small businesses, SDBs, women-owned small businesses, and HUBZone small businesses.

5. *Comment:* Section 6e. of the policy letter indicates that agencies may count prime contract awards to small businesses toward more than one goal. This practice has historically been recognized as ''double counting'' and may provide opportunities for inaccuracies. This section should be clarified to indicate how ''double counting'' may be utilized.

Response: The policy letter recognizes that the government-wide small business goal of 23 percent includes all the goals for the specific categories of small businesses. Therefore, agencies may count awards to small businesses toward more than one goal. We do not view this as ''double counting'' since the goals for each small business category are a subset of the overall small business goal. SBA's ''Guidelines on Goals Under Procurement Preference Programs'' provides more detailed guidance on the goal-setting process.

6. *Comment:* Section 7a.(2) of the policy letter should be clarified to require ''plans for improving performance'' only from agencies that fail to meet their goals.

Response: Section (h)(2)(C) of the Small Business Act requires the SBA Administrator to include in the report to the President an analysis of why the government-wide goals or any individual agency goals were not met. The commenter suggests that section 7a.(2) should make clear that an agency's narrative report should include plans for improvement if the agency fails to achieve their goals. If the agency achieves its goals, the narrative report would not include a plan for improvement. We will revise the last sentence in section 7a.(2) to clarify this point.

7. *Comment:* The policy letter correctly emphasizes the importance of accurate and complete prime and subcontract data in the Federal Procurement Data System (FPDS) since SBA uses FPDS data to measure an agency's small business goal achievements. However, agencies should have timely and easy access to their FPDS data. There should be a government-wide standard for which agencies can take small business credit when ordering from another agency's contract. Also, there should be an initiative to improve the quality and reporting of subcontracting data.

Response: We realize that providing agencies with easy access to their FPDS data would help to improve the quality of the data. We are working with GSA's Federal Procurement Data Center, which operates the FPDS, to provide agencies easier on-line access to their data. Currently, the FPDC does provide agencies with reports of their data upon request. We have drafted government-wide policy that would allow agencies to take small business credit when ordering from another agency's contract, e.g., Federal Supply Schedules, government-wide agency contracts, and multi-agency contracts. When finalized, this guidance should help to improve the FPDS data and permit an agency to properly reflect its level of small business participation. We also agree that there should be an initiative to improve the subcontracting data collection process. In that regard, we plan to work with SBA and the Procurement Executives Council to identify problem areas where improvements can be made.

8. *Comment:* The second bullet in section 7b.(4)(ii) of the policy letter should read ''competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals' to coincide with the requirements of section 503 of Public Law 100–656, Presidential Reports on Contracting Goals. As currently written, it seems to imply that agencies have the authority to set-aside acquisitions for SDBs, a statutory authority that has been superseded by the provisions in FAR Part 19 which allow for price evaluation adjustments.

Response: Throughout the policy letter, we refer to ''small business concerns owned and controlled by socially and economically disadvantaged individuals' as ''small disadvantaged businesses.'' We are using procurement mechanisms like price evaluation adjustments set forth in FAR Part 19 instead of set-asides for small disadvantaged businesses. However, competition restricted to small disadvantaged businesses also includes competitive 8(a) awards. We do not believe the policy letter should be changed.

Dated: October 1, 1999.

Deidre A. Lee,

Administrator.

POLICY LETTER 99–1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Small Business Procurement Goals

1. *Purpose.* This policy letter provides guidance to Executive Branch departments and agencies on government-wide goals for procurement contracts awarded to small businesses, HUBZone small businesses, small disadvantaged businesses and women-owned small businesses (''small businesses''). It also provides guidance on reporting requirements that will help the Small Business Administration (SBA) determine whether agencies are reaching these goals.

2. *Supersession Information.* This policy letter replaces OFPP Policy Letter 91–1, ''Government-Wide Small Business and Small Disadvantaged Business Goals for Procurement Contracts,'' dated March 11, 1991, which is rescinded.

3. *Authority.* This policy letter is based on the Small Business Act, the Office of Federal Procurement Policy Act, the Business Opportunity Development Reform Act of 1988, the Federal Acquisition Streamlining Act of 1994, and the Small Business Reauthorization Act of 1997.

4. *Background.* The Small Business Act requires executive agencies, in consultation with SBA, to develop annual goals for contract awards to small businesses. SBA monitors agency performance and reports their achievements to the President. The Office of Federal Procurement Policy Act, 41 U.S.C. 405, empowers the Administrator for Federal Procurement Policy to prescribe government-wide procurement policies.

The Business Opportunity Development Reform Act establishes government-wide goals for small businesses and small disadvantaged businesses and requires the President to include the agencies' actual goal achievements in the ''State of Small Business'' report. The report must also include an analysis of any failure to achieve the goals, and the number and dollar value of prime contracts awarded to small businesses through noncompetitive negotiated procurements, restricted and unrestricted competitions, and information on subcontract awards. The Federal Acquisition Streamlining Act of 1994 (FASA) establishes a 5 percent women-owned small business goal. The Small Business Reauthorization Act of 1997 (SBRA) adds a 3 percent HUBZone small business goal phased-in over the next 5 years. It also increases the annual government-wide goal for prime contract awards to small business concerns to not less than 23 percent.

In March 1991, the OFPP issued Policy Letter 91–1 to implement government-wide goals for small businesses and small disadvantaged businesses. This policy letter includes the guidance from Policy Letter 91–1, and also implements the more recent statutory provisions of FASA and SBRA.

This policy letter also supports the Small Business Administration's (SBA) policies of establishing its own guidance on the goals, establishing with each agency mutually acceptable prime contract goals for awards made under section 8(a) of the Small Business Act, and using procurement data in the Federal Procurement Data System to measure accomplishments rather than requiring agencies to provide this information in separate reports.

5. *Policy.* Prior to the beginning of each fiscal year, SBA will mutually establish with each agency goals for participation by small businesses, small disadvantaged businesses, HUBZone small businesses, and women-owned small businesses. The agencies' cumulative goals shall count toward accomplishment of the government-wide goals.

6. *Goals.*

a. The government-wide small business goal is not less than 23 percent of the total value of all prime contracts awarded for the fiscal year. This includes all the goals for the specific categories of small businesses.

b. The following table lists the specific goals for small disadvantaged and women-owned small businesses.

The goal for . . .	is . . .
Small disadvantaged business prime contracts.	Not less than 5 percent of the value of all prime contract awards.
Small disadvantaged business subcontracts.	Not less than 5 percent of the value of all subcontract awards.
Women-owned small business prime contracts.	Not less than 5 percent of the value of all prime contract awards.
Women-owned small business subcontracts.	Not less than 5 percent of the value of all subcontract awards.

c. The following table lists the specific goals for HUBZone small businesses.

For FY . . .	the percentage goal is at least . . .
1999	1 percent of the value of all prime contract awards
2000	1.5 percent of the value of all prime contract awards.
2001	2 percent of the value of all prime contract awards.
2002	2.5 percent of the value of all prime contract awards.
2003 and after	3 percent of the value of all prime contract awards.

d. There is no specific statutory requirement to establish goals for awards made pursuant to section 8(a) of the Small Business Act. However, agencies must mutually establish with SBA acceptable goals for awards to 8(a) firms.

e. Agencies must mutually establish with SBA acceptable goals for prime contract awards as well as subcontract awards by prime contractors to small businesses, small disadvantaged businesses, women-owned small businesses, and HUBZone small businesses.

f. Agencies may count prime contract awards to small businesses toward more than one goal. Prime contract awards to small businesses, women-owned small businesses, small disadvantaged businesses, 8(a) firms, and HUBZone small businesses count toward the government-wide small business goal.

7. *Responsibilities.*

a. Agency Responsibilities

(1) Each department or agency must negotiate annually in good faith with SBA to establish its specific prime and subcontract goals for small businesses, woman-owned small businesses, small disadvantaged businesses, HUBZone small businesses, and 8(a) firms. These goals should provide the maximum practicable opportunity for all these categories of small businesses to participate in contracts let by the agency. SBA's annual guidance on establishing small business goals, entitled ''Guidelines on Goals Under Procurement Preference Programs,'' covers the goal-setting process.

(2) At the end of the fiscal year, each agency must submit a narrative report to SBA analyzing its achievements and any failures to achieve its small business goals for the year. If an agency fails to achieve its goals, the report also must include plans for improving performance in the next year.

(3) Agencies must ensure that their prime and subcontract data in the Federal Procurement Data System is accurate and complete in order to measure their small business goal accomplishments.

b. SBA Responsibilities

(1) Prior to the beginning of each fiscal year, SBA will work with each agency to establish mutually acceptable prime and subcontract goals for the different categories of small businesses.

(2) SBA must ensure that the mutually established cumulative goals for all agencies meet or exceed the government-wide small business goal of 23%.

(3) SBA must compile and analyze agencies' achievements against their individual small business procurement goals and report the results to the President.

(4) SBA will use data in the Federal Procurement Data System to determine:

(i) Agencies' success in reaching their procurement goals for prime contracts and subcontracts;

(ii) The number and dollar value of prime contracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns through:

- Noncompetitive negotiation,
- Competition restricted to small disadvantaged business concerns,
- Competition restricted to small business concerns and HUBZone small business concerns, and
- Unrestricted competitions; and

(iii) The dollar value of subcontracts awarded to small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

8. *Information Contact.* Direct any questions regarding this policy letter to Michael Gerich or Keith Coleman, OFPP, 202–395–3501.

9. *Effective Date.* The policy letter is effective 30 days after issuance.

Deidre A. Lee,

Administrator.

[FR Doc. 99–26217 Filed 10–7–99; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection

described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 8, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on July 20, 1999 (64 FR 38928 and 38929). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA?s estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Court Order Requirements.

OMB number: 3095-New.

Agency form number: NA Form 13027.

Type of review: Regular.

Affected public: Veterans and Former Federal civilian employees, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 5,000.

Estimated time per response: 15 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 1,250 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.162. In accordance with rules issued by the Office of Personnel Management, the National Personnel Records Center (NPRC) of the National Archives and Records Administration (NARA) administers Official Personnel Folders (OPF) and Employee Medical Folders (EMF) of former Federal civilian employees. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT), the NPRC also administers military service records of veterans after discharge, retirement, and death, and the medical records of these veterans, current members of the Armed Forces, and dependents of Armed Forces personnel.

The NA Form 13027, Court Order Requirements, is used to advise requesters of (1) the correct procedures to follow when requesting certified copies of records for use in civil litigation or criminal actions in courts of law and (2) the information to be provided so that records may be identified.

Dated: October 4, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–26289 Filed 10–7–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency information collection activities: Submission for OMB review; comment request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before November 8, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on July 20, 1999 (64 FR 38927 and 38928). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) The accuracy of NARA's estimate of the burden of the proposed information collection; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Authorization for Release of Military Medical Patient Records, Request for Information Needed to Locate Medical Records, Request for Information Needed to Reconstruct Medical Data, and Questionnaire about Military Service.

OMB number: 3095-New.

Agency form number: NA Forms 13036, 13042, 13055, and 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 79,800.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent wishes to request information from a military personnel, military medical, and dependent medical record).

Estimated total annual burden hours: 6,650 hours.

Abstract: The information collection is prescribed by 36 CFR 1228.162. In accordance with rules issued by the Department of Defense (DOD) and the Department of Transportation (DOT, U.S. Coast Guard), the National Personnel Records Center (NPRC) of the National Archives and Records

Administration (NARA) administers military personnel and medical records of veterans after discharge, retirement, and death. In addition, NRPC administers the medical records of dependents of service personnel. When veterans, dependents, and other authorized individuals request information from or copies of documents in military personnel, military medical, and dependent medical records, they must provide on forms or in letters certain information about the veteran and the nature of the request. A major fire at the NPRC on July 12, 1973, destroyed numerous military records. If individuals? requests involve records or information from records that may have been lost in the fire, requesters may be asked to complete NA Form 13075, Questionnaire about Military Service, or NA Form 13055, Request for Information Needed to Reconstruct Medical Data, so that NPRC staff can search alternative sources to reconstruct the requested information. Requesters who ask for medical records of dependents of service personnel and hospitalization records of military personnel are asked to complete NA Form 13042, Request for Information Needed to Locate Medical Records, so that NPRC staff can locate the desired records. Certain types of information contained in military personnel and medical records are restricted from disclosure unless the veteran provides a more specific release authorization than is normally required. Veterans are asked to complete NA Form 13036, Authorization for Release of Military Medical Patient Records, to authorize release to a third party of a restricted type of information found in the desired record.

Dated: October 4, 1999.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–26290 Filed 10–7–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before November 22, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Energy, Agency-wide (N1–434–97–2, 1 item, 1 temporary item). Cancelled checks issued by contractors.

2. Department of Energy, Agency-wide (N1–434–98–22, 1 item, 1 temporary item). Records pertaining to the development of software. Files relate to such matters as data processing requests, project descriptions, policy statements, and project constraints and exclusions. Files may also include such records as estimates, approval signatures, analyses, test results, meeting minutes, requests for

modifications, and related correspondence and working papers.

3. Department of Health and Human Services, Public Health Service (N1–90–99–1, 59 items, 32 temporary items). Older records accumulated by the Public Health Service (PHS), ca. 1945–1977, which relate to administrative matters. Included are records relating to budget, personnel, and other housekeeping activities, routine correspondence, raw and/or incomplete data concerning such matters as emergency care and dental treatment, statistical information on medical supplies, duplicate background materials, and computer printouts. Records proposed for permanent retention include subject files relating to international health issues, environmental health, and influenza, files documenting the activities of a wide variety of PHS components, budget documents and other files pertaining to programs for individuals rejected for military service during the Vietnam War, and files relating to organizational changes.

4. Department of State, Office of Management, Policy and Planning (N1–59–99–16, 29 items, 16 temporary items). Records relating to Office of Inspector General Reports and forms used as input for an automated system that tracks Departmental personnel positions. Also included are electronic copies of documents created using electronic mail and word processing that are accumulated by the Office. Files proposed for permanent retention include record-keeping copies of general subject files and records relating to projects, bureau and mission planning, overseas staffing, and accountability review boards.

5. Department of the Treasury, Bureau of the Public Debt (N1–53–99–1, 92 items, 92 temporary items). System outputs from electronic systems previously scheduled as temporary. The schedule covers outputs of systems used to perform routine administrative functions or to facilitate accounting or accounting-related work processes (primarily verification and correction of financial data).

6. Department of the Treasury, Bureau of the Public Debt. (N1–53–99–2, 183 items, 164 temporary items). Public Debt Accounting and Reporting System (PARS) and related records. Most PARS data tables, used primarily to verify and correct raw financial data, are proposed for disposal as are electronic and hardcopy financial data inputs and outputs used to verify and correct financial data. Hardcopy versions of the Interest Expense on the Public Debt and the Monthly Statement of the Public Debt are proposed for permanent retention while the related electronic word processing and spreadsheet versions are proposed for disposal. Fifteen PARS data tables are proposed for permanent retention including raw financial data and tables needed to interpret the data.

7. U.S. Office of Government Ethics, Office of Information Resource Management (N1–522–99–3, 50 items, 50 temporary items). Electronic tracking and administrative systems with related inputs, outputs, and systems documentation. Included are systems relating to calendars of events, document management, public financial disclosure reporting, certificates of divestiture, blind and diversified trusts, the status of pending legislation, designated agency ethics official listings, audits, annual agency ethics program questionnaires, registration for ethics conferences and workshops, the preparation of mailing labels, and emergency notifications.

Dated: September 23, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–26288 Filed 10–7–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9 a.m. to 5:30 p.m., on Tuesday, November 9, 1999.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after January 1, 2000.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Laura S. Nelson, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 99–26251 Filed 10–7–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the

public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* October 28, 1999.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Dodge Humanities Scholar in Residence, submitted to the Division of Education at the October 15, 1999 deadline.

2. *Date:* October 29, 1999.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for NEH/Dodge Humanities Scholar in Residence, submitted to the Division of Education at the October 15, 1999 deadline.

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 99–26250 Filed 10–7–99; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413, 50–414 and 50–370]

Duke Energy Corporation et al. (Catawba Nuclear Station, Units 1 and 2) (McGuire Nuclear Station, Unit 2); Exemption

I

Duke Energy Corporation et al. (the licensee, Duke) is the holder of Facility Operating License Nos. NPF–35 and NPF–52, for the Catawba Nuclear Station (CNS), Units 1 and 2, and NPF–9 and NPF–17, for the McGuire Nuclear Station (MNS), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

Each of these facilities consists of two pressurized water reactor units located at the licensee's Catawba site in York County, South Carolina, and McGuire site in Mecklenburg County, North Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR), Part 54, addresses the various requirements for renewal of operating licenses for nuclear power plants. Section 54.17(c) of Part 54 specifies:

> An application for a renewed license may not be submitted to the Commission earlier than 20 years before the expiration of the operating license currently in effect.

Pursuant to 10 CFR 54.15, the Commission may grant an exemption from the requirements of 10 CFR Part 54 in accordance with the provisions of 10 CFR 50.12, which in turn specifies that the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are considered to be present under Section 50.12(a)(2)(ii) where application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

By letter dated June 22, 1999, the licensee requested an exemption from 10 CFR 54.17(c) for McGuire, Unit 2, and Catawba, Units 1 and 2.

In initially promulgating Section 54.17(c) in 1991, the Commission stated that the purpose of the time limit was ''to ensure that substantial operating experience is accumulated by a licensee before it submits a renewal application'' (56 FR 64963). At that time, the Commission found that 20 years of operating experience provided a sufficient basis for renewal applications. However, in issuing the amended Part 54 in 1995, the Commission indicated it would consider an exemption to this requirement if sufficient information was available on a plant-specific basis to justify submission of an application to renew a license before completion of 20 years of operation (60 FR 22488).

The 20-year limit was imposed by the Commission to ensure that sufficient operating experience was accumulated to identify any plant-specific aging concerns. As set forth below, McGuire, Unit 2, and both Catawba units are sufficiently similar to McGuire, Unit 1, such that the operating experience for McGuire, Unit 1, should apply to the other three units. In addition, the other three units have accumulated significant operating experience. Accordingly, under the requested exemption, sufficient operating experience will have been accumulated to identify any plant-specific aging concerns for all four units.

McGuire and Catawba are two-unit stations comprised of four-loop Westinghouse pressurized water reactors with ice-condenser containments and a rated power of 3411 megawatts. The licensee states that it will use the combined experience it has gained by operation of the McGuire and Catawba units to perform the evaluations required to support the license renewal applications. The licensee also states that the two McGuire units and the two Catawba units are similar in design, operation, and maintenance. This statement is supported by a review of the McGuire and Catawba Updated Final Safety Analysis Reports (UFSARs). In particular, Section 1.3 of the Catawba UFSAR describes the similarities in design between McGuire and Catawba. Table 1–2 of the Catawba UFSAR lists significant similarities between systems, structures, and components installed at Catawba and McGuire, including elements of the reactor system, the reactor coolant system, the engineered safety features, and the auxiliary systems. Additionally, Duke indicates that the current aging management programs and activities are also similar at each of the four units.

The licensee also stated that there are ''regular and systematic exchanges of information on plant-specific operating experience among all three Duke nuclear stations'' (McGuire, Catawba, and Oconee). An example provided was peer communications that occurred on an ongoing basis during the normal course of operation and maintenance of the units. Additionally, during certain infrequent occurrences at any one station, peer observers from the other Duke plants participate to gain firsthand experience and to provide input based on their own experiences. These communications provide the means to continually improve plant programs. Additionally, peer group meetings are held regularly throughout the year to discuss topics of mutual interest. The effectiveness of programs and activities is reviewed, and program changes are often discussed. This sharing of plant-specific operating experience among the Duke nuclear stations is part of Duke's normal process to maintain the effectiveness of plant programs and activities and to continually improve the performance of Duke's nuclear stations.

Given these similarities, the operating experience at McGuire, Unit 1, should be applicable to McGuire, Unit 2, and also to the Catawba units for purposes of the license renewal review. At the earliest date for submitting an application, McGuire, Unit 1, will have achieved the required 20 years of operation and its operating experience will be applicable to Unit 2 which will have almost met the 20-year requirement with 18.3 years of operating experience. At this time, the Catawba units will have operated for a substantial period of time (approximately 16.5 years for Unit 1 and 15.3 years for Unit 2) which provides additional plant-specific operating experience to supplement the McGuire operating experience. The actual twenty

years of operating experience of McGuire Unit 1, in conjunction with the substantial number of years of operation of the other three units, should be sufficient to identify any aging concerns applicable to the four units.

Therefore, sufficient combined operating experience should exist at the earliest possible date for submittal to satisfy the intent of Section 54.17(c), and application of the regulation in this case is not necessary to achieve the underlying purpose of the rule. The staff finds that Duke's request meets the requirement in Section 50.12(a)(2) that special circumstances exist to grant the exemption.

IV

Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii). As stated in Section III above, the staff finds that the combined operating experience of the four McGuire and Catawba units would satisfy the intent of Section 54.17 at the earliest possible date for submittal of concurrent applications (June 13, 2001), and application of the regulation in this case is not necessary to achieve the underlying purpose of the rule. The Commission hereby grants the licensee an exemption from the requirement of 10 CFR 54.17(c). Specifically, this exemption removes the scheduler requirement which prohibits the licensee from applying to the Commission for a renewed license earlier than 20 years (but no earlier than June 13, 2001), before the expiration of the Catawba, Units 1 and 2 and McGuire, Unit 2, operating licenses currently in effect.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR 52802 and 64 FR 52803).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 1st day of October 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–26301 Filed 10–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

Oyster Creek Nuclear Generating Station; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–16, issued to GPU Nuclear, Inc. *et al.,* (the licensee), for operation of the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment requests approval to handle loads up to and including 45 tons using the reactor building crane during power operations. NRC Bulletin 96–02 indicates that plants which will perform ''activities involving the handling of heavy loads over spent fuel, fuel in the reactor core, or safety-related equipment while the reactor is at power * * * and that involve a potential load drop accident that has not previously been evaluated in the FSAR,'' submit a license amendment request for NRC staff review.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By November 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ocean County Library, Reference Department, 110 Washington Street, Toms River, NJ 08753. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one

contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 28, 1999, as supplemented by letters dated August 30, 1999, and September 3, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 4th day of October 1999.

For the Nuclear Regulatory Commission.

Helen N. Pastis,

Senior, Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–26302 10–7–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations''

AGENCY: Office of Management and Budget, Executive Office of the President

ACTION: Final Revision

SUMMARY: This notice finalizes the revision to OMB Circular A–110, required by a provision of OMB's appropriation for fiscal year (FY) 1999, contained in Public Law 105–277. The provision directs OMB to amend Section __.36, Intangible property, of the Circular ''to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act'' (FOIA). Pursuant to the direction of the provision contained in Public Law 105–277, OMB published a Notice of Proposed Revision on February 4, 1999 (64 FR 5684), and a request for comments on clarifying changes to the proposed revision on August 11, 1999 (64 FR 43786). We received over 9,000 comments on the proposed revision and over 3,000 comments on the clarifying changes.

After a review of the comments on the clarifying changes, as well as the comments on the proposed revision, OMB is issuing this final revision to the Circular, as required by the provision contained in Public Law 105–277.

DATES: The revised Circular is effective November 8, 1999.

ADDRESSES: You may obtain the full text of the Circular, the text of this notice, and the text of the February 4th and August 11th notices on OMB's home page (http://www.whitehouse.gov/OMB), under the heading ''Grants Management.'' You many obtain copies of Public Law 105–277 on the Library of Congress's home page (http://thomas.loc.gov).

FOR FURTHER INFORMATION CONTACT: F. James Charney, Policy Analyst, Office of Management and Budget, at (202) 395–3993. Please direct press inquiries to OMB's Communications Office, at (202) 395–7254.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statutory Direction to Amend Circular A–110

Congress included a two-sentence provision in OMB's appropriation for FY 1999, contained in Public Law 105–277, directing OMB to amend Section __.36 of the Circular ''to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act.'' The provision also provides for a reasonable fee to cover the costs incurred in responding to a request. The Circular applies to grants and other financial assistance provided to institutions of higher education, hospitals, and non-profit institutions, from all Federal agencies.

In directing OMB to revise the Circular, Congress entrusted OMB with the authority to resolve statutory ambiguities, the obligation to address implementation issues the statute did not address, and the discretion to balance the need for public access to research data with protections of the research process. In developing this revision to the Circular, OMB seeks to implement the statutory language fairly, in the context of its legislative history. This requires a balanced approach that (1) furthers the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensures that research can continue to be conducted in accordance with the traditional scientific process, and (3) implements a public access process that will be workable in practice.

OMB recognizes the importance of ensuring that the revised Circular does not interfere with the traditional scientific process. Science and technology are the principal agents of change and progress, with over half of the Nation's labor productivity growth in the last 50 years attributable to technological innovation and the science that supports it. Although the private sector makes many investments in technology development, the Federal Government has an important role to play—particularly when risks appear too great or the return to companies too speculative. Its support of cutting-edge science contributes to new knowledge and greater understanding, ranging from the edge of the universe to the smallest

imaginable particles. When the Federal Government changes the requirements that apply to researchers whom it funds, it needs to ensure that the changes do not interfere with cutting-edge science and the benefits that such science provides to the American people.

During the revision process, many commenters expressed concern that the statute would compel Federally-funded researchers to work in a ''fishbowl'' in which they would be required to reveal the results of their research, and their research methods, prematurely. They argued that this could prevent researchers from operating under the traditional scientific process. As in many other fields of endeavor, scientists need to deliberate over, develop, and pursue alternative approaches in their research before making results public. When a scientist is sufficiently confident of their results, they publish them for the scrutiny of other scientists and the community at large. Accordingly, in light of this traditional scientific process, we have not construed the statute as requiring scientists to make research data publicly available while the research is still ongoing.

B. OMB's Two Requests for Public Comment on the Proposed Revision

To address implementation issues, OMB published two notices in the **Federal Register** requesting public comment on the proposed revision to the Circular. Interested parties can consult these notices, which provide extensive background information, for a more complete understanding of the final revision. The original proposal appeared on February 4, 1999 (64 FR 5684). It would have revised Section __.36 of the Circular to read as follows:

(c) The Federal Government has the right to (1) obtain, reproduce, publish or otherwise use the data first produced under an award, and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes. In addition, in response to a Freedom of Information Act (FOIA) request for data relating to published research findings produced under an award that were used by the Federal Government in developing policy or rules, the Federal awarding agency shall, within a reasonable time, obtain the requested data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

OMB received over 9,000 comments in response to the proposed revision. Commenters offered strongly differing views on the provision contained in Public Law 105–277. Those who supported the statutory provision stated that the public has a right to obtain research data that have been funded with tax dollars, particularly when the research findings were used by the Federal Government in developing policy or rules. These commenters also expressed the view that making this data available for public review and validation would improve the scientific process. Commenters who opposed the provision contained in Public Law 105–277 stated that they support the concepts of full disclosure and open access to information. They acknowledged that the traditional scientific process operates by requiring researchers to subject their findings to the scrutiny of the scientific community and the general public, so that those findings may be validated, corrected, or rejected. However, they expressed concern that the approach required by Public Law 105–277 would significantly impair scientific research. In their view, individuals and businesses would be reluctant to agree to participate in research, since the participants' personal privacy and proprietary information could not be assured of confidential treatment.

Many commenters on the original proposal asked OMB to clarify four concepts found in the proposed revision: ''data,'' ''published,'' ''used by the Federal Government in developing policy or rules,'' and cost reimbursement. OMB agreed that clarification was needed for these concepts. On August 11, 1999, OMB published a second notice (64 FR 43786), requesting public comment on clarifications to the proposed revision:

(c) The Federal Government has the right to: (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and (2) authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing a regulation, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions are to be used for purposes of paragraph (d) of this section:

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate researching findings, but not any of the following: Preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (e.g., laboratory samples). Research data also do not include: (A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until publication of their results in a peer-reviewed journal, or information which may be copyrighted or patented; and (B) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when: (A) Research findings are published in a peer-reviewed scientific or technical journal; or (B) a Federal agency publicly and officially cites to the research findings in support of a regulation.

(iii) *Used by the Federal Government in developing a regulation* is defined as when an agency publicly and officially cites to the research findings in support of a regulation (for which notice and comment is required under 5 U.S.C. 553).

The August 11th notice explained these clarifications were intended to implement the statute in a manner that (1) furthers the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensures that research can continue to be conducted in accordance with the traditional scientific process, and (3) implements a public access process that will be workable in practice. OMB received over 3,000 comments in response to the clarifying changes.

After considering the views and concerns of all the commenters, OMB now issues a final revision to the Circular. Although the final revision resembles the clarifying changes proposed on August 11, 1999, it reflects additional changes in response to the public comments.

Issuance of this final revision meets the statutory requirement imposed by OMB's appropriation for FY 1999 within the time in which it has legal effect. As OMB and the agencies develop experience with the revised Circular, changes to the data access process may be considered. These could range from technical and clarifying changes to substantive revision or rescission. OMB also endeavors to

review each of its Circulars every three years.

II. Comments on the Clarifying Changes to the Proposed Revision

A. Research Data

A number of commenters objected that the proposed definition of ''research data'' would transfer authority to determine which records are exempt from mandatory disclosure under FOIA from Federal agencies to recipients. It was not OMB's intent to transfer the agency's FOIA exemption authority to recipients. Rather, we were providing a definition for what constitutes research ''data,'' a term that is not defined in the provision contained in Public Law 105–277. We have always understood that it would be the recipient, not Federal agency staff, who would identify the research data in the recipient's files which are responsive to a FOIA request. In the over 12,000 comments OMB received on the proposed revision, we are not aware of any suggestion that Federal agency staff should perform the search of a recipient's offices to identify responsive research data. The fact that the recipient is responsible for searching for, and identifying, the research data does not mean the Circular has transferred the agencies' responsibility to recipients. When the recipient searches files for responsive research data, pursuant to section .__36(d), and in so doing applies the definition of ''research data,'' the recipient is not exercising the agencies'' authority under FOIA to determine exemptions. Rather, the recipient is simply identifying the research data that must be provided to the agency. The Federal awarding agency would retain its right to ask the recipient for additional information, if it believed the recipient's submission was not complete.

Several commenters expressed concern because the proposed definition of ''research data'' excluded ''information which may be copyrighted or patented.'' These commenters believed the proposed language was too broad. They argued that, under copyright law, a wide range of materials ''may be'' copyrighted, and therefore that such a test could have unintended consequences for the scope of the public access process. In reviewing this language, we note that the protections available in the other parts of the definition (in particular, those protecting ''trade secrets'' and ''commercial information'') broadly protect the intellectual property rights of researchers. The proposed definition was not intended to create additional protections for intellectual property, but rather to ensure that existing protections continue to be respected. To avoid unintended consequences, and to avoid having to sort out the complexities of copyright law (and how it might apply in various areas of Federally-funded research), the final revision substitutes ''similar information which is protected under law'' for ''information which may be copyrighted or patented.'' This language is intended to ensure that the public access process will not upset intellectual property rights that are elsewhere recognized and protected under the law.

Many commenters suggested a change to the definition of ''research data'' to ensure that appropriate data were protected from disclosure, no matter what the format. Their suggestion was to replace the word ''files'' with the word ''information'' in the phrase ''[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.'' Examples of research data that might not be considered to be in the form of a ''file'' include video or audio tapes of research subjects. We agree with this technical change and have included it in the final revision to the Circular.

Several commenters noted that the definition of ''research data'' excluded ''materials necessary to be held confidential until publication of their results in a peer-reviewed journal.'' However, since this language is not exactly the same as that used in the definition of ''published,'' (''either when: (A) Research findings are published in a peer-reviewed scientific or technical journal; or (B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law'') it appeared that the two might be in conflict. We have revised the definition of ''research data'' to avoid any conflict between the two definitions.

Finally, several commenters asked for a clarification to the revision pertaining to research data already available to the public. They suggested that if a request is made for research data the recipient has already made available to the public, through a data archive or other means, further action should not be necessary. Since this principle is used when a Federal agency responds to FOIA requests, it makes sense to apply it in this case as well. However, the Federal awarding agency should respond to the FOIA request with directions on how the requester can access the publicly available research data.

B. Used by the Federal Government in Developing a Regulation

A number of commenters objected to the definition which applied the revision to research data that are used by the Federal Government in developing a ''regulation.'' These commenters had generally been satisfied with the language found in the proposed revision (''used by the Federal Government in developing policy or rules''), because it had been used by congressional sponsors during the legislative consideration of Public Law 105–277. However, these commenters believed that the clarifying changes significantly narrowed the scope of the revision.

As we explained in the August 11th notice, its clarification was intended ''to ensure that members of the public can obtain the information needed to validate those Federally-funded research findings on which Federal agencies rely when they take actions that have the force and effect of law, while at the same time ensuring that the provision contained in Public Law 105–277 can be administered in a manner that is workable for members of the public, Federal agencies and their recipients'' (64 FR 43791). We sought to refer to agency actions that have ''the force and effect of law'' when it included ''a regulation (for which notice and comment is required under 5 U.S.C. 553)'' in the proposed definitions. While it is true that agencies also take actions that have ''the force and effect of law'' when they issue administrative orders (e.g., decisions issued by administrative law judges), we think that agencies rarely rely on Federally-funded research in the context of their administrative orders. Nevertheless, in response to the comments, we have changed the revision to refer to ''an agency action that has the force and effect of law'' rather than to ''a regulation.''

We believe this change addresses the concerns of most commenters. We note that a comment letter from Senators Shelby, Lott, Campbell, and Gramm stated that the revision should not be limited to regulations, but should apply generally to ''federal actions that can dramatically impact the public.'' Agency actions that have ''the force and effect of law'' certainly represent ''federal actions that can dramatically impact the public.'' Indeed, it is through actions that have the force and effect of law that an agency (in the words of one business association) ''imposes costs, mandates, restrictions, obligations and responsibilities on the regulated community.'' However, as stated in the August 11th notice, we have decided

not to extend the scope of the revision to agency guidance documents and other issuances that do not have the force and effect of law. We continue to believe that the public interest in such access is less than where the agency is taking action that has the force and effect of law, and that the revision would not be workable in those circumstances. Some commenters, who argued for a broader application, nevertheless were sympathetic to OMB's desire that the public access provision be workable. For example, one commenter stated that ''the reproposal may be a workable first step in implementation. OMB could start with its August position and see how the system works.''

A number of commenters raised a concern about whether requesters would be able to obtain the research data sufficiently in advance of when public comments are due on proposed regulations. These commenters offered various suggestions for how the Circular might be revised to address this concern. In the prior two notices, OMB has proposed a ''reasonable time'' standard for the response to a request for research data. Since OMB and the agencies do not yet have experience with implementing the public access process, we believe the ''reasonable time'' standard, which allows consideration of the circumstances of a particular case, is appropriate. As OMB and the agencies gain experience with the public access process, we may be able to develop further clarification on this point.

Finally, in the August 11th notice, OMB also requested comment ''on whether limiting the scope of the proposed revision to regulations that meet (a) $100 million [impact] threshold would be appropriate'' (64 FR 43791). Such a limitation received strong support, as well as strong opposition from commenters. For now, we have decided not to limit the scope of the revision to agency actions that have an impact in excess of $100 million. As OMB and the agencies develop experience from implementing the revision, we may revisit this issue.

C. Published

Commenters generally supported the proposed definition of ''published.'' Some in the research community were more supportive of the first part of the definition (when ''(r)esearch findings are published in a peer-reviewed scientific or technical journal'') rather than the second part (when ''(a) Federal agency publicly and officially cites the research findings in support of'' an agency action). However, those who support the provision in Public Law 105–277 argued that the second part is necessary to ensure that the public can have access to the data that underlies Federally-funded research findings on which agencies rely to support their actions. We continue to believe that both parts of the definition are important to successful implementation of a data access provision that furthers the interest of the public in obtaining information while ensuring that research can continue to be conducted in accordance with the traditional scientific process. The only change that has been made to the definition of ''published'' is to make conforming revisions to reflect the previously-discussed change from ''used by the Federal Government in developing a regulation'' to ''used by the Federal Government in developing an agency action that has the force and effect of law.''

D. Cost Reimbursement

Many commenters, particularly recipients of Federally-funded research awards, expressed concern about the reimbursement mechanisms available under the proposed revision. In cases where the award's funding period expires before a request is made, neither the direct nor indirect methods of charging would allow reimbursement. Comments generally focused on the need for a separate agreement between the Federal awarding agency and the recipient, which would cover the full incremental cost of responding to the request. The process for such an agreement could work as follows:

When a request is received by the Federal awarding agency, it would pass the request on to the recipient for an assessment of the costs of complying. Once the recipient has estimated an amount, the Federal awarding agency can apply its existing standards for requesting appropriate prepayments from the requester, as with the FOIA fee. When the recipient transmits the responsive research data to the agency, it should include an accounting for the associated costs. The Federal awarding agency will then seek reimbursement from the FOIA requester and reimburse the recipient.

If we determine that this mechanism is not adequate, we will consider revising OMB Circular A–21, ''Cost Principles for Educational Institutions,'' as necessary to ensure that recipient institutions are reimbursed for the incremental costs of complying with the provision contained in Public Law 105–277.

E. Record Retention

Some commenters questioned whether the final revision would impose additional record retention requirements on recipients. The final revision only affects Section .__36, which does not discuss recordkeeping responsibilities. Section .__53, Retention and access requirements for records, requires that ''(f)inancial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report.'' In addition, ''(t)he Federal awarding agency * * * ha(s) the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards * * *. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.'' Therefore, if a recipient chooses to keep records longer than three years, the recipient must make them available for review in response to requests from the Federal awarding agency.

F. Effective Date

Many commenters sought clarification on the effective date for the final revision. As stated above, the revised Circular is effective thirty days after it appears in the **Federal Register**. The revised Circular is effective for awards issued after the effective date and those continuing awards which are renewed after the effective date.

G. Projects Funded From Multiple Sources

Some commenters asked whether the final revision would apply in situations where research was funded not only by the Federal Government but also by other entities. As noted in the proposed revision, the legislative history to the provision contained in Public Law 105–277 indicates that ''the amended Circular shall apply to all Federally-funded research, regardless of the level of funding or whether the award recipient is also using non-Federal funds.'' 144 Cong. Rec. S12134 (October 9, 1998) (Statement of Sen. Campbell). This statement is consistent with OMB's longstanding interpretation of the Circular which holds that it is applicable to all recipients, regardless of whether they also receive non-Federal funds.

H. Procurement Contracts

Some commenters asked whether the final revision would apply to research that is funded by a Federal agency

through a procurement contract. However, the Circular does not apply to procurement contracts. Section .__2(e) of the Circular defines ''award,'' and specifically excludes ''contracts which are required to be entered into and administered under procurement laws and regulations.''

Issued in Washington, DC, September 30, 1999.

Jacob J. Lew,

Director.

As directed by OMB's appropriation for FY 1999, contained in Public Law 105–277, OMB hereby amends Section __.36 of OMB Circular A–110 by revising paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

__ .36 Intangible property.

* * * * *

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the Federal awarding agency shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the Federal awarding agency obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of paragraph (d) of this section:

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This ''recorded'' material excludes physical objects (*e.g.,* laboratory samples). Research data also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

[FR Doc. 99–26264 Filed 10–7–99; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

[OPM Form of 510, Applying for a Federal Job, and OPM Form of 612, Optional Application for Federal Employment]

Proposed Collection; Comment Request

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 a proposed reinstatement of the optional forms Applying for a Federal Job (OF 510) and Optional Application for Federal Employment (OF 612). The OF 510 is used to provide guidance to the general public on how to apply for Federal jobs. The form provides information on what necessary work, education, and other information applicants should provide in association with vacancy announcements and completing their application method of choice. The OF 612 is a data collection form used to collect applicant qualification information associated with vacancy announcements. The form provides necessary guidance to applicants so that they can be considered for employment when applying for Federal jobs. Presently the OF 612 is downloadable from OPM's electronic forms page on our website at http://www.opm.gov/forms. This information is necessary for Federal agencies to evaluate applicants for Federal jobs under the authority of sections 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394 of title 5 United States Code.

We estimate 245,000 applications will be completed annually. Each form takes approximately 40 minutes to read and/or complete. The annual estimated burden is 9,800 hours.

This action is being taken to continue and expand employment application options for both Federal agencies and job seekers.

Comments on this proposed reinstatement 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 of information is accurate, and is 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 the 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 at mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before December 7, 1999.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, Washington Service Center/Employment Information Office, ATTN: Rob Timmins, 1900 E Street, NW., Room 1425, Washington, DC 20415–9820.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–26230 Filed 10–7–99; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend a system of records.

SUMMARY: This notice proposes to add a new routine use to an existing Internal System of Records.

DATE: The changes will be effected without further notice on November 17, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send written comments to Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415-7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: The new routine use involves the implementation of a new financial management system, pursuant to the Debt Collection Improvement Act of 1996. This Act requires agencies to turn over all receivables more than 180 days past due to the Department of the Treasury for further collection activity. The system uses the Social Security Number as part of the identifying information in the record.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/CENTRAL–1

SYSTEM NAME:

Civil Service Retirement and Insurance Records.

SYSTEM LOCATION:

Associate Director, for Retirement and Insurance Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001. Certain records pertaining to State income tax withholdings from annuitant payments are located with State Taxing Offices. Certain information concerning enrollment/change in enrollment in a health plan under the Federal Employee Health Benefits Program may be located at other agencies. Certain records pertaining to overpayments must be forwarded to the Department of the Treasury for collection activity. Certain records pertaining to enrollment in a Preauthorized Debit Program (PAD) for sending recurring remittances to OPM for service credit and voluntary contributions accounts are maintained with a lockbox bank which operates the PAD program for OPM.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Former Federal employees and members of Congress who performed service subject to the Civil Service Retirement (CSR) or Federal Employees Retirement (FER) system.

b. Current Federal employees who have:

(1) Performed Federal service subject to the CSR system other than with their present agency; or

(2) Filed a designation of beneficiary for benefits payable under the CSR system; or

(3) Requested OPM to review claim for health benefits made under the Federal Employees Benefits Program; or

(4) Enrolled/changed enrollment in a plan under the Federal Employees Health Benefits Program; or

(5) Filed a service credit application in connection with former Federal service; or

(6) Filed an application for disability retirement with OPM and are waiting final decision, or whose disability retirement application has been disapproved by OPM.

c. Former Federal employees who died subject to or who retired under the CSR or FER system, or their surviving spouses, and/or children who have received or are receiving CSR or FER benefits and/or Federal Employees Group Life Insurance benefits, or Federal Employees Health Benefits.

d. Former Federal employees who died subject to or who retired under a Federal Government retirement system other than CSR or FER system, or their surviving spouses and/or children, who have received or are receiving Federal Employees Group Life Insurance benefits and/or Federal Employees Health Benefits.

e. Applicants for Federal employment found unsuitable for employment on medical grounds.

f. Former spouses of Federal employees who have received or are receiving CSR or FER benefits, or who have filed a court order awarding future benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system comprises those retirement service history records of employee's service in the Federal Government other than for the agency in which they may presently be employed. Also included in the system are current personnel data pertaining to active United States Postal Service employees who, by virtue of the provisions set forth in 5 U.S.C. 2105(e), are not considered civil service employees. It also contains information concerning health benefit enrollment/change in enrollment, and information developed in support of claims for benefits made under the retirement, health benefits, and life insurance programs for Federal employees that OPM administers. Also included are medical records and supporting evidence on those individuals whose application for disability retirement has been rejected. Consent forms and other records related to the withholding of State income tax from annuitant payments, whether physically maintained by the State or OPM; are included in this system. Consent forms and other records related to enrollment in the Preauthorized Debit Program, whether physically maintained by the authorized lockbox bank or OPM, are included in the system. These records contain the following information:

a. Documentation of Federal service subject to the CSR or FER system.

b. Documentation of service credit and refund claims made under the CSR or FER system.

c. Documentation of voluntary contributions made by eligible individuals.

d. Retirement and death claims files, including documents supporting the retirement application, health benefits, and life insurance eligibility, medical records supporting disability claims (after receipt by OPM), and designations of beneficiary.

e. Claim review files pertaining to requests that claims made under the Federal Employee Health Benefits Program be reviewed by OPM.

f. Enrollment and change in enrollment information under the Federal Employees Health Benefits Program.

g. Documentation of continuing coverage for life insurance and health benefits for annuitants and their survivors under a Federal Government retirement system other than the CSR or FER system, or for compensationers and their survivors under the Office of Workers Compensation programs.

h. The system also maintains a file of court orders submitted by former spouses of Federal employees. These court orders are submitted to support claims to apportion funds/benefits due to a Federal employee at some point in the future.

i. Records relating to overpayments made to annuitants, survivor annuitants, spouses and/or dependents. These records may be retained in OPM or provided to the Department of the Treasury, pursuant to the Debt Collection Act of 1996. There are two different systems applicable to overpayments. First, OPM has installed a new financial management system. The system uses the Social Security Number as part of the identifying information in the record. The Debt Collection Act of 1996 requires agencies

to turn over all receivables more than 180 days past due to the Department of the Treasury for all further collection activity. The Social Security Number is one of the required fields for transferring the record to the Department of the Treasury. OPM may obtain the SSN from case files or requests made to credit bureaus.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions or amendments:

Section 3301 and chapters 83, 84, 87, 89 of title 5, United States Code, Pub. L. 83–598, 84–356, 86–724, and 94–455; and Executive Order 9397.

PURPOSE(S):

These records provide information and verification on which to base entitlement and computation of CSR and FER and survivors' Benefits, Federal Employees Health Benefits and Enrollments, and Federal Employees Group Life Insurance benefits, and to withhold State income taxes from annuitant payments. These records also serve to review rejection of applicants for Federal employment on medical suitability grounds. These records also may be used to locate individuals for personnel research. These records also provide information and verification concerning enrollment/change in enrollment in a plan under the Federal Employees Health Benefit Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 10 of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To disclose, to the following recipients, information needed to adjudicate a claim for benefits under OPM's or the recipient's benefits program(s), or information needed to conduct an analytical study of benefits being paid under such programs: Office of Workers Compensation Programs; Department of Veterans Affairs Pension Benefit Program; Social Security Administration's Old Age, Survivor and Disability Insurance and Medical Programs, Health Care Financing Administration, and Supplemental Security Income Program; military retired pay programs; Federal civilian employee retirement programs (other than the CSR or FER system); or other national, State, county, municipal, or other publicly recognized charitable or social security administrative agency;

b. To disclose to the Federal Employees Group Life Insurance Office information necessary to verify the election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

c. To disclose to health insurance carriers contracting with OPM to provide a health benefits plan under the Federal Employees Health Benefits Program, Social Security Numbers and other information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination for benefits provisions of such contracts.

d. To disclose to any inquirer, if sufficient information is provided to assure positive identification of an individual on whom a department or agency maintains retirement or insurance records, the fact that an individual is or is not on the retirement rolls, and if so, the type of annuity (employment or survivor, but not retirement on disability) being paid, or if not, whether a refund has been paid.

e. When an individual to whom a record pertains dies, to disclose to any person possibly entitled in the order of precedence for lump-sum benefits, information in the individual's record that might properly be disclosed to the individual, and the name and relationship of any other person whose claim for benefits takes precedence or who is entitled to share the benefits payable. When a representative of the estate has not been appointed, the individual's next of kin may be recognized as the representative of the estate.

f. To disclose to the Internal Revenue Service, Department of the Treasury, information as required by the Internal Revenue Code of 1954, as amended.

g. To disclose to the Department of Treasury information necessary to issue benefit checks or savings bonds.

h. To disclose information to any person who is responsible for the care of the individual to whom a record pertains, and who is found by a court or OPM Medical Officers to be incompetent or under other legal disability, information necessary to assure payment of benefits to which the individual is entitled.

i. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the present address of an annuitant, or former employee, for enforcing child support obligations against such individual.

j. In connection with an examination ordered by the agency under

(1) Medical examination procedures; or

(2) Agency-filed disability retirement procedures.

To disclose to the agency-appointed representative of an employee all notices, decisions, other written communications, or any pertinent medical evidence other than medical evidence that a prudent physician would hesitate to inform the individual of; such medical evidence will be disclosed only to a licensed physician, designated in writing for that purpose by the individual or his or her representative.

k. To disclose information to any source from which additional information is requested relevant to OPM determination on an individual's eligibility for or entitlement to coverage under the retirement, life insurance, and health benefits program, to the extent necessary to identify the individual and the type of information requested.

l. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB circular No. A–19.

m. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files, compiling descriptive statistics, and making analytical studies to support the function for which the records were collected and maintained.

n. To disclose to a Federal agency, in response to its request, the address of any annuitant or applicant for refund of retirement deductions, if the agency requires that information to provide consideration in connection with the collection of a debt due the United States.

o. To disclose to an allottee, as defined in 5 CFR 831.1501, the name, address, and the amount withheld from an annuitant's benefits, pursuant to 5 CFR 831.1501 *et seq.* as an allotment to that allottee to implement the program of voluntary allotments authorized by 5 U.S.C. 8345(h) or 8465.

p. To disclose to a Federal agency, in response to its request, information in connection with the hiring, retention, separation, or retirement of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; the classification of a job; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that OPM determines that the information is relevant and necessary to the requesting party's decision on the matter.

q. To disclose to a State agency responsible for the collection of State income taxes the information required by an Agreement to Implement State Income Tax Withholdings from Civil Service Annuities entered pursuant to section 1705 of Pub. L. 97–35 or 5 U.S.C. 8469 to implement the program of voluntary State income tax withholding required by 5 U.S.C. 8345(k) or 8469.

r. To disclose to the Social Security Administration the Social Security Numbers of civil service annuitants to determine (1) their vital status as shown in the Social Security Master Records; (2) whether recipients of the minimum annuity are receiving at least the Special Primary Insurance Amount benefit from the Social Security Administration; and (3) whether civil service retirees with post-1956 military service credit are receiving benefits from the Social Security Administration.

s. To disclose information contained in the Retirement Annuity Master File; including the name, Social Security Number, date of birth, sex, OPM's claim number, health benefit enrollment code, retirement date, retirement code (type of retirement), annuity rate, pay status of case, correspondence address, and ZIP code, of all Federal retirees and their survivors to requesting Federal agencies and States to help eliminate fraud and abuse in the benefit programs administered by the Federal agencies and States (and those States to local governments) and to collect debts and overpayments owed to the Federal Government, and to State governments and their components.

t. To disclose to a Federal agency, a person or an organization contracting with a Federal agency for rendering collection services within the purview of section 13 of the Debt Collection Act of 1982, in response to a written request from the head of the agency or his other designee, or from the debt collection contractor, the following data concerning an individual owing a debt to the Federal Government: (1) The debtor's name, address, Social Security Number, and other information necessary to establish the identity of the individual; (2) the amount, status, and history of the claim; and (3) the agency or program under which the claim arose.

u. To disclose information contained in the Retirement Annuity Master File, upon written request, to state tax administration agencies, for the express purpose of ensuring compliance with state tax obligations by persons receiving benefits under the Civil Service Retirement System or the Federal Employees Retirement System, and to prevent fraud and abuse, but only the following data elements: name, correspondence address, date of birth, sex, Social Security Account Number, annuity rate, commencing date of benefits, and retirement code (type of retirement).

v. To disclose information to a State court or administrative agency in connection with a garnishment, attachment, or similar proceeding to enforce an alimony or child support obligation.

w. To disclose to a former spouse when necessary to explain how that former spouse's benefit under 5 U.S.C. 8341(h), 8345(j), 8445, or 8467 was computed.

x. To disclose to a Federal or State agency (or its agent) when necessary to locate individuals who are owed money or property either by a Federal agency, state or local agency, or by a financial institution or similar institution.

y. To disclose to a health plan participating in the Federal Employees Health Benefits Program (FEHBP) and to an FEHBP enrollee or covered family member or an enrollee or covered family member's authorized representative, in connection with the review of a disputed claim for health benefits, from information maintained within this system of records, the decision of OPM regarding the disputed claim review.

z. To disclose to a State or local government, or private individual or association engaged in volunteer work, identifying and address information and other pertinent facts, for the purpose of developing an application as representative payee for an annuitant or survivor annuitant who is mentally incompetent or under other legal disability.

aa. To disclose on request to a spouse or dependent child (or court-appointed guardian thereof) of a CSR or FER system annuitant or an annuitant of any other Federal retirement system enrolled in the Federal Employees Health Benefits Program whether the annuitant has changed from a self-and-family to a self-only health benefits enrollment.

bb. To the Defense Manpower Data Center, Department of Defense, and the U.S. Postal Service to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are past due in their repayment of debts owed to the U.S. Government under certain programs administered by the Office of Personnel Management in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

cc. To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency or receiving or eligible to receive some benefit payments from the agency when the Office of Personnel Management as a creditor has a claim against that person.

dd. To disclose information concerning past due receivables to the U.S. Department of the Treasury, Financial Management Service, and to any other debt collection center designated by the Secretary of the Treasury, or any debt collection contractor for the purpose of collecting the receivable by cross servicing in accordance with 31 U.S.C. 3711(M).

ee. To disclose information concerning past due receivables to the Department of the Justice for the purpose of litigating to enforce collection of a past due account or to obtain the Department of Justice's concurrence in a decision to compromise, suspend, or terminate collection action on an overpayment with the principal amount in excess of $100,000 or such higher amount as the Attorney General may, from time to time, prescribe in accordance with 31 U.S.C. 3711(a).

ff. To disclose information concerning past due receivables to the U.S. Department of the Treasury, Financial Management Service, or to any other debt collection center designated by the Secretary of the Treasury, or any other Federal agency for the purpose of collecting the receivable through offset under 31 U.S.C. 3716 (administrative offset), 31 U.S.C. 3720A (Tax refund offset), 5 U.S.C. 5514 (Salary offset), or offset under any other statutory or common law authority.

gg. To disclose information concerning overpayees in arrears to other Federal agencies for the purpose of implementing 31 U.S.C. 3720B, which prohibits persons who are past due on Federal debts from obtaining Federal financial assistance in the form of loans or loan insurance or guaranties.

hh. To disclose information concerning past due receivables to any employer of the debtor for the purpose of conducting administrative wage garnishment pursuant to 31 U.S.C. 3720D.

ii. To disclose information or publicly disseminate information concerning overpayees in arrears and the debt to the public for the purpose of publicly disseminating information regarding the identity of the debtor pursuant to 31 U.S.C. 3720B.

jj. To disclose information concerning past due receivables to State and local governments in an effort to collect monies owed the Federal government.

kk. To disclose information concerning past due receivables to the Internal Revenue Service for the purpose of: Effecting an administrative offset against the individual's income tax refund to recover monies owed the Federal government by the individual, or obtaining the mailing address of a taxpayer in order to locate the individual to collect or compromise a Federal receivable against the taxpayer in accordance with 31 U.S.C. 3711, 3717, 3728, and 3718 and 26 U.S.C. 6103(m)(2) and 6402.

ll. To disclose information concerning past due receivables to any person or for any debt collection purpose authorized by statue not specifically enumerated here.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

DISCLOSURES PURSUANT TO 5 U.S.C. 552A(B)(12):

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic tapes, disks, microfiche, and in folders.

RETRIEVABILITY:

These records are retrieved by the name, Social Security Number, date of birth and/or claim number of the individual to whom they pertain.

SAFEGUARDS:

Records are kept in lockable metal file cabinets or in a secured facility with access limited to those whose official duties require access. Personnel screening is employed to prevent unauthorized disclosure.

RETENTION AND DISPOSAL:

All records on a claim for retirement, life insurance, health benefits, and tax withholdings are maintained permanently. Medical suitability records are maintained for 18 months. Requests for review of health benefits claims are maintained up to 3 years. Disposal of manual records is by shredding or burning; magnetic tapes and discs are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director, Retirement and Insurance Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security Number.
d. Name and address of office in which currently and/or formerly employed in the Federal service.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security Number.
d. Name and address of office in which currently and/or formerly employed in the Federal service.
e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting access must also follow OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records in this system should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Name, including all former names.
b. Date of birth.
c. Social Security Number.
d. Name and address of office in which currently and/or formerly employed in the Federal service.
e. Annuity, service credit, or voluntary contributions account number, if assigned.

Individuals requesting amendment of their records must also follow OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system is obtained from:

a. The individual to whom the information pertains.
b. Agency pay, leave, and allowance records.
c. National Personnel Records Center.
d. Federal civilian retirement systems other than the CSR/FER systems.
e. Military retired pay system records.
f. Office of Workers' Compensation Benefits Program.
g. Veteran's Administration Pension Benefits Program.
h. Social Security Old Age, Survivor, and Disability Insurance and Medicare Programs.
i. Health insurance carriers and plans participating in the Federal Employee Health Benefits Programs.
j. The Office of Federal Employees Group Life Insurance.
k. Official Personnel Folders.
l. The individual's co-workers and supervisors.
m. Physicians who have examined or treated the individual.
n. Former spouse of the individual.
o. State courts or support enforcement agencies.
p. Credit bureaus.

[FR Doc. 99–26231 Filed 10–7–99; 8:45 am]
BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend two existing systems of records.

SUMMARY: OPM proposes to amend two existing systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of systems of records maintained by the agency (5 U.S.C. 552a(e)(4)).

DATES: The changes will become effective without further notice November 17, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Written comments must be sent to the U.S. Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: This notice serves to update the System Location and System Manager for OPM/Internal–12 (Telephone Call Detail Records) and to amend the data

collection, analysis and maintenance of OPM/Central-11 (Presidential Management Intern Program) as a result of an increased use of automated information technology.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

OPM/INTERNAL–12

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

Employment Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are assigned OPM telephone numbers or are authorized to use OPM telephone services, and persons who make or receive telephone calls billed to OPM.

CATEGORIES OF RECORDS IN THE SYSTEM:

Call detail records of long-distance telephone calls placed from OPM telephones or otherwise billed to OPM (including originating and destination telephone numbers, cities, and states; date; time; cost; and duration of each call); records indicating the assignment of telephone numbers to organizations and individuals; and the organizational location of telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments:

31 U.S.C. 1348 and 44 U.S.C. 3101.

PURPOSE(S):

OPM uses call detail records to verify telephone usage and to resolve billing discrepancies so that telephone bills can be paid. OPM may also use these records to allocate the costs of telephone services to OPM organizational units; to identify unofficial telephone calls; to seek reimbursement for unofficial calls; and as a basis for taking action when Agency employees or other persons misuse or abuse OPM telephone services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Routine uses 1 through 7, and 11, of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. By OPM employees or other persons to determine their individual responsibility for telephone calls;

b. By another Federal agency or a telecommunications company providing telephone services to permit servicing the account;

c. By appropriate OPM employees to assist in the planning and effective management of OPM telephone services, and to determine that OPM telephone services are being used in an efficient and economical manner;

d. By auditors, investigators, and other employees authorized by the Inspector General, pursuant to sections 4 and 6 of the Inspector General Act of 1978.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:1

Pursuant to 5 U.S.C. 552a(b)(12), OPM may disclose records from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, AND RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

OPM stores records on magnetic media, on optical media, and on paper.

RETRIEVABILITY:

Records are retrieved by employee name; by OPM organization; or by originating telephone number, destination telephone number, date, time, cost, or duration of call.

SAFEGUARDS:

Records are stored in secure areas and are available only to those persons whose official duties require access.

RETENTION AND DISPOSAL:

These records are maintained for varying periods of time, from 6 months to 3 years, in accordance with NARA General Records Schedule 12, items 2 and 3. Records are destroyed after the appropriate retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Network Communications Services, Employment Service, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should send written requests to the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. OPM-assigned telephone number or telephone service authorization number; and

c. Description of information being sought, including the time frame of information being sought.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. OPM-assigned telephone number or telephone service authorization number; and

c. Description of information being sought, including the time frame of information being sought.

Individuals requesting access must also follow the Agency's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of records about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. OPM-assigned telephone number or telephone service authorization number; and

c. Description of information being sought, including the time frame of information being sought.

Individuals requesting amendment must also follow the Agency's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

The information in this system of records is obtained from:

a. Local OPM telephone directories and other telephone assignment records;

b. Call detail reports provided by suppliers of telephone services; and

c. The individual on whom the record is maintained.

OPM/CENTRAL–11

SYSTEM NAME:

Presidential Management Intern (PMI) Program Records.

SYSTEM LOCATION:

Presidential Management Intern Program Office, Philadelphia Service Center, U.S. Office of Personnel Management, William J. Green, Jr., Federal Building, Room 3400, 600 Arch Street, Philadelphia, PA 19106.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former PMIs and students pursuing graduate degrees who have been nominated by their universities for consideration for the PMI Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about the covered individuals relating to name, Social Security Number, date of birth, race/national origin, academic background, home address and telephone number, employment history, veterans' preference, and other personal history information needed during the evaluation and selection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes the following with any revisions and amendments:

Executive Order 12364.

PURPOSE(S):

These records are used by program office staff for the following reasons:

a. To determine basic program eligibility and to evaluate the candidates in assessment center interviews administered at OPM Service Center locations around the country;

b. To make a final determination as to those candidates who will be referred to Federal agencies for employment consideration;

c. For program evaluation and assessment functions to determine the effectiveness of the program and to improve program operations; and

d. To facilitate interaction and communication between PMI Program participants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1, 3, 4, and 7 through 10, of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within this system. The routine uses listed below are specific to this system of records only:

a. To refer candidates to Federal agencies for employment consideration;

b. As a data source for management information of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research; and

c. To provide an educational institution with information on an appointment of a recent graduate to a Federal position.

d. As a data source for management information of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel research functions or manpower studies, or to locate individuals for personnel research.

e. To request information from a Federal, State, or local agency maintaining civil, criminal, or other information relevant to an agency decision concerning the hiring or retention of a candidate.

f. To provide an educational institution with information on an appointment of a recent graduate to a Federal position at a certain grade level.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The records are maintained on electronic databases and on a website.

Note: The section on the website containing personal information on PMI candidates is accessible only with a user identification code and password.

RETRIEVABILITY:

Records are indexed by name of candidate, educational institution, undergraduate and graduate degree awarded, state of legal residence, Social Security Number, and any combination of these.

SAFEGUARDS:

Candidates' records are maintained on electronic databases and on a website. Only OPM personnel (PMI Program Office and Macon Technology Center staff) have access to PMI databases. Candidates' resumes are contained in a restricted section on the PMI website. This section of the website is accessible only with a confidential user identification code and password. The confidential user identification code and password are maintained by PMI Program Office staff and issued only to Federal agency hiring officials and not the general public.

RETENTION AND DISPOSAL:

Automated records are retained for up to 5 years. Manual records are retained for up to 3 years. Tapes are erased and manual records are burned or shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Presidential Management Intern Program, Philadelphia Service Center, U.S. Office of Personnel Management, William J. Green, Jr., Federal Building, Room 3400, 600 Arch Street, Philadelphia, PA 19106.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system contains information about them should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Address; and

c. Nominating university.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from access.

Current or former Presidential Management Interns or candidates who wish to gain access to their non-exempt records should direct such a request in writing to the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Address;

c. Academic year of nomination; and

d. Nominating university.

Individuals must also comply with OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific material in this system has been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding access to and amendment of records. The section of the notice titled Systems Exempted from Certain Provisions of the Act, indicates the kinds of materials exempted and the reasons for exempting them from amendment.

Current or former Presidential Management Interns or candidates wishing to request amendment of their non-exempt records should contact the system manager. Individuals must furnish the following information for their records to be located and identified:

a. Full name;

b. Address;

c. Academic year of nomination; and

d. Nominating university.

Individuals must also comply with OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individual to whom it applies;

b. Nominating university deans; and

c. Employing agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains testing and examination materials that are used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act at 5 U.S.C. 552(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. OPM has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records, for any such testing or examination materials in the system.

[FR Doc. 99–26232 Filed 10–7–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24066; 812–11690]

Nuveen Floating Rate Fund

October 1, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares, and impose asset-based distribution fees and early withdrawal charges.

APPLICANTS: Nuveen Floating Rate Fund (''Fund''), Nuveen Senior Loan Asset Management Inc. (''Adviser''), and John Nuveen & Co. Incorporated (''Distributor'').

FILING DATES: The application was filed on July 9, 1999, and amended on September 23, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 26, 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 SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609; Gifford R. Zimmerman, Esq., John Nuveen & Co. Incorporated, 333 West Wacker Drive, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Massachusetts business trust. The Adviser, a newly organized entity, is in the process of registering under the Investment Advisers Act of 1940 and will serve as investment adviser to the Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1034, will distribute the Fund's shares. The Adviser and Distributor are both wholly-owned subsidiaries of The John Nuveen Company. Applicants request that the order also apply to any other registered closed-end investment company for which the adviser or the Distributor or any entity controlling, controlled by, or under common control with the Adviser or the Distributor acts as investment adviser or principal underwriter.[1]

2. The Fund's investment objective is to seek a high level of current income, consistent with the preservation of capital. The Fund will invest primarily in senior secured adjustable rate loans made by commercial banks, investment banks, finance companies and other lenders to commercial and industrial borrowers (''Loans''). Under normal circumstances, at least 80% of the Fund's total assets will be invested in Loans. Up to 20% of the Fund's total assets may be held in other assets, such as cash, fixed-rate debt obligations, short- to medium-term notes, high yield securities, asset-backed securities, and equity securities.

3. The Fund intends to continuously offer its shares to the public at net asset value. The Fund's shares will not be offered or traded in the secondary market and will not be listed on any exchange or quoted on any quotation medium. The Fund intends to operate as an ''interval fund'' pursuant to rule 23c–3 under the Act and make periodic repurchase offers to its shareholders.

4. The Fund seeks the flexibility to be structured as a multiple-class investment company and currently intends to offer four classes or shares. The Fund will offer Class B shares at net asset value without a front-end sales charge, but subject to an early withdrawal charge (''EWC'') on shares that are repurchased by the Fund within five years of the date of purchase. Class B shares will automatically convert to Class A shares six years after the date of purchase. The Fund may also offer Class A shares at net asset value plus a front-end sales charge, which may be waived for certain classes of purchasers in accordance with rule 22d–1 under the Act. The Fund will offer Class C shares at net asset value without a front-end sales charge, but subject to an EWC on shares that are repurchased by the Fund within one year of the date of purchase. Class A, Class B, and Class C shares will be subject to an annual shareholder service fee of up to 0.25% of average daily net assets. Class B and Class C shares will be subject to an annual distribution fee of up to .75% of average daily net assets. Applicants represent that the service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'') as if the Fund were an open-end investment company. The Fund also will offer Class R shares, which will be sold exclusively to certain eligible investors such as certain employees and directors of the Distributor or employees of authorized dealers and bank trust departments. Class R shares also may be purchased through registered investment advisers, certified financial planners and registered broker-dealers who charge asset-based or comprehensive ''wrap'' fees for their services. Class R shares will not be subject to distribution fees, service fees, front-end sales charges or EWCs. Applicants represent that the Fund will disclose in its prospectus the fees, expenses and other characteristics

[1] Any registered closed-end investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each investment company presently intending to rely on the requested relief is listed as an applicant.

of each class of shares offered for sale, as is required for open-end multi-class investment companies under Form N–1A.

5. All expenses incurred by the Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses attributable to that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. The Fund may create additional classes of shares in the future that may have different terms from Class A, Class B, Class C, and Class R shares. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

6. The Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

7. The Fund may offer its shareholders an exchange feature under which shareholders of the Fund may exchange their shares during the quarterly repurchase period for shares of the same class of other investment companies in the Nuveen group of investment companies. Fund shares so exchanged will be counted as part of the repurchase offer amount as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company. In complying with rule 11a–3, the Fund will treat the EWC as if it were a contingent deferred sales charge (''CDSC'').

Applicant's Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple class of shares of the Fund may violate Section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and 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. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements will permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company may purchase any securities of which it is the issuer except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the fund. Rule 23c–3(b)(1) provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the 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. Applicants request relief under sections 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares submitted for repurchase that have been held for less than a specified period.

8. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end investment companies under rule 6c–10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and that EWCs may discourage investors from moving their money quickly in and out of the Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c–10 under the Act as if that rule applied to closed-end investment companies. The Fund also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Asset-Based Distribution Fees

9. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered 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 unless the SEC issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the SEC considers whether the participation of the investment

company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1. Applicants also request an order under section 17(d) and rule 17d–1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act and NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26252 Filed 10–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27080]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

October 1, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 26, 1999, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 26, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Alabama Power Company (70–9547)

Alabama Power Company ("APC"), 600 North 18th Street, Birmingham, Alabama 35291, a wholly owned public utility subsidiary of The Southern Company, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(d) of the Act, and rules 44 and 54 under the Act.

By Alabama state statute ("Territorial Act"), Alabama grants the primary electric supplier within each municipality in Alabama the option ("Option") to acquire all distribution facilities of any secondary electric supplier used to supply retail electric service within the particular municipal limits.[1] The Territorial Act also establishes a method for detemining the price to be paid for those facilities. APC and other primary electric suppliers have exercised the Option in a timely fashion.

APC has exercised the Option in those municipalities where it is the primary electric supplier, and, accordingly, proposes to purchase the distribution facilities of the secondary electric supplier in accordance with the provisions of the Territorial Act. The consideration APC will pay for these facilities will not exceed, in the aggregate, $20 million. Once APC acquires the facilities, it will immediately connect them to other distribution facilities owned by APC.

In some municipalities APC is the secondary electric supplier, and has received timely notice of the exercise of the Option from the primary electric supplier in the particular municipality. In these cases, APC proposes to sell the facilities for amounts to be determined in accordance with the Territorial Act, which amounts will not exceed $10 million in the aggregate. Once these facilities are sold, they will be disconnected from APC's distribution system.

[1] The primary and secondary electric suppliers in the municipalities affected by the Territorial Act, other than Alabama Power, are comprised of electric membership corporations, rural electric cooperatives and/or municipally owned electric distributors.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26254 Filed 10–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24067; 812–10986]

Schwab Capital Trust, et al.; Notice of Application

October 1, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of 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 and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: The order would permit certain registered open-end management investment companies to acquire shares of other registered open-end management investment companies both within and outside the same group of investment companies.

APPLICANTS: Schwab Capital Trust, Schwab Investments, and The Charles Schwab Family of Funds (the "Trusts") and Charles Schwab Investment Management, Inc. ("Adviser").

FILING DATES: The application was filed on February 2, 1998 and amended on August 31, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

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 October 26, 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, N.W., Washington, D.C. 20549–0609. Applicants, 101 Montgomery Street, 120KNY–14, San Francisco, CA 94104.

FOR FURTHER INFORMATION CONTACT: Michael W. Mundt, Branch Chief, and Nadya B. Roytblat, Assistant Director, 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, N.W., Washington, D.C. 20549–0102, (202) 942–8090.

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act that are comprised of separate series, each of which pursues a distinct set of investment objectives and policies. The Adviser, a wholly-owned subsidiary of The Charles Schwab Corporation (''Schwab''), is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Trusts. Another wholly-owned subsidiary of Schwab, Charles Schwab & Co., Inc. (the ''Distributor''), is a broker-dealer and transfer agent registered under the Securities Exchange Act of 1934 and serves as the principal underwriter/distributor, transfer agent, and shareholder servicing agent for the Trusts. The Distributor also operates Schwab's Mutual Fund OneSource Service (''OneSource Service''), which provides services to investment companies in return for a fee based on the assets invested in the investment companies through the OneSource Service.

2. Applicant request relief to permit certain series of the Trusts (the ''Funds of Funds'') to invest: (a) In other series of the Trusts and other registered open-end management investment companies that are part of the same ''group of investment companies,'' as that term is defined in section 12(d)(1)(G) of the Act discussed below, as the Trusts (''Affiliated Funds''), and (b) in other registered open-end management investment companies that are not part of the same group of investment companies as the Trusts (''Unaffiliated Funds'').[1] The Affiliated and Unaffiliated Funds collectively are referred to as ''Underlying Funds.'' [2] A Fund of Funds also may make direct investments in stocks, bonds, and any other securities which are consistent with its investment objective.

3. Applicants state that each Fund of Funds will enable investors to create a comprehensive asset allocation program or achieve diversification in a specific segment of the market with just one investment. Applicants assert that a Fund of Funds will provide a simple, convenient, low-cost investment program for investors who are able to identify their long-term investment goals, but who may not be comfortable deciding how to invest their assets to achieve those goals.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company from selling its shares to another investment 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 voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(G) provides, in relevant part, that section 12(d)(1) will not apply to securities of a registered open-end investment company acquired by a registered open-end investment company if the acquired company and the acquiring company are part of the same group of investment companies, provided that certain other requirements contained in section 12(d)91)(G) are met. Applicants state that they may not rely on section 12(d)(1)(G) because a Fund of Funds will invest in Unaffiliated Funds in addition to Affiliated Funds.

3. Section 12(d)(1)(J) 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 any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Funds of Funds to acquire shares of Underlying Funds and to permit Underlying Funds to sell shares to the Funds of Funds beyond the limits set forth in sections 12(d)(1)(A) and (B).

4. Applicants state that section 12(d)(1)(J) was added to the Act by the National Securities Markets Improvement Act of 1996 (''NSMIA''). Applicants further state that the legislative history of NSMIA indicates that Congress intended that, in granting relief under section 12(d)(1)(J), the Commission consider, among other things, ''the extent to which a proposed arrangement is subject to conditions that are designed to address conflicts of interest and overreaching by a participant in the arrangement, so that the abuses that gave rise to the initial adoption of the Act's restrictions against investment companies investing in other investment companies are not repeated.'' [3]

5. Applicants state that the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

6. Applicants state that the proposed arrangement will not result in undue influence by a Fund of Funds or its affiliates over Underlying Funds. Applicants note that investment by a Fund of Funds in Affiliated Funds is permitted under section 12(d)(1)(G) of the Act. To limit the control that a Fund of Funds may have over an Unaffiliated Fund, applicants propose a condition prohibiting the Adviser, the Fund of Funds, and certain affiliates (individually or in the aggregate) from controlling an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act.

7. To limit further the potential for undue influence by a Fund of Funds or its affiliates over an Unaffiliated Fund, applicants state that a Fund of Funds

[1] With regard to purchases of shares of Unaffiliated Funds, the requested order would apply to purchases made by the Fund of Funds only where the Fund of Funds could not rely on the provisions of section 12(d)(1)(F) of the Act.

[2] All Funds of Funds and Affiliated Funds that currently intend to rely on the requested order are named as applicants. Any other investment company that relies on the order in the future will comply with the terms and conditions of the application.

[3] H.R. Rep. No. 622, 104th Cong., 2d Sess., 44 (1966).

and its Adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each a ''Fund of Funds Affiliate'') will not cause any investment by the Fund of Funds in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or its investment adviser, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each an ''Unaffiliated Fund Affiliate''). The board of trustees of the Fund of Funds, including a majority of the trustees who are not ''interested persons'' of the Fund of Funds, as defined in section 2(a)(19) of the Act (''disinterested trustees''), also will adopt procedures designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions. The board of directors of each Unaffiliated Fund, including a majority of the disinterested directors, also will determine that any consideration paid by the Unaffiliated Fund to the Fund of Funds or a Fund of Funds Affiliate is fair and reasonable and does not involve overreaching on the part of any person concerned.

8. To avoid the possibility that a Fund of Funds could force and Unaffiliated Fund to purchase unmarketable securities, applicants state that a Fund of Funds will not cause an Unaffiliated Fund to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, investment adviser, or employee of the Fund of Funds, or a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person (each an ''Underwriting Affiliate''). For the purposes of the requested relief, an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate is considered an ''Affiliated Underwriting.''

9. Applicants further state that the board of directors of an Unaffiliated Fund, including a majority of the disinterested directors, will adopt procedures designed to monitor any purchases of securities by the Unaffiliated Fund in Affiliated Underwritings and directly from Underwriting Affiliates, and will make certain findings to assess whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. An Unaffiliated Fund will keep certain records concerning these purchases.

10. As an additional assurance that an Unaffiliated Fund understands the implications of an investment by a Fund of Funds under the requested order, the Fund of Funds and Unaffiliated Fund will execute an agreement prior to the investment stating that the Unaffiliated Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. Applicants note that an Unaffiliated Fund may choose to reject an investment from the Fund of Funds.

11. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants sate that the Adviser may charge an investment advisory fee to each Fund of Funds and to Affiliated Funds. However, the board of trustees of a Fund of Funds, including a majority of the disinterested trustees, will be required to determine that the advisory fees charged to the Fund of Funds are based on services that are in addition to the services provided under the advisory contract of any Underlying Fund. In addition, to avoid the inference that fees payable to the Distributor by a Fund of Funds and by Unaffilated Funds are duplicative, the Distributor will waive fees otherwise payable to the Distributor by a Fund of Funds pursuant to transfer agent and shareholder servicing contracts and other similar contracts in an amount at least equal to any compensation received by the Distributor (including One Source Service fees) from Unaffiliated Funds in connection with any investment by the Fund of Funds.

12. Applicants also state that the aggregate sales charges and/or distribution-related fees of a Fund of Funds and any Underlying Fund in which it invests will not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers (''NASD Conduct Rules''). In addition, applicants represent that a Fund of Funds' prospectus and sales literature will contain concise, ''plain English'' disclosure designed to inform investors of the unique characteristics of the Fund of Funds structure, including, but not limited to, its expense structure and the additional expenses of investing in Underlying Funds.

13. Applicants state that the proposed arrangement will not create an overly complex fund structure. Applicants note that an Underlying Fund will be prohibited from acquiring securities of any investment company in excess of the limits contained in section 12(d)(1)(A), except to the extent permitted by an exemptive order allowing an Underlying Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person and any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that the Funds of Funds and the Affiliated Funds might be deemed to be under common control. Applicants also state that a Fund of Funds and an Unaffiliated Fund might become affiliated persons if the Fund of Funds acquires more than 5% of the Unaffiliated Fund's outstanding voting securities. In light of these possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from the Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that: (a) The terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any person or transactions from any provision of the Act if 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 submit that the proposed arrangement satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that the consideration paid for the sale and

redemption of shares of the Underlying Funds will be based on the net asset values of the Underlying Funds. Applicants state that the proposed arrangement will be consistent with the policies of each Fund of Funds, as set forth in each Fund of Funds' registration statement, and with the general purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) The Adviser, (b) any person controlling, controlled by, or under common control with the Adviser, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or section 3(c)(7) of the Act advised by the Adviser or any person controlling, controlled by, or under common control with the Adviser (collectively, the ''Group'') will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, the Group, in the aggregate, becomes a holder of more than 25% of the outstanding voting securities of the Unaffiliated Fund, the Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares.

2. A Fund of Funds and a Fund of Funds Affiliate will not cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or Funds of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The board of trustees of the Fund of Funds, including a majority of the disinterested trustees, will adopt procedures reasonably designed to assure that the Adviser is conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or a Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. The board of directors of each Unaffiliated Fund, including a majority of the disinterested directors, will determine that any consideration paid by the Unaffiliated Fund to the Fund of Funds or a Fund of Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Fund; (b) is within the range of consideration that the Unaffiliated Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned.

5. A Fund of Funds will not cause an Unaffiliated Fund to purchase a security from any Affiliated Underwriting.

6. The board of directors of an Unaffiliated Fund, including a majority of the disinterested directors, will adopt procedures reasonably designed to monitor any purchase of securities by an Unaffiliated Fund in an Affiliated Underwriting, including any purchases made directly from an Underwriting Affiliate. The board of directors will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in shares of the Unaffiliated Fund. The board of directors should consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Fund: (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The board of directors will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities from Affiliated Underwritings are in the best interests of shareholders.

7. The Unaffiliated Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase from an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase, setting forth from whom the securities were acquired, the identify of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the board's determinations were made.

8. Prior to an investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(F), the Fund of Funds and the Unaffiliated Fund will execute an agreement stating, without limitation, that the Unaffiliated Fund understands the terms and conditions of the order and agrees to fulfill its responsibilities under the order. At the time of its investment in shares of an Unaffiliated Fund in excess of the limit in section 12(d)(1)(F), a Fund of Funds will notify the Unaffiliated Fund of the investment. At such time, the Fund and Funds also will transmit to the Unaffiliated Fund a list of the names of each Fund of Funds Affiliates and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Fund of any change to the list as soon as reasonably practicable after a change occurs. The Unaffiliated Fund and the Fund of Funds will maintain and preserve a copy of the order, the agreement, and the list with any updated information for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

9. Prior to approving any advisory contract under section 15 of the Act, the board of trustees of each Fund of Funds, including a majority of the disinterested trustees, will find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract of any Underlying Fund in which the Funds of Funds may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Fund of Funds.

10. The Distributor will waive fees otherwise payable to the Distributor by a Fund of Funds pursuant to transfer agent and shareholder servicing contracts and other similar contracts in an amount at least equal to any compensation received by the Distributor (including OneSource Service fees) from Unaffiliated Funds in connection with the investment by a Fund of Funds in the in the Unaffiliated Funds.

11. Any sales charges and/or distribution-related fees charged with respect to shares of a Fund of Funds, when aggregated with any sales charges and/or distribution-related fees paid by the Fund of Funds with respect to its acquisition, holding, or disposition of shares of an Underlying Fund, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules. If the Fund of Funds and an Underlying Fund both

charge a ''service fee'' as defined in rule 2830, the board of trustees of the Fund of Funds, including a majority of the disinterested trustees, will find that the service fee being paid by the Fund of Funds to its service providers is based on services that will be in addition to, rather than duplicative of, the services provided to the Underlying Fund.

12. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by an exemptive order that allows the Underlying Fund to purchase shares of an affiliated money market fund for short-term cash management purposes.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–26253 Filed 10–7–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3222; Amendment #1]

State of Connecticut

In accordance with a notice received from the Federal Emergency Management Agency dated September 27, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on September 16, 1999 and continuing through September 21, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 21, 1999 and for economic injury the deadline is June 23, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26294 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3215; Amendment #1]

State of New Jersey

In accordance with notices received from the Federal Emergency Management Agency dated September 18 and 28, 1999, the above-numbered Declaration is hereby amended to include Hunterdon County, New Jersey as a disaster area due to damages caused by Hurricane Floyd. This declaration is further amended to establish the incident period for this disaster as beginning on September 16, 1999 and continuing through September 18, 1999.

All counties contiguous to the above-named county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 16, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26297 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3216; Amendment #1]

State of New York

In accordance with a notice received from the Federal Emergency Management Agency dated September 30, 1999, the above-numbered Declaration is hereby amended to include Albany, Dutchess, Greene, Rensselaer, Schenectady, and Ulster Counties in the State of New York as a disaster area due to damages caused by Hurricane Floyd beginning on September 16, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Columbia, Delaware, Fulton, Montgomery, Saratoga, Schoharie, and Washington Counties in New York; Bennington County, Vermont; and Berkshire County, Massachusetts.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 1999 and for economic injury the deadline is June 19, 2000.

The economic injury number for the State of Massachusetts is 9F1700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26296 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3214; Amendment #1]

Commonwealth of Pennsylvania

In accordance with a notice received from the Federal Emergency Management Agency dated September 29, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on September 16, 1999 and continuing through September 29, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 16, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26298 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3219; Amendment #1]

Commonwealth of Pennsylvania

In accordance with a notice received from the Federal Emergency Management Agency dated September 27, 1999, the above-numbered Declaration is hereby amended to include Dauphin County, Pennsylvania as a disaster area due to damages caused by severe flash flooding associated with Tropical Depression Dennis that occurred on September 6–7, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Cumberland, Lancaster, Lebanon, and York in the Commonwealth of Pennsylvania 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 physical damage is November 20, 1999 and for economic injury the deadline is June 22, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26300 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3218; Amendment #1]

State of South Carolina

In accordance with a notice received from the Federal Emergency Management Agency dated September 28, 1999, the above-numbered Declaration is hereby amended to include Berkeley, Colleton, Marion, and Williamsburg Counties in the State of South Carolina as a disaster area due to damages caused by Hurricane Floyd beginning on September 14, 1999 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Allendale, Bamberg, Beaufort, Clarendon, Florence, Hampton, Jasper, and Orangeburg in the State of South Carolina may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 1999 and for economic injury the deadline is June 21, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26295 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3213; Amendment #1]

Commonwealth of Virginia

In accordance with notices received from the Federal Emergency Management Agency dated September 23, 26, and 28, 1999, the above-numbered Declaration is hereby amended to include the following areas as a disaster area due to damages caused by Hurricane Floyd: The Independent Cities of Richmond, Suffolk and Williamsburg, and the Counties of Dinwiddie, Gloucester, Halifax, and Mathews. This declaration is further amended to establish the incident period for this disaster as beginning on September 13, 1999 and continuing through September 26, 1999.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Virginia may be filed until the specified date at the previously designated location: Campbell (including the City of Lynchburg), Charlotte, Mecklenberg, Nottoway, and Pittsylvania (including the City of Danville).

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 16, 1999 and for economic injury the deadline is June 19, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 1, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–26299 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0366]

Edwards Capital Corporation; Notice of Surrender of License

Notice is hereby given that Edwards Capital Corporation (''ECC''), 437 Madison Avenue, New York, New York 10022, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the ''Act''). ECC was licensed by the U.S. Small Business Administration on June 22, 1979.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 1, 1999, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 24, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–26292 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–5388]

Transportation Capital Corporation; Notice of Surrender of License

Notice is hereby given that Transportation Capital Corporation (''TCC''), 437 Madison Avenue, New York, New York 10022, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the ''Act''). TCC was licensed by the U.S. Small Business Administration on June 23, 1980.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on September 1, 1999, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 24, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–26291 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–5286]

TSG Ventures LP; Notice of Surrender of License

Notice is hereby given that TSG Ventures LP (''TSG'') 177 Broad Street, 12th Floor, Stamford, Connecticut 06901, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the ''Act''). TSG was licensed by the U.S. Small Business Administration on May 7, 1971.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on October 28, 1998, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 24, 1999.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 99–26293 Filed 10–7–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–6311]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for grants and cooperative

agreements from national nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after October 8, 1999. Proposals for the fiscal year 2000 grant cycle must be received before 4:30 p.m. eastern time, January 17, 2000.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at http://www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Marmo or Ms. Vickie Hartberger, Office of Boating Safety, U.S. Coast Guard (G-OPB–1/room 3100), 2100 Second Street, SW, Washington, DC 20593–0001; 202–267–0950 or 202–267–0974. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504, establishes the Boat Safety Account of the Aquatic Resources Trust Fund. From this trust fund, the majority of funds are allocated to the States, and up to 5% of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national boating safety activities. It is anticipated that $2,950,000 will be available for fiscal year 2000. Thirty-five awards totaling $2,942,080 were made in fiscal year 1999 ranging from $9,000 to $435,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 8, 1999. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

Prospective grantees may propose up to a five-year grant with twelve-month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case by case basis to assist planning certain large scale projects and ensure continuity. Procedures also provide for awarding noncompetitive grants or cooperative agreements on a case by case basis. This authority is judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues. The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. We welcome any initiative that can help to reduce recreational boating deaths, injuries or property damage. We have a high interest in initiatives that focus on recreational fishermen, canoeists, kayakers, and/or personal watercraft operators. Some project areas of continuing and particular interest for grant funding include the following.

1. Develop and Conduct a National Annual Safe Boating Campaign

The Coast Guard seeks a grantee to develop and conduct the year 2001 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents and associated health care costs, as well as support the nationwide grassroots activity of the many volunteer groups who coordinate local media events, education programs, and public awareness activities. Products must include, but are not limited to: situation analysis, post campaign component evaluation processes, measures of effectiveness, marketing strategy, distribution plan, and final report. All print, audio and video material must be designed to emphasize multiple year-round boating safety and accident prevention messages. Highlights of the calendar year 2001 national campaign will be special select materials and activities to support National Safe Boating Week and other selected national boating safety events. The major focus of the campaign will be to affect the behavior of all boaters to increase wearing of Personal Flotation Devices (PFDs) [with special emphasis on use by children, paddlers, hunters and anglers, and users of personal watercraft] and the dangers of boating while under the influence (BUI) of alcohol or drugs. The hunters, anglers, paddlers and personal watercraft user components should reflect the statistical risks associated with fishing activities, falls overboard, cold water immersion, and failure to wear a PFD. An established portion of allocated grant funds must support a National Boating Accident Reporting Awareness Program that is designed to reach all boaters with a message on the importance of reporting boating accidents. Efforts will also be coordinated, year-round, with other national transportation safety activities and special media events, in particular those which focus on the prevention of operating a boat under the influence of alcohol or drugs. Point of Contact: Ms. Jo Calkin, 202–267–0994.

2. Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference

The Coast Guard seeks a grantee to plan, implement, and conduct a National Recreational Boating Safety Outreach and Awareness Conference. This conference must support the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents, and lower associated health care costs. The overall conference focus should have promotional strategies which address the following specific targeted audiences: paddlers, anglers and hunters, and personal watercraft users. The conference should be scheduled to be conducted during the spring of 2001 and be held concurrent or consecutively with additional major national recreational and/or boating

safety and aquatic symposiums. The design of the conference should enhance the awareness and development of paid and volunteer professionals; national, state, and local boating safety program organization leaders; waterway managers and industry specialists. It should provide a unifying link between local or regional programs and those on the national level. The conference should be a collaborative effort of national organizations interested in the betterment of boating and aquatic safety and should include, but not be limited to, plenary sessions, hands-on workshops, and the distribution of a post conference report (publication) describing the activities of the conference. Products should include, but are not limited to, specific program tasks, evaluation processes, measures of effectiveness, marketing strategy, and final report. Point of Contact: Ms. Jo Calkin, 202–267–0994.

3. State/Federal/Boating Organizations Cooperative Partnering Efforts

The Coast Guard seeks grantees to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and State laws and regulations pertaining to boating safety. Point of Contact: Ms. Sandy Brown, 202–267–6010.

4. Voluntary Standards Development Support

The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary safety standards for boats and associated equipment. Point of Contact: Mr. Peter Eikenberry, 202–267–6984.

5. Develop and Conduct Boating Accident Seminars

The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the U.S. Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Rick Gipe, 202–267–0985.

6. National Estimate of Personal Flotation Devices (PFDs) Wear Rate

Coast Guard seeks a grantee to develop a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Special emphasis should be placed on identifying inland fishermen. Point of Contact: LCDR Rick Sparacino, 202–267–0976.

7. Human Factors and Risk Management in Recreational Boating Applications

The Coast Guard seeks a grantee to apply risk analysis and risk management techniques in the recreational boating arena to identify and characterize the human factors and risk involved with the recreational boating experience, including operator controlled factors, boat characteristics, safety equipment, and operator safety awareness. The grantee shall identify operator and/or equipment interventions and develop methodology to eliminate or mitigate risk factors. Point of Contact: Mr. Phil Cappel, 202–267–0988.

8. Redesign of Personal Flotation Device (PFD) Labels

The Coast Guard seeks a grantee to redesign the labels affixed to Personal Flotation Devices (PFDs). The final label designs for each of the five (05) types of PFDs would incorporate icons to show the applicability of that type of PFD as well as icons to communicate special uses and/or restrictions. The grantee would be expected to work with various organizations to gather and prioritize the information that needs to be conveyed by the label, develop the label, perform comprehension testing of each label element and design, and prepare a deliverable in the form of a draft standard to be delivered to the Standards Technical Panel for PFDs at Underwriters Laboratories. Point of Contact: Mr. Rick Gipe, 202–267–0985.

9. Sailing Lessons Learned

The Coast Guard seeks a grantee to review reports and articles on major offshore sailing incidents over the last several years, review actions taken by various U.S. organizations to date and make recommendations for additional actions to improve sailboat safety in racing and non-racing environments in the United States and aboard U.S. flagged sailboats. Point of Contact: Mr. Carlton Perry, 202–267–0979.

10. Global Maritime Distress and Safety System Education

The Coast Guard seeks a grantee to develop training aids and a training program to educate the recreational boating public on the Global Maritime Distress and Safety System (GMDSS). The training program and training aids shall incorporate the history of GMDSS, a summary of its component systems, the definition of GMDSS Sea Areas, as well as the equipment carriage requirements for mandatory (SOLAS-class) vessels. The program should address the discontinuance of certain radio guards on GMDSS compliant vessels, and the potential difficulties non-GMDSS equipped recreational boaters may encounter in trying to establish communications with such vessels in the future. In addition to providing this background, the program should focus on the aspect of GMDSS most likely to be used by recreational boaters in the future, *i.e.*, VHF–FM Digital Selective Calling (DSC). The program should also emphasize the time frame for construction of the U. S. Coast Guard's infrastructure for VHF–FM DSC, currently slated for completion in 2005 as part of the National Distress and Response System Modernization Project (NDRSMP). Point of Contact: LT Robert Schambier, 202–267–6702.

11. Boating Safety Problem-Specific Outreach

The Coast Guard seeks a grantee to develop an informational package dealing with several safety issues, including carbon monoxide dangers, propeller injury prevention, off throttle steering properties and others to be specified. The information would be reproducible in pamphlet form as well as in format for inclusion on a web site and focused elements of the year-round national campaign. Point of Contact: Ms. Diane Schneider, 202–267–1196.

12. Off-Throttle Steering of Jet-pump Propelled Craft

The Coast Guard seeks a grantee to identify available and emerging technology/methodology in the area of off-throttle steering of jet-pump propelled craft, and conduct testing on those items/methods that are determined to be most effective. Point of Contact: Mr. Gary Larimer, 202–267–0986.

13. Measures of Effectiveness for State Grants

The Coast Guard seeks a grantee to develop common measures of effectiveness (MOEs) that could be used to evaluate the overall effectiveness of the Coast Guard grant program for State recreational boating safety programs. The grantee would evaluate existing MOEs used in various States, research best business practices, and develop methodology associated with MOEs. The information would be disseminated

to the States to assist their evaluation of the effectiveness of their individual programs. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

Potential grantees should focus on partnership, *i.e.*, exploring other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. You may obtain a more detailed discussion of specific projects of interest to the Coast Guard by contacting the Coast Guard Infoline at 800–368–5647 and requesting a copy of a specific proposal. We also encourage proposals addressing other boating safety concerns. The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: October 1, 1999.

Terry M. Cross,

Rear Admiral, U. S. Coast Guard, Assistant Commandant for Operations Acting.

[FR Doc. 99–26353 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), 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 extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 6, 1999, [FR 64, page 24447).

DATES: Comments must be submitted on or before November 8, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Part 121—Operating Requirements: Domestic, Flag, and Supplemental Operations.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0008.

Forms(s): FAA Form 8070–1.

Affected Public: Estimated 146, 14 CFR Part 121 Operators.

Abstract: Each operator who seeks to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of 14 CFR Part 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards.

Estimated Annual Burden Hours: 1,268,856 burden hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA 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 Department's 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.

Issued in Washington, DC, on October 5, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–26374 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–17–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29802]

Airport Privatization Pilot Program

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Acceptance for Review: Preliminary Application for San Diego Brown Field, San Diego, California.

SUMMARY: The Federal Aviation Administration (FAA) has completed its review of the San Diego Brown Field (SDM) preliminary application for participation in the airport privatization pilot program. The preliminary application is accepted for review, with a filing date of September 1, 1999. The City of San Diego, the airport sponsor, may submit a final application to the FAA for exemption under the pilot program. 49 U.S.C. 47134 establishes an airport privatization pilot program and authorizes the Department of Transportation to grant exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. The application procedures require the FAA to publish a notice in the **Federal Register** after review of a preliminary application. The FAA must publish a notice of receipt of the final application in the **Federal Register** for public review and comment for a sixty-day period. The SDM preliminary application is available for public review in the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28895, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis (202–267–8741) Airport Compliance Division, AAS–400, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Section 149 of the Federal Aviation Administration Authorization Act of 1996, Public Law 104–264 (October 9, 1996) (1996 Reauthorization Act), adds a new § 47134 to Title 49 of the U.S. Code. Section 47134 authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport-related purposes, to the extent necessary to permit the purchaser or lessee to earn compensation from the operations of the airport.

On September 16, 1997, the Federal Aviation Administration issued a notice of procedures to be used in applications for exemption under Airport Privatization Pilot Program (62 FR

48693). A request for participation in the Pilot Program must be initiated by the filing of either a preliminary or final application for exemption with the FAA.

The City of San Diego has selected a private operator. The filing date of this preliminary application is September 1, 1999, the date of the last submittal revising the application. The City may negotiate an agreement with the private operator and submit a final application to the FAA for exemption.

If FAA accepts the final application for review, the application will be published in the **Federal Register** for public review and comment for a sixty-day period.

Issued in Washington, DC on September 30, 1999.

Louise E. Maillett,

Acting Associate Administrator for Airports.

[FR Doc. 99–26373 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Williamson, Travis, Caldwell and Guadalupe Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed new location highway/tollway facility, designated as State Highway 130, in Williamson, Travis, Caldwell and Guadalupe Counties, Texas. This notice supersedes any and all previous notices pertaining to proposed State Highway 130 (Segments A, B or C including **Federal Register** 172 [9–4–98]; **Federal Register** 191 [10–2–98] **Federal Register** 230 [12–1–98]).

FOR FURTHER INFORMATION CONTACT: Walter C. Waidelich, District Engineer, Federal Highway Administration, Room 850 Federal Building, 300 East 8th Street, Austin, Texas 78701 Telephone: (512) 916–5988. David C. Kopp, P.E., Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin Texas 78701–2483 Telephone: (512) 936–0980.

SUPPLEMENTARY INFORMATION: State Highway 130, as currently envisioned, is a proposed controlled access highway which will extend from IH 35 at State Highway 195 north of Georgetown in Williamson County, Texas, to IH 10 near Seguin in Guadalupe County, Texas. State Highway 130 will be located generally parallel to and east of Interstate Highway 35 and the urban areas of Austin, San Marcos, and New Braunfels. The total length of the proposed facility is approximately 90 miles. The proposed State Highway 130 facility is being developed by the FHWA in cooperation with the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation. Previous Notices for State Highway 130, which were published in the **Federal Register**, the Texas Register and newspapers having general circulation in the project area, indicated that State Highway 130 would be developed in three independent segments and that an environmental impact statement would be prepared for each of the three segments. Subsequent to publication of those notices, FHWA and TTA decided to prepare a single environmental impact statement addressing State Highway 130 in its entirety. This Notice serves to announce that recent decision and FHWA's intent to prepare, in cooperation with TTA, one environmental impact statement for State Highway 130 within the limits described above. All previous notices pertaining to State Highway 130 are hereby superseded.

The purpose of proposed State Highway 130 is to relieve congestion on Interstate Highway 35 and other major transportation facilities within the Austin-San Antonio corridor, improve mobility, and increase accessibility to important public facilities.

A major investment study, addressing the entire length of proposed State Highway 130, was endorsed in July 1997 by the Austin Transportation Study Policy Advisory Committee (now known as the Capital Area Metropolitan Planning Organization), the metropolitan planning organization for the Austin, Texas area.

The proposed facility is being planned as a toll road candidate; thus, in conjunction with the EIS and selection of a preferred alternative, TTA will conduct a toll feasibility study to evaluate the viability of developing the selected alternative as a toll road and financing it, in whole or in part, through the issuance of revenue bonds. The toll road designation will not influence the selection of a preferred alternative. Proposed alternatives, including alternative alignments, will be evaluated for how well they meet the stated purpose and need for the proposed action. Any impacts owing to the toll road designation will be discussed in the environmental impact statement.

The draft EIS will address a build alternative including multiple alternative alignments along existing and new location rights-of-way. Taking no action, or the ''no build'' alternative, will also be evaluated in the EIS.

Impacts caused by construction of and operation of State Highway 130 will vary according to the alternative selected. Generally, the project may include construction impacts, socio-economic impacts and impacts to the natural and built environment.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. Numerous public meetings have been held for State Highway 130. The most recent meetings were held on February 3, 1998, at Hopewell Middle School in Round Rock, Texas; November 5, 1998, at Barbara Jordan Elementary School in Austin, Texas; December 2, 1998, at the Seguin Coliseum in Seguin, Texas; and on December 8, 1998, at Plum Creek Elementary School in Lockhart, Texas. At these and previous meetings, public comments on the proposed action and alternatives were requested.

Public hearings on the proposed action will be held after publication of the Draft EIS. Public notice will be given of the time and place of the hearings. The Draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to proposed State Highway 130 are addressed and all significant issues identified, comments and suggestions are invited from all parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or TTA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Walter C. Waidelich,

District Engineer, Austin, Texas.

[FR Doc. 99–26241 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–6156]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of petitions and intent to grant applications for exemption; request for comments.

SUMMARY: This notice announces the FHWA's preliminary determination to grant the applications of 40 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments 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 must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Motor Carrier Research and Standards, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 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 may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 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's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Forty individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FHWA may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the FHWA has evaluated each of the 40 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 33 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

Qualifications of Applicants

1. Herman Bailey, Jr.

Mr. Bailey is 33 years old and has been employed as a commercial truck driver for 12 years driving straight trucks, as well as one and one half years driving tractor-trailer combinations. He has a history of amblyopia in his right eye secondary to a congenital cataract. Mr. Bailey has 20/20 vision in his left eye. In the ophthalmologist's opinion, ''Mr. Bailey has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Bailey holds a West Virginia commercial driver's license (CDL). He has driven commercial vehicles more than 330,000 miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

2. Mark A. Baisden

Mr. Baisden, 37, has been employed as a commercial truck driver for over 8 years. A 1999 examination indicates Mr. Baisden has amblyopia in his left eye which is ''stable and nonprogressive'' and ''does not affect or impair peripheral vision.'' His visual acuity in the right eye is 20/15 and his field of vision is full in each eye. In his optometrist's opinion, Mr. Baisden has sufficient vision to perform the driving tasks required for operating a CMV.

Mr. Baisden holds an Ohio CDL. He has driven straight trucks more than 55,000 miles and tractor-trailer combinations 950,000 miles over the last 8 years His official driving record for the past 3 years reflects no traffic violations and no accidents in a commercial vehicle.

3. Brad T. Braegger

Mr. Braegger, 47, has amblyopia in his left eye. His vision in the right eye is 20/20 with corrective lens, according to a 1999 examination. His ophthalmologist states, ''Mr. Braegger has sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Brad Braegger holds a Utah CDL. He has driven tractor-trailer combination vehicles during a 29-year career. He has operated tractor-trailers for a total of over 3 million miles. His official State driving record reveals no traffic citations or accidents in any vehicle in the last 3 years.

4. Kenneth Eugene Bross

Mr. Bross, 46, has worn a prosthesis in his left eye for approximately 9 years. A 1999 medical examination indicates he has 20/20 corrected vision in his right eye. In the optometrist's opinion, ''Mr. Bross has developed excellent adaptive skills and is fully capable of operating a commercial motor vehicle.''

Kenneth Bross holds a Missouri CDL with hazardous materials and tank vehicles endorsements. He has operated straight trucks for 30 years and tractor-trailer combinations for 12 years. His official State driving record reflects no moving violations and no accidents in any vehicle in the last 3 years.

5. Erick H. Cotton

Mr. Cotton, 34, suffered an injury to his right eye over 20 years ago. A 1999 medical report indicates that his best corrected visual acuity in his right eye is 20/200. His vision in his left eye with glasses is 20/20. His optometrist states, ''Mr. Cotton has adapted very well to the central vision loss and [is] experiencing no difficulty driving a commercial vehicle.''

Erick Cotton holds a Michigan CDL with a tank vehicle endorsement. He has driven tractor-trailer combination vehicles for 13 and one half years and over 470,000 miles. His driving record for the past 3 years reflects no traffic violations and no accidents in any type of vehicle.

6. Fletcher E. Creel

Mr. Creel, 55, suffered an injury to his right eye in 1984 which prevents him from meeting the Federal vision standard. He has 20/20 vision in his left eye with correction and full horizontal field of vision. An optometrist examined him in 1999 and stated, ''In my opinion, Mr. Creel is able to perform the visual

tasks necessary to operate a commercial vehicle.''

Fletcher Creel has 33 years of experience operating tractor-trailer combinations. He holds a California CDL and has driven more than 1.65 million miles in commercial vehicles. His official State driving record contains no accidents or citations in any vehicle over the last 3 years.

7. Richard James Cummings

Mr. Cummings, 42, has been employed as a commercial truck driver for 19 years. According to a 1999 examination, Mr. Cummings' right eye was removed in 1993, and he wears a prosthesis. The vision in his left eye is 20/20 with glasses. According to his optometrist, ''Mr. Cummings has sufficient vision to drive a commercial vehicle.''

Richard Cummings holds an Indiana Chauffeur's License. He has driven straight trucks for 8 years and tractor-trailer combinations for 14 years for a total of over 1 million miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

8. Daniel R. Franks

Mr. Franks, 33, has operated straight trucks and tractor-trailer combinations for approximately 15 years. Because he suffered a retinal detachment in his right eye in 1991, Mr. Franks is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination by an ophthalmologist reveals Mr. Franks's best-corrected vision in his left eye is 20/20. In the ophthalmologist's opinion, Mr. Franks has sufficient vision to operate a CMV safely.

Mr. Franks holds an Ohio CDL. He has driven straight trucks more than 750,000 miles and tractor-trailer combinations more than 300,000 miles, and his official driving record for the past 3 years contains no traffic violations or accidents in a CMV.

9. William L. Frigic

Mr. Frigic, 55, has amblyopia in his right eye. A 1999 examination indicates Mr. Frigic has 20/20 corrected vision in his left eye and light perception in his right eye. According to the optometrist, Mr. Frigic ''can perform the driving tasks required to operate a commercial vehicle.''

Mr. Frigic holds an Ohio CDL. He has driven straight trucks and tractor-trailer combinations during a 32-year career. He has driven straight trucks nearly 960,000 miles and tractor-trailer combinations 1.35 million miles during that period. His official State driving record reveals no traffic citations or accidents in a CMV in the last 3 years.

10. Curtis Nelson Fulbright

Mr. Fulbright, 57, had a metallic foreign body in his left eye in 1966 that was removed, but resulted in the development of a cataract that was also removed, followed by a retinal detachment. Vision in the left eye is light perception and 20/20 corrected in the right eye, according to a 1999 examination. His ophthalmologist states, ''Mr. Fulbright is fully capable of performing the driving tasks required to operate a commercial vehicle.''

Curtis Fulbright has a North Carolina CDL. He has 35 years experience operating tractor-trailer combinations and has driven a CMV over 3.5 million miles. His official State driving record reveals no traffic citations or accidents in any vehicle in the past 3 years.

11. Victor Bradley Hawks

Mr. Hawks, 36, has been employed as a commercial truck driver for 14 years driving tractor-trailer combinations. According to his optometrist, Mr. Hawks has amblyopia in his left eye. As a result, he cannot meet the vision requirement of 49 CFR 391.41(b)(10).

A December 1998 medical report indicates Mr. Hawks's best corrected vision is better than 20/25 in the right eye. In the optometrist's opinion, Mr. Hawks' ''has sufficient visual ability to perform commercial driving tasks in question.''

He has driven tractor-trailer combinations for more than 1.8 million miles. Mr. Hawks holds a North Carolina CDL, and his driving record for the past 3 years reflects no traffic violations and no accidents in a commercial vehicle.

12. Vincent I. Johnson

Mr. Johnson is a 71-year-old individual who is blind in his right eye as the result of an injury at the age of approximately five years. He has 20/20 vision in his left eye, according to a 1999 examination. The ophthalmologist who conducted the examination indicates Mr. Johnson has sufficient vision to drive a CMV.

Mr. Johnson has a 53-year career operating straight trucks more than 300,000 miles. He holds a District of Columbia CDL and has had no traffic violations or accidents in any vehicle in the past 3 years.

13. Myles E. Lane, Sr.

Mr. Lane is a 63-year-old individual who has operated CMVs for over 40 years. He has amblyopia in the left eye. Because of this condition, Mr. Lane is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination reveals Mr. Lane has 20/20 corrected vision in his right eye and 20/400 vision in his left eye. The optometrist who conducted the examination states Mr. Lane is ''visually able to safely operate a commercial motor vehicle.''

Mr. Lane holds a Kentucky CDL with hazardous materials and tank vehicles endorsements. He has driven straight trucks and tractor-trailer combinations approximately 3.4 million miles. His official driving record for the past 3 years contains no moving violations and no accidents.

14. Dennis J. Lessard

Mr. Lessard, 37, has a 12-year history of a macular scar in his right eye which limits his central vision. According to a 1999 examination, the vision in his left eye is 20/20 with glasses. His ophthalmologist says Mr. Lessard has sufficient vision to perform the tasks necessary to operate a CMV.

Mr. Lessard holds an Indiana CDL with tank vehicle and hazardous materials endorsements. He has 19 years' experience driving tractor-trailer combination vehicles. His official State driving record contains no traffic violations and no accidents in any vehicle in the past 3 years. Mr. Lessard has driven for Ronwal Transportation, Inc., full-time since 1985 except for a 9-month period in 1994. The company's vice president says, ''With his excellent safety habits, work history and driving record, we feel that Mr. Dennis J. Lessard is an asset to us and to the Truck Transportation Industry.''

15. Jon G. Lima

Mr. Lima, 50, has been blind in his right eye since 1954 due to trauma. The vision in his left eye was 20/20 corrected in a 1999 examination. His ophthalmologist says, ''Mr. Lima, in my opinion, has sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Jon Lima holds an Illinois CDL. He has 20 years' experience driving straight trucks and 10 years' experience driving tractor-trailer combinations. His official State driving record contains no traffic violations and no accidents in any vehicle in the past 3 years.

16. Richard L. Loeffelholz

Mr. Loeffelholz, 45, has a small central scotoma in his right eye due to an injury he suffered in 1992. He cannot meet the Federal vision requirement, as a result. Mr. Loeffelholz' best corrected vision in his right eye is 20/400 and 20/20 in his left eye, according to a 1999

examination. According to the ophthalmologist, Mr. Loeffelholz' ''visual acuity is sufficient to perform the tasks required to operate a commercial vehicle.''

Mr. Loeffelholz holds a Wisconsin CDL with a tank vehicle endorsement. He has 27 years' experience operating straight trucks and 10 years' experience operating tractor-trailer combinations. He has driven these CMVs approximately 2 million miles. His official State driving record reveals no traffic violations and one accident in a commercial vehicle. Mr. Loeffelholz was not at fault in the accident and no citation was issued to him. The driver of the other vehicle was cited for failure to yield right of way.

17. Herman Carl Mash

Mr. Mash, 51, is missing his right eye and wears a prosthesis as the result of trauma in the 1960s. His vision in the left eye is 20/20, according to a 1999 examination. His ophthalmologist states, ''I certify that in my profession(al) opinion Mr. Mash has sufficient vision to perform the driving test required to operate a commercial vehicle in the state of North Carolina and in interstate commerce.''

Herman Carl Mash holds a North Carolina CDL. He has driven tractor-trailer combination vehicles for 14 years and over 1 million miles. His official State driving record reveals no traffic citations or accidents in a CMV in the last 3 years.

18. Joseph M. Porter

Mr. Porter, 36, has an amblyopic right eye. A 1999 examination indicates the vision in his left eye is 20/20 with glasses. The optometrist says, ''Mr. Porter will have no visual reason *not* to operate a motor vehicle, commercial and otherwise.''.

Mr. Porter has a Minnesota CDL. He has driven straight trucks for 18 years and approximately 360,000 miles and tractor-trailer combination vehicles approximately 300,000 miles. There are no traffic violations or accidents in any vehicle in the past 3 years on his official driving record.

19. Richard Rankin

Mr. Rankin, 32, has been blind in his left eye since childhood. A 1999 medical examination indicates that he has 20/20 acuity in his right eye.

According to his ophthalmologist, the vision in his right eye is ''completely stable'' and the visual field is full in his right eye. In the ophthalmologist's opinion, Mr. Rankin ''has done well with vision just out of his right eye'' and can perform the tasks necessary to operate a CMV.

Mr. Rankin has been a professional truck driver for 4 years and has driven straight trucks approximately 100,000 miles. He holds an Ohio CDL, and a review of his State driving record indicates no moving violations and no accidents in any vehicle in the last 3 years.

20. Robert G. Rasicot

Mr. Rasicot, 58, has amblyopia in his left eye. A December 1998 examination indicates the best corrected vision in his right eye is 20/20. His optometrist says, ''It is my medical opinion that Robert G. Rasicot has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle.''

Mr. Rasicot has a Florida CDL. He has driven straight trucks and tractor-trailer combinations for 34 years. He has driven straight trucks over one million miles and tractor trailer combinations over 650,000 miles. His official State driving record for the past 3 years contains no traffic violations and no accidents in a CMV.

21. A. W. Schollett

Mr. Schollett, 52, has operated CMVs for 25 years. His right eye was removed as the result of an accident approximately 40 years ago, and he is, therefore, unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination by the optometrist reveals Mr. Schollett has 20/15 vision in his left eye with correction. In the optometrist's opinion, Mr. Schollett has sufficient vision to operate a CMV.

A.W. Schollett holds a Colorado CDL. He has driven straight trucks and tractor-trailer combinations for over 1 million miles, and his official driving record for the past 3 years reveals no accidents and no traffic violations in any vehicle.

22. Melvin B. Shumaker

Mr. Shumaker, 58, has amblyopia in his left eye. Because of this condition, he is unable to meet the Federal vision standard in 49 CFR 391.41(b)(10). An optometrist examined Mr. Shumaker in December 1998, and found his best corrected vision is 20/200 in the left eye and 20/20 in the right eye. According to the optometrist, Mr. Shumaker's condition ''is certifiably stable and his vision is sufficient for driving commercial vehicles (CMV).''

Melvin Shumaker has operated tractor-trailer combinations for 40 years and over 4 million miles. He holds a Florida CDL, and his official driving record for the past 3 years reflects no moving violations and no accidents in a CMV.

23. Clark H. Sullivan

Mr. Sullivan, 50, has been blind in his left eye since approximately 1974 due to trauma. A 1999 examination by an ophthalmologist revealed the vision in his right eye to be 20/20 with or without correction. He wears a prosthesis in the left eye. The ophthalmologist stated Mr. Sullivan ''will be safe to drive'' a CMV.

Mr. Sullivan holds a Louisiana CDL. He has operated tractor-trailer combinations for 30 years and approximately 2.4 million miles. His official State driving record reflects no traffic citations and no accidents for the past 3 years.

24. Wayland O. Timberlake

Mr. Timberlake, 30, suffered a retinal detachment 17 years ago in his right eye due to previous trauma. A 1999 medical examination indicates he has 20/20 minus one vision in his left eye. In the ophthalmologist's opinion, Mr. Timberlake has sufficient vision to operate a CMV.

Wayland Timberlake holds a Texas CDL with a tank vehicle endorsement. He has driven tractor-trailer combinations more than 500,000 miles over the last 5 years, and his official driving record for the past 3 years contains no accidents and no violations in any vehicle.

25. Norman R. Wilson

Mr. Wilson, 51, has a congenital visual defect in his left eye and his visual acuity is finger counting. Therefore, he cannot meet the vision requirement in 49 CFR 391.41(b)(10).

He has 20/20 vision in his right eye, according to a 1999 examination. The ophthalmologist who conducted the examination asserts Mr. Wilson has sufficient vision to drive a CMV.

Mr. Wilson has an Oregon CDL with a tank vehicle endorsement. He has driven straight trucks for 24 years and tractor-trailer combinations for 20 years. His official State driving record for the past 3 years contains no accidents in any vehicle and one traffic violation for ''Failure to obey a sign/traffic control device'' while driving a CMV.

26. Larry M. Wink

Mr. Wink, 43, has been a commercial driver for 25 years. He has amblyopia in his right eye. His corrected visual acuity is 20/60 in his right eye. Therefore, Mr. Wink is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination revealed Mr. Wink has 20/20 vision in his left eye with glasses. According to the

optometrist, ''he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Larry Wink holds a Kentucky CDL with a passenger transportation endorsement. He has driven tractor-trailer combination vehicles approximately 440,000 miles, straight trucks more than 625,000 miles, and buses 4,000 miles. There is one accident in a commercial vehicle on his official driving record in the past 3 years. Mr. Wink was stopped at a traffic light when he was struck from behind. He was not issued a citation for that accident. No moving violations in a commercial vehicle in the last 3 years were found on his record.

27. Jeffrey G. Wuensch

Mr. Wuensch, 34, has amblyopia in his left eye. A 1999 examination by an optometrist revealed the vision in his right eye to be 20/20 with correction. The optometrist stated Mr. Wuensch ''has sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Mr. Wuensch holds a Wisconsin CDL with a hazardous materials endorsement. He has operated tractor-trailer combinations for eight years and 200,000 miles. His official State driving record reflects no traffic citations and no accidents in any vehicle for the past 3 years.

28. Jon H. Wurtele

Mr. Wurtele, 60, has operated CMVs for 42 years. He is blind in the right eye due to an accident approximately 40 years ago and therefore cannot meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination indicates Mr. Wurtele has visual acuity in his left eye of 20/20 uncorrected. His optometrist states ''I can see no reason why he would not be able to drive a commercial vehicle as long as he has the proper accessories such as outside mirrors.''

Jon Wurtele has a Nebraska CDL. He has driven straight trucks and tractor-trailer combination vehicles for 42 years and approximately 3.5 million miles. His official State driving record reveals no accidents or citations for a moving violation in any vehicle for the past 3 years.

29. Walter M. Yohn, Jr.

Mr. Yohn, 28, suffered trauma in his left eye in 1993 and is visually impaired, as a result. Because of this eye condition, Mr. Yohn is unable to meet the Federal vision requirement. He has 20/20 corrected vision in his right eye, according to a 1999 examination. In his optometrist's opinion, Mr. Yohn has ''sufficient vision to perform the driving tasks required to operate a commercial vehicle.''

Walter M. Yohn holds an Alabama CDL. He has been a professional truck driver for 7 years operating straight trucks. His official State driving record contains no moving violations and no accidents in any vehicle in the last 3 years.

30. Steven H. Heidorn

Mr. Heidorn, 56, has been employed as a commercial truck driver for forty years. He holds an Indiana Chauffeurs License, and has driven straight trucks over 320,000 miles and tractor trailer combination vehicles over 2.25 million miles. He has been blind in the left eye since 1995, as the result of a retinal detachment. His optometrist states that his condition is stable and should not lessen his ability to operate any vehicle. His official driving record contains no accidents or citations of any kind.

31. James Donald Simon

Mr. Simon, 42, is blind in his left eye and wears a prosthesis due to an injury suffered when he was a child. The vision in his right eye is 20/20 without correction, according to a 1999 examination. His optometrist says he has sufficient vision to operate a commercial vehicle.

James Simon holds a Florida CDL. He has driven tractor-trailer combinations over 890,000 miles and straight trucks nearly 750,000 miles. His official driving record contains one moving traffic violation in the past 3 years. In 1997, Mr. Simon was convicted of a non-serious speeding violation in a commercial vehicle.

32. William A. Bixler

Mr. Bixler, 48, is blind in his right eye as the result of an injury which took place in 1955. A 1998 medical report indicates he has 20/20 vision in his left eye without correction. In his optometrist's opinion, Mr. Bixler is capable of operating a CMV, because ''he has adapted his head turning ability to compensate for the loss in his visual field.''

William Bixler has 23 years' experience operating straight trucks and 4 years' experience operating tractor-trailer combinations, accumulating almost 1.15 million miles. He has a Pennsylvania CDL and his official driving record reveals no traffic citations or accidents in any vehicle in the past 3 years.

33. Woodrow E. Bohley

Mr. Bohley is a 35 year-old individual who has operated buses for 13 years. Because he has amblyopia in his left eye, Mr. Bohley is unable to meet the vision requirement in 49 CFR 391.41(b)(10).

A 1999 examination by the optometrist reveals Mr. Bohley's best corrected vision in his right eye is 20/20, and no pathological conditions were detected during this examination. In the optometrist's opinion, Mr. Bohley has adequate vision to operate a CMV safely.

Mr. Bohley holds a Missouri commercial driver's license (CDL). He has driven more than 455,000 miles, and his official driving record for the past 3 years contains no accidents or traffic violations in any vehicle.

34. George L. Silvia

Mr. Silvia, 44, is blind in his left eye due to an injury suffered 30 years ago. A 1999 medical examination indicates that he has 20/25 uncorrected acuity in his right eye and 20/100 acuity in his left eye. According to his optometrist, ''Mr. Silvia has sufficient vision to operate a commercial vehicle and he has no medical conditions which would compromise his visual field.''

Mr. Silvia has been a professional truck driver for 25 years and has driven tractor-trailer combinations more than 625,000 miles. He holds a North Carolina CDL. A review of his State driving record indicates no moving violations and no accidents in any vehicle in the last 3 years.

35. Martin Postma

Mr. Postma, 45, has been employed as a commercial truck driver for 20 years. He has 20/400 vision in his left eye due to amblyopia and therefore cannot meet the vision requirement of 49 CFR 391.41(b)(10).

A 1999 examination indicates Mr. Postma has 20/20 corrected visual acuity in his right eye. According to his optometrist, ''Mr. Postma has developed all the skills necessary to adapt'' to his condition and the examination ''demonstrates all the skills necessary to operate a commercial vehicle.''

Mr. Postma holds an Illinois CDL. He has driven tractor-trailer combination vehicles for 20 years and over 1.7 million miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

36. Steven L. Valley

Mr. Valley, 48, has no central vision in his left eye due to a central retinal vein occlusion. A 1999 examination indicates the best corrected vision in his right eye is 20/20+. His optometrist says, that his condition ''has and should remain stable. Thus, I would state that

Mr. Valley is quite capable of performing his commercial vehicle driving tasks as he has in the past.''

Mr. Valley has a Maine CDL. He has driven straight trucks for 8 years and tractor-trailer combinations for 5 years, accumulating over 400,000 miles. His official State driving record for the past 3 years contains no traffic violations and no accidents in a CMV.

37. Phillip P. Smith

Mr. Smith, 43, has been employed as a commercial bus driver for 21 years. According to his optometrist, Mr. Smith has amblyopia in his right eye and his best corrected visual acuity in right eye is finger counting at 15 feet. As a result, he cannot meet the vision requirement of 49 CFR 391.41(b)(10).

A 1999 medical report indicates Mr. Smith's best corrected vision is 20/20–1 in the left eye. In the optometrist's opinion, Mr. Smith's ''central vision is excellent OS (left) and the field of vision is a full 180 degrees OU (both eyes), (therefore) I see no reason that his vision should cause any undo risk for commercial or personal driving to himself or to others.''

He has driven buses for more than 315,000 miles. Mr. Smith holds a Kentucky CDL, and his driving record for the past 3 years reflects no traffic violations and one accident in a commercial vehicle. Mr. Smith was not charged with any violation in the accident, and there were no injuries.

38. Robert W. Nicks

Mr. Nicks, 47, has been employed as a commercial truck driver for 28 years, driving straight trucks as well as tractor-trailer combinations. He has amblyopia in his right eye. Mr. Nicks has 20/20 corrected vision in his left eye. In the optometrist's opinion, Mr. Nicks has sufficient vision to safely operate a commercial vehicle. Mr. Nicks holds a New York CDL. He has driven commercial vehicles more than 1 million miles. His official driving record for the past 3 years reflects no traffic violations and no accidents in any vehicle.

39. Frank T. Miller

Mr. Miller, 50, has a long-standing central scar in his left eye, leaving visual acuity in that eye of 20/100. A 1999 examination by an optometrist revealed the vision in his right eye to be 20/20 with or without correction. The optometrist stated Mr. Miller's ''condition is stable, and I see no reason that he should not be able to safely operate a commercial motor vehicle.''

Mr. Miller holds an Ohio CDL. He has operated tractor-trailer combinations for 25 years. His official State driving record reflects no accidents in a CMV for the past 3 years. His record does show 2 speeding violations in a commercial vehicle in the last 3 years. Both were non-serious violations, under 15 mph over the posted speed limit.

40. Roger Allen Dennison

Mr. Dennison, 62, has been driving straight trucks approximately 50,000 miles per year for the past 30 years. Mr. Dennison holds an Illinois CDL. He has ambyopia in his left eye. His vision is correctable to 20/30 in the right eye. According to his optometrist, Mr. Dennison has sufficient vision to perform the driving tasks required to operate a CMV. His official driving record shows no accidents or citations in a commercial vehicle.

Basis for Preliminary Determination To Grant Exemptions

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 40 applicants represented here have qualifications similar to those possessed by drivers in the waiver program. Their experience and safe driving record operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. Since past driving records are reliable precursors of the future, there is no reason to expect these individuals to drive less safely after receiving their exemptions. Indeed, there is every reason to expect at least the same level of safety, if not a greater level, because the applicants can have their exemptions revoked if they compile an unsafe driving record.

For these reasons, the FHWA believes exempting the individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in § 391.41(b)(10). As a condition of the exemption, therefore, the FHWA proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FHWA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FHWA for a renewal under procedures in effect at that time.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FHWA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue exemptions from the vision requirement to the 40 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the

comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

Authority: 49 U.S.C. 31136 and 31315; 23 U.S.C. 315; 49 CFR 1.48.

Issued on: September 29, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–26284 Filed 10–7–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143, Notice No. 99–10]

Study of the Applicability of Hazard Analysis and Critical Control Points (HACCP) or Similar Methodologies to the Transportation of Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting; request for comments.

SUMMARY: This notice advises interested persons of an exploratory meeting with stakeholders in industry, government, and the public to obtain input concerning a study on the applicability of Hazard Analysis and Critical Control Points (HACCP) or similar methodologies for managing risks posed by hazardous materials transportation. RSPA anticipates that the study will lead to voluntary, ''best-practices'' risk management techniques applicable to the various parties involved in hazardous materials transportation, and may eventually identify a need for changes to the current regulatory system.

DATES: Public Meeting Date: RSPA's contractor, ICF Consulting, will host the public meeting on November 4–5, 1999. The meeting will be held on November 4 from 1:00 p.m. to 5:00 p.m. and on November 5 from 8:30 a.m.–3:00 p.m.

Comment Date: Comments or suggestions should be submitted on or before November 30, 1999.

ADDRESSES: Public Meeting: The public meeting will be held at the Transportation Research Board, Green Building, 2001 Wisconsin Avenue, N.W., Washington, D.C.

Written Comments: Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW, Washington, D.C. 20590–0001. Comments should identify the docket and notice numbers (Docket No. RSPA–99–5143; Notice No. 99–10) and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at http://dms.dot.gov. Click on ''Help & Information'' to obtain instructions for filing the document electronically. In every case, the comment should refer to the Document number ''RSPA–99–5413''.

The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. Public dockets may be reviewed between the hours of 10 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. Internet users may access all comments received by the U.S. Department of Transportation by using the Universal Resource Locator (URL) at http://dms.dot.gov. An electronic copy of the document may be downloaded using modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: Jean Hoff, ICF Consulting, telephone number (703) 934–3045 or via email at jhoff@icfconsulting.com; or A. Douglas Reeves, Research and Special Programs Administration, telephone number (202) 366–4545 or via email at douglas.reeves@rspa.dot.gov.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Scott Holland at (202) 366–0002 as soon as possible.

SUPPLEMENTARY INFORMATION:

Background

The Hazard Analysis and Critical Control Points (HACCP) system, first developed by the Pillsbury Company in cooperation with the National Aeronautics and Space Administration, consists of the following steps: (1) Analyze hazards, (2) identify critical control points, (3) establish preventive measures with critical limits for each control point, (4) establish procedures to monitor critical control points, (5) establish corrective actions to take when monitoring shows that a critical limit has not been met, (6) establish procedures to verify that the system is working properly, and (7) establish effective recordkeeping. While the most recent experience in broadening the application of the concept occurs with respect to food safety, the HACCP approach may have relevance in other safety systems, including hazardous materials transportation. In addition, other risk management techniques may prove to have potential for adaptation in the latter context.

The Vice President's National Performance Review urged implementation of HACCP based systems to ensure food manufacturers identify points where contamination is likely to occur and implement process controls to prevent it. On December 18, 1995, the Food and Drug Administration published a final rule, effective on December 18, 1997, that requires processors of fish and fishery products to develop HACCP systems for their operations. The Department of Agriculture also has applied this methodology to the meat and poultry industry effective January 26, 1998.

Study Description

RSPA has contracted with ICF Consulting, Fairfax, VA, to study the applicability of HACCP or similar methodologies to the transportation of hazardous materials. The study encompasses two overriding goals: (1) To examine the risk management aspects of hazardous materials transportation to determine how HACCP or similar methodologies might play a role, and (2) To undertake one or two pilot applications of HACCP or similar methodologies to better understand their practical applicability and usefulness in promoting the safe transportation of hazardous materials. Performance of the contract will be over a one-year period.

The work being performed by ICF Consulting for RSPA consists of the following tasks, which RSPA expects may be refined as efforts proceed and as a result of public input:

(1) Exploratory Meeting. Conduct an open meeting with stakeholders in industry, government, and the public to solicit ideas, input, and support.

(2) Current System Evaluation. Characterize elements of hazardous materials transportation that involve hazard analysis and generically identify control points within the program. Perform this task from the perspective of the various participants: industry (shippers, carriers, and associations), government (regulators and emergency response personnel), and the public. Look at variations depending on mode of transportation and materials involved. Compare on-going programs and efforts, including those of the Chemical Manufacturers Association

(Distribution Code) and the nuclear industry. Assess the degree of coverage of these efforts.

(3) Structural Definition. Define a theoretical structure for HACCP or similar methodologies relative to hazardous materials transportation. Determine what types of data are necessary to support any methodology developed. Catalog the sources and types of currently available data. Identify data that might need to be developed or collected. Describe performance measures that could be used in conjunction with such methodologies. Develop models for the application of concepts in the various segments of the hazardous material transportation system. Theoretical examples of its use might include a framework for carrier analysis of undeclared hazardous materials in air transportation and a model of regulated medical waste from the standpoint of a shipper.

(4) Panel of Experts. Convene a panel of experts to evaluate and help refine concepts. Analyze significant incidents in recent years where changes or decisions at one or more of a series of control points might have prevented the incidents or mitigated effects. Identify elements of greatest risk in the current hazardous material transportation system where use of HACCP or similar methodologies might be beneficial.

(5) Pilot Applications. Seek out industry participants and use the models developed in one or two prototype real-world applications for hazardous materials transportation.

(6) Guidebook. Complete a guidebook on methodologies developed in the course of this study. Include a series of examples of how concepts can be applied in various situations. To the extent possible, work with industry in completing a series of actual practical demonstrations based on these examples.

(7) Implementation Strategy. Evaluate how HACCP or similar methodologies adapted to hazardous materials transportation can best be employed. Should it be offered as a guideline and used voluntarily? Should it be required by regulation in certain instances? What are the advantages and disadvantages of each approach?

(Note that Task 6 and Task 7 are optional and a decision on whether to proceed with these will be made upon the completion of previous tasks.)

Objectives

The objectives of the exploratory meeting include:

(1) Informing stakeholders on the purpose and the importance of this project to RSPA;

(2) Educating participants about the HACCP concept;

(3) Identifying other risk management tools besides HACCP that might be considered;

(4) Enumerating major issues that need to be resolved before developing an approach;

(5) Developing a framework for Task 2 analysis and the identification of hazards and critical control points from the perspective of each of the major stakeholder segments B industry, government, and the public;

(6) Identifying potential pilot applications; and

(7) Obtaining recommendations for the Panel of Exerts.

Meeting Agenda

The November 4 session will cover general information and objectives. The November 5 session will consist of workshops addressing specific topics. The meeting will be structured so that a balanced group of stakeholders are the primary participants. Those wishing to make a short presentation on industry segment or government risk management programs on November 4 or those wishing to participate in the workshops on November 5 should contact Jean Hoff, ICF Consulting, telephone number (703) 934–3045 or via email at jhoff@icfconsulting.com, as far in advance of the meeting as possible. The entire meeting is open for observation without prior arrangement. The latest version of the agenda for this exploratory meeting also may be obtained by contacting Jean Hoff.

Comments on RSPA's overall approach to the area or on specifics that should be considered in conjunction with what is developed at the exploratory meeting are welcome.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–26395 Filed 10–7–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20953]

Gonzalez, Inc., d/b/a Golden State Transportation Company—Merger—Los Rapidos, Inc., d/b/a Crucero

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Gonzalez, Inc., d/b/a Golden State Transportation Company (Golden State or applicant), a motor carrier of passengers, has filed an application under 49 U.S.C. 14303 for the acquisition by merger of its affiliate, Los Rapidos, Inc., d/b/a Crucero (Los Rapidos), also a motor carrier of passengers. Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by November 22, 1999. Applicant may file a reply by December 7, 1999. If no comments are filed by November 22, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20953 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005–3934.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Golden State is a regular-route regional passenger carrier operating principally in the Southwest pursuant to authority granted in Docket No. MC–173837.[1] Los Rapidos is a regular-route regional passenger carrier operating in the Southwest pursuant to authority granted in Docket No. MC–293638.[2] According to applicant, the operations of the two bus lines to some extent have duplicated but in larger measure have complemented each other, with Golden State's operations directed at the domestic market and Los Rapidos specializing in the international cross-border market with Mexico.

Pursuant to a merger agreement, Los Rapidos will be merged into Golden State, with Golden State being the surviving corporation. Golden State will continue to be managed by its president, Mr. Antonio Gonzalez. By application thereafter to be filed with the Federal Highway Administration, the operating authority held by Los Rapidos is expected to be transferred to, and be

[1] Golden State is authorized to operate in Arizona, California, Colorado, Nevada, New Mexico, Oregon, Texas, and Washington.

[2] Los Rapidos is authorized to operate in Arizona and California.

integrated into the operating authority of, Golden State.

Golden State and Los Rapidos are controlled by Sistema Internacional de Transporte de Autobuses, Inc. (SITA), a noncarrier which is a wholly owned subsidiary of Greyhound Lines, Inc. (Greyhound).[3] Greyhound holds nationwide, motor passenger carrier operating authority under Docket No. MC–1515, and controls eight other motor passenger carriers, one directly [4] and the others indirectly through its noncarrier subsidiaries.[5] Greyhound is controlled by Laidlaw Inc., of Burlington, Ontario, Canada (Laidlaw), a noncarrier [6] that also controls 13 other motor passenger carriers, whose U.S. operations are mostly limited to charter and special operations.[7]

The merger is expected to produce significant benefits for the passengers of the two bus lines, which specialize in accommodating the needs of travelers to and from Mexico. Through integration of the schedules, passengers will have the choice of more frequent departures, at more opportune times, and with improved cross-border through or interline bus service. The merger will also permit the consolidation of terminals and, where appropriate, their enlargement, thereby making them more convenient and comfortable for the passengers.

It is anticipated that the merger will result in more efficient and cost-effective operations. Golden State plans to consolidate the management of the two companies, thereby eliminating duplicative overhead costs and improving management oversight and control. The merger is also expected to allow more efficient use of the buses and more effective deployment of personnel.

Applicant states that it will incur no debt in its merger of Los Rapidos; therefore, there will be no increase in fixed charges.

Applicant also states that there is no need to attach conditions for the protection of affected employees pursuant to 49 U.S.C. 14303(b) because the employees of Los Rapidos who meet the Golden State employment criteria and needs will be offered employment. Applicant notes that Golden State experienced significant growth before the merger and, thus, will be required to increase its employee base.

Applicant certifies that: (1) The aggregate gross operating revenues for Golden State, Los Rapidos, and the motor passenger carriers that they are affiliated with (subject carriers) exceeded $2 million during the 12-month period ending December 31, 1998; (2) Each of the subject carriers holds a satisfactory safety fitness rating from the U.S. Department of Transportation (except for affiliates of Laidlaw that are not rated); (3) Each of the subject carriers has sufficient liability insurance; (4) None of the subject carriers is domiciled in Mexico nor owned or controlled by persons of that country; and (5) Approval of the transactions will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from the applicant's representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) The total fixed charges that result; and (3) The interest of affected carrier employees.

On the basis of the application,[8] we find that the proposed merger is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed merger is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on November 22, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20004; (2) The U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) The U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: October 1, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–26204 Filed 10–7–99; 8:45 am]

BILLING CODE 4915–00–P

[3] Greyhound's acquisition of indirect control of Golden State was approved by the Board in *Greyhound Lines, Inc.—Control—Gonzalez, Inc., d/b/a Golden State Transportation Company,* STB Docket No. MC–F–20914 (STB served Dec. 19, 1997). Greyhound's acquisition of indirect control of Los Rapidos was approved by the Board in *Greyhound Lines, Inc.—Acquisition of Control—Los Rapidos, Inc.,* STB Docket No. MC–F–20903 (STB served Jan. 15, 1997).

[4] Greyhound directly controls Continental Panhandle Lines, Inc. (MC–8742), which operates in Kansas, Oklahoma, and Texas.

[5] Greyhound indirectly controls five motor passenger carriers through its wholly owned noncarrier subsidiary, GLI Holding Company. They are: PRB Acquisition, LLC., d/b/a Peoria Rockford Bus Co. (MC–66810), operating in Illinois; Valley Transit Company, Inc. (MC–74), operating in Texas; Carolina Coach Company, Inc. (MC–13300), operating in Delaware, Pennsylvania, Maryland, Virginia, and North Carolina; Texas, New Mexico & Oklahoma Coaches, Inc. (MC–61120), operating in Texas, New Mexico, Colorado, Kansas, and Oklahoma; and Vermont Transit Co., Inc. (MC–45626), operating in Maine, Vermont, Massachusetts, New Hampshire, and New York. The remaining two motor passenger carriers are indirectly controlled by Greyhound through SITA. They are: Americanos U.S.A., L.L.C. (MC–309813), operating between the Mexican border crossing points at El Paso, Laredo, and McAllen, TX, to the cities of Albuquerque, NM, Denver, CO, Dallas and Houston, TX, and Chicago, IL; and Autobus Amigos, L.L.C. (MC–340462), operating to and from the Mexican border crossing point at Brownsville, TX, and Houston, TX, and points in Florida.

[6] *See Laidlaw Inc. and Laidlaw Transit Acquisition Corp.—Merger—Greyhound Lines, Inc.,* STB Docket No. MC–F–20940 (STB served Dec. 17, 1998).

[7] The carriers are: D–A–R Transit Systems, Inc., d/b/a Galaxy Charters (MC–311766); Greyhound Canada Transportation Corp. (MC–304126); Laidlaw Transit, Inc. (MC–161299); Laidlaw Transit Services (Two), Inc. (MC–163344); Roesch Lines, Inc. (MC–119843); Safe Ride Services, Inc. (MC–246193); Vancom Transportation—Illinois, L.P. (MC–167816); Willett Motor Coach Co. (MC–16073); 1327172 Ontario Limited, Transferee of Gisele Rockey d/b/a Northern Escape Tours (MC–231298); Grey Line of Vancouver Holdings Limited (MC–357855); Voyageur Corp. (MC–360339); Laidlaw Transit Ltd. (MC–102189); and Dave Transportation Services (MC–144040).

[8] Under 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 31086 (Sub-No. 3)]

Tongue River Railroad Company, Construction and Operation of the Western Alignment in Rosebud and Big Horn Counties, MT

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of availability of a draft programmatic agreement and request for comments.

SUMMARY: The Surface Transportation Board's Section of Environmental Analysis (SEA) has prepared a Draft Programmatic Agreement (Draft PA) to establish the process for the identification and treatment of historic and cultural resources potentially affected by the construction and operation of Tongue River Railroad Company's (TRRC's) proposed rail line from Miles City to Decker, MT. TRRC's purpose is to provide a shorter and more cost effective route to transport low sulfur, sub-bituminous coal primarily to electric utilities in the mid-western United States.

SEA has developed the Draft PA in consultation with the following likely signatories: Advisory Council on Historic Preservation (ACHP); Montana State Historic Preservation Office (MT SHPO); Department of the Interior, Bureau of Land Management (BLM); United States Army Corps of Engineers (Corps); United States Department of Agriculture, Agricultural Research Service (ARS); Montana Department of Natural Resources and Conservation (MT DNRC); and, TRRC. SEA has also consulted with the Northern Cheyenne Indian Tribe as a concurring party. At this time all the likely participants to the Draft PA generally concur with the approach and stipulations contained in the Draft PA.

The Draft PA sets forth the detailed requirements of how the impacts associated with the construction and operation of TRRC's proposed rail line from Miles City to Decker, MT would be appropriately addressed, including impacts to archeological, paleontological, architectural, historic, and cultural resources. The Draft PA would require completion of detailed on-the-ground surveys of the railroad right-of-way prior to construction; development of a Treatment Plan to mitigate adverse effects on historic and cultural resources in consultation with the participants to the PA and the Native American community; and, procedures for reviewing and addressing objections and/or disagreements.

TRRC's rail line from Miles City to Decker, MT is comprised of two connecting line segments, neither of which has yet been constructed. The initial 89-mile segment, extending from Miles City, MT to a terminus point near Ashland, MT, was approved by the Interstate Commerce Commission (ICC), now the Surface Transportation Board (Board), in May 1986 in Finance Docket No. 30186 (Sub-No. 1), and also referred to as *Tongue River I.*[1] The second segment, referred to as *Tongue River II,*[2] extends approximately 40 miles in length from Ashland to Decker, MT, and was approved by the Board in November 1996 in Finance Docket No. 30186 (Sub-No. 2) via the Four Mile Creek Alternative.[3]

On April 27, 1998, TRRC filed an application with the Board under 49 U.S.C. 10901 and 40 CFR 1150.1–10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, MT known as the ''Western Alignment'' and also referred to as *Tongue River III.* The Western Alignment is an alternative routing for the Four Mile Creek Alternative approved by the Board in *Tongue River II* and the remainder of the approved rail line from Ashland to Decker would remain generally unchanged. A decision by the Board on whether to grant or deny *Tongue River III* will be made following the completion of the environmental review process and will take into account both the environmental and transportation concerns.[4]

In *Tongue River I,* the Board's predecessor, the ICC, developed a Memorandum of Agreement (MOA) to address historic and cultural issues that was signed by all the participating agencies. In *Tongue River II,* the Board developed a PA that addressed only the Ashland to Decker, MT portion of the line. However, the PA developed in *Tongue River II* was never signed by the participating agencies.

The Draft PA prepared for *Tongue River III* by SEA, acting on behalf of the Board, and presented for public review and comment would supercede the MOA signed in *Tongue River I* and the PA prepared in *Tongue River II,* and would apply to TRRC's entire rail line from Miles City to Decker, MT approved in *Tongue River I* and *Tongue River II,* and currently being considered in *Tongue River III.*

In compliance with Section 106 of the National Historic Preservation Act of 1996, as amended, and its implementing guidelines at 36 CFR Part 800, copies of the Draft PA are available for public review at the following locations:

Billings Library, 510 N. Broadway #2, Billings, MT

Miles City Public Library, 1 South 10th Street, Miles City, MT

St. Labre Indian School Library, 1000 Tongue River Road, Ashland, MT

Dull Knife Memorial College Library, 100 College Drive, Lame Deer, MT

Sheridan High School Library, 1056 Long Drive, Sheridan, WY

Range Riders Museum, Highway 10 and 12, Miles City, MT

Big Horn County Historic Museum, Hardin, MT

Individual copies of the Draft PA can be obtained for review and comment by contacting SEA's independent third-party contractor: Scott Steinwert, (415) 989–1446, extension 17, Public Affairs Management, 101 The Embarcadero, Suite 210, San Francisco, CA 94105.

Based on comments to the Draft PA, SEA, on behalf of the Board, and in consultation with the signatory and concurring agencies to the PA, will prepare a Final PA which will be executed by the participants.

DATES: Written comments on the Draft PA as the November 30, 1999 (45 days).

ADDRESSES: Send an original and 10 copies to Dana G. White, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. Please refer to Finance Docket No. 30186 (Sub-No. 3).

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[1] In *Tongue River I, Tongue River Railroad Company—Rail Construction And Operation—In Custer, Powder River, And Rosebud Counties, Montana,* Finance Docket No. 30186 (Miles City to Ashland), the Draft Environmental Impact Statement was served July 15, 1983; the Supplement to the Draft Environmental Impact Statement was served January 19, 1984; and the Final Environmental Impact Statement was served August 23, 1985.

[2] In *Tongue River II, Tongue River Railroad Company—Rail Construction And Operation Of An Additional Rail Line From Ashland To Decker, Montana,* Finance Docket No. 30186 (Sub-No. 2), the Draft Environmental Impact Statement was served July 17, 1992; the Supplement to the Draft Environmental Impact Statement was served March 17, 1994; and the Final Environmental Impact Statement was served April 11, 1996.

[3] Petitions for review of the November 8, 1996 decision were filed in the Ninth Circuit in *Northern Plains Resource Council, Inc. et al.* v. *STB,* No. 97–70037 (filed Jan. 7, 1997) (*NPRC*). The court proceedings are being held in abeyance pending the conclusion of *Tongue River III.*

[4] SEA is presently completing a Draft Supplement to the Final Environmental Impact Statement in *Tongue River III* that will be made available for public comment. Based on any comments received and any further environmental analysis that may be necessary, SEA will prepare a Final Supplement to the Final Environmental Impact Statement that will also be made available to the public. The Board will then decide whether to grant *Tongue River III.*

FOR FURTHER INFORMATION CONTACT: Dana G. White, (202) 565–1552 (TDD for the hearing impaired (202) 565–1695).

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act of 1966, as amended, requires that Federal agencies take into account the effect of an undertaking on a property which is included in, or eligible for inclusion in, the National Register of Historic Places (National Register). The ACHP has developed procedures at 36 CFR part 800 for implementing compliance with the requirements of section 106. For large or complex projects, the ACHP procedures allow preparation of a Programmatic Agreement (PA) as a way for an agency to fulfill it's section 106 responsibilities (36 CFR 800.13).

In *Tongue River I,* the Board's predecessor, the ICC, developed and MOA that was signed by all the participating agencies. In *Tongue River II,* the Board developed a PA that addressed only the Ashland to Decker, MT portion of the line. However, this PA was never signed by the participating agencies. In *Tongue River III,* the Board determined, in consultation with the ACHP, that preparation of a PA was appropriate to fulfill the section 106 responsibilities relative to construction of TRRC's proposed rail line from Miles City of Decket, MT. In addition, the participating agencies agreed that the PA prepared for *Tongue River III* and presented here for public review and comment, should supercede the MOA signed in *Tongue River I* and the PA prepared in *Tongue River II,* and apply to TRR's entire rail line from Miles City to Decker, MT considered in *Tongue River I, Tongue River II,* and *Tongue River III.*

Accordingly, here in *Tongue River III,* SEA, acting on behalf of the Board, developed the Draft PA in consultation with the following likely signatories: ACHP, MT SHPO, Corps, BLM, ARS, MT DNR, and TRRC. SEA also consulted with the Northern Cheyenne Indian Tribe as a concurring party. Each of the Federal and state agencies were consulted because TRRC's rail line would cross land either owned or managed by that agency, or it would affect land regulated by that agency. While TRRC's rail line would not cross the Northern Cheyenne Indian Reservation, SEA consulted with and invited the Northern Cheyenne to be a concurring party to the Draft PA because TRRC's rail line would cross lands that may contain properties of spiritual and traditional cultural value to Native Americans, primarily the Northern Cheyenne. In addition to the Northern Cheyenne, SEA contacted the Crow, Arapaho, Oglaha and Miniconjou Tribes and invited them to participate in the development of the Draft PA. However, at this time, none of the Tribes, other than the Northern Cheyenne, have responded to SEA's invitation or decided whether to participate in the development of, or concur in, the Draft PA.

Identification and Evaluation of Historic and Cultural Resources

SEA has reviewed and approved Class I Inventories conducted for a 1,500 foot area on either side of the centerline of the rail line from Miles City to Decker, MT. The Class I Inventories were conducted as part of the environmental review process for *Tongue River I, Tongue River II,* and *Tongue River III.*

A Class I Inventory identifies prehistoric sites, historic sites and structures, cultural landscapes, and properties of traditional cultural value that may be affected by construction and operation of the proposed rail line. The Class I Inventories conducted for *Tongue River I, Tongue River II,* and *Tongue River III* determined that construction and operation of a rail line by TRRC from Miles City to Decker, MT may have an effect upon historic properties included on, or eligible for inclusion on, the National Register.

The Draft PA includes stipulations that surveys and inventories would be conducted for geographic areas within which the construction and operation of the railroad may cause changes in the character or use of historic and cultural resources, to further assess the potential effects of the undertaking on these resources. These surveys and inventories would include a windshield survey from publicly accessible roads to consider visual, audible, and atmospheric effects, as well as other indirect effects on standing structures, cultural landscapes and properties of traditional cultural value that may be affected by the undertaking. These surveys are similar to a Class II Survey. A Class III Inventory of the right-of-way plus a 200 foot buffer area on either side would also be conducted by a qualified archaeologist under contract to TRRC. A Class III Inventory is an intensive survey aimed at locating and recording all historic and cultural resources that have surface or exposed profile. Representatives of the Northern Cheyenne Indian Tribe would be invited to participate in these surveys and inventories to help identify, document, and evaluate properties of spiritual and traditional cultural value to Native Americans. The windshield survey and intensive Class III inventories are hereafter referred to as the Class III Inventory Process.

The results of the Class III Inventory Process would be provided to the signatories and concurring agencies to the PA for review and comment. SEA, on behalf of the Board, would consult with the MT SHPO to resolve any conflicts and reach concurrence regarding the eligibility of properties for listing on the National Register, and the effects of constructing the rail line on these properties.

The Board, through SEA, would then consult with the signatory and concurring agencies to the PA to develop a Treatment Plan which would include measures to avoid, minimize or mitigate any adverse effects on historic and cultural resources identified in the surveys and inventories as eligible for listing on the National Register. To the extent practicable, the Treatment Plan(s) would incorporate measures identified by Native American representatives as necessary for mitigation of adverse effects to properties that are determined to be significant for their traditional cultural values.

Under the Draft PA, a Treatment Plan would be prepared for a segment or portions of the rail line as long as the Class III Inventory Process is complete and has been approved for that segment or portion of the rail line. Whenever possible, in-place preservation of historic and cultural resources would be the preferred treatment. However, where avoidance of such resources is not feasible, a program of data recovery would be implemented. The Treatment Plan(s) would also be provided to the signatory and concurring agencies to the PA for review and comment similar to the process for the Class III Inventory.

Construction Activities

Where the right-of-way does not contain eligible historic or cultural resources, TRRC could begin construction once the signatory and concurring agencies agree on the adequacy of the Class III Inventory Report(s). Where eligible historic and cultural resources are present, TRRC could begin construction once the agreed-upon data recovery fieldwork/treatment as specified in the Treatment Plan is completed and approved by SEA, on behalf of the Board, with the concurrence of the MT SHPO. Where eligible historic and cultural resources are present on land administered by the BLM, ARS or the state of Montana, TRRC may begin construction only after the agreed upon data recovery fieldwork/treatment is completed and approved by the affected agency and

with the concurrence of the MT SHPO and SEA, on behalf of the Board.

Changes in the ROW/Other Ancillary Areas

The Draft PA includes provisions that if changes are made to the alignment after a Class III Inventory Process is completed that place the alignment or ancillary areas outside of the areas previously surveyed, then SEA, on behalf of the Board, would require TRRC to inventory those areas and would require that TRRC retain the services of a qualified archaeologist to prepare a supplemental Class III Inventory Report prior to construction in the previously un-surveyed areas.

Discovery Plan

The Draft PA includes provisions that if a previously undiscovered archaeological, historical, or cultural property is encountered during construction, or previously known properties would be affected in an unanticipated manner, all work would cease within 200 feet of the resource in all directions until SEA, on behalf of the Board, could evaluate and, if necessary, authorize steps to mitigate impacts to the new discovery. Evaluation and mitigation would be carried out in consultation with the signatory and concurring agencies to the PA as expeditiously as possible.

The Draft PA also includes provisions that if historic or cultural resources are encountered on lands administered by the BLM, ARS or the state of Montana, SEA, on behalf of the Board, would consult with the affected agency to develop appropriate mitigation measures. TRRC would provide the construction contractor with written notification of the proper protocol, discussed above, for discovery of previously unencountered sites.

Human Remains

To address the potential for encountering human remains, cultural items and items of cultural patrimony associated with human remains during construction, the Draft PA includes provisions that in these circumstances on Federal lands, SEA, on behalf of the Board, or the appropriate Federal land management agency would consult with Native Americans, or other appropriate groups to determine treatment and disposition measures consistent with applicable Federal laws such as the Native American Graves Protection and Repatriation Act (NAGPRA) and Section 106 of the National Historic Preservation Act and state laws such as Montana laws M.C.A. 22–3–801 through 811. If human remains were encountered on state-administered lands, SEA, on behalf of the Board, would consult with the MT SHPO and MT DNRC as to appropriate mitigation measures in accordance with Montana laws M.C.A. 22–3–801 through 811. If human remains were encountered on private lands, the Board would ensure that they are treated according to the provisions of the Montana Human Skeletal Remains and Burial Site Protection Act.

The Draft PA further requires that in the case of inadvertent discovery of Native American human remains during construction activities, SEA, on behalf of the Board, would attempt to identify the appropriate Native American tribe(s) or other ethnic group(s) related to the burial, and consult with them over the treatment of remains in accordance with procedures identified in the Treatment Plan. All work would cease within 200 feet in all directions of the human remains until the requirements of Federal and state laws were satisfied.

Curation

The Draft PA includes provisions that all records and other items resulting from identification and data recovery efforts would be curated in accordance with 36 CFR Part 79, and the provisions of the NAGPRA. All archaeological materials recovered from BLM-administered lands would be curated in accordance with BLM requirements at BLM's Billings (MT) Curation Center. All archaeological materials recovered from ARS-administered lands would be curated in accordance with 36 CFR Part 79.

The Board would encourage private land owners to curate collections from their lands in an appropriate facility. Materials from private lands to be returned to the private land owners would be maintained in accordance with 36 CFR Part 79 until any specified analysis is complete.

The Board would ensure through consultation with the MT DNRC that all cultural and paleontological materials discovered on Montana lands would be curated in accordance with Montana laws M.C.A. 22–3–432.

Dispute Resolution

The Draft PA includes provisions for resolving disputes among the signatories to the PA. These include: (1) consulting with the objecting party to resolve the objection; (2) forwarding all documentation relevant to the dispute to the ACHP, unless the dispute involves site eligibility; and (3) sending any unresolved issue regarding site eligibility to the Keeper of the National Register.

Final PA

Based on comments to the Draft PA, SEA, on behalf of the Board, and in consultation with the signatory and concurring agencies to the PA, will prepare a final PA which will be executed by the participants.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 99–26320 Filed 10–7–99; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 30, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 8, 1999 to be assured of consideration.

Departmental Offices/Office of Foreign Assets Control (OFAC)

OMB Number: 1505–0118.

Form Number: TD F 90–22.39.

Type of Review: Extension.

Title: Travel to Cuba.

Description: Declarations are to be completed by persons traveling from the United States to Cuba. The declarations provide the U.S. Government with information to be used in administering and enforcing economic sanctions imposed against Cuba pursuant to the Cuban Assets Control Regulations; 31 CFR Part 515.

Respondents: Individuals or households.

Estimated Number of Respondents: 26,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: Other (each trip).

Estimated Total Reporting Burden: 2,166 hours.

OMB Number: 1505–0170.

Form Number: TD F 90–22.54.

Type of Review: Extension.

Title: Form for OFAC Funds Transfer License Applications.

Description: Assets blocked pursuant to the Trading With the Enemy Act, 50 U.S.C. App. 1–44, and the International Emergency Economic Powers Act, 50 U.S.C. 1701, may be released only through a specific license issued by the Office of Foreign Assets Control (OFAC). Such licenses are issued in response to applications submitted by or on behalf of persons or institutions whose money has been blocked. Since December 1998, applicants have been encouraged to use this form (1505–0170) to apply for licenses. Use of this form greatly facilitates and speeds applicants' submissions and OFAC's processing of applications, obviates the need for applicants to write lengthy letters to OFAC, and enables submitted application forms to become actual licenses once approved, thus reducing the overall burden of the application process.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 2,714.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,357 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–26304 Filed 10–7–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Solicitation for Comment in Connection With a Study Being Conducted by the Department of the Treasury Relating to the Scope and Use of Provisions Regarding Taxpayer Confidentiality

AGENCY: Department of the Treasury.

ACTION: Solicitation for comment.

SUMMARY: This is a solicitation for public comment in connection with a study being conducted by the Department of the Treasury relating to the scope and use of provisions regarding taxpayer confidentiality. This study is required by section 3802 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 782).

DATES: Written comments must be submitted by November 15, 1999.

ADDRESSES: Send comments to: Elizabeth P. Askey, Office of Tax Legislative Counsel, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Room 1321A, Washington, DC 20220. Comments may also be submitted to: *http://www.taxpolicy@do.treas.gov*—the subject line should contain the phrase ''Confidentiality Study.'' All comments will be available for public inspection and copying.

FOR FURTHER INFORMATION CONTACT: Elizabeth Askey at 202–622–0224 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6103 of the Internal Revenue Code (Code) prohibits the disclosure of tax returns or returns information except as otherwise authorized by the Code. Permitted disclosures include:

(1) Disclosures to a taxpayer or the taxpayer's designee pursuant to the taxpayer's consent;

(2) Disclosures for purposes of tax administration (including state tax administration);

(3) Disclosures to federal state, or local governmental agencies for nontax purposes such as child support enforcement and verifying taxpayers' eligibility for certain designated needs based programs, including food stamps, and certain Social Security benefits; and (4) Disclosures for nontax law enforcement purposes. Permitted disclosures generally are subject to strict procedural safeguards. Unauthorized disclosure or inspection of returns and return information may result in civil damages against the United States and/or criminal penalties against individuals who unlawfully disclose or inspect tax information.

Section 6104 makes available to the public certain tax information related to tax-exempt organizations and certain other entities. In the case of any tax exempt organization, section 6104 generally provides that the organization's application for tax exemption and supporting documents, IRS determination letter, and annual information returns filed under section 6033 are available for public inspection at certain IRS offices and at the organization's principal office (and certain regional and district offices). In addition, copies of such documents are generally available upon request made to the organization or the IRS. Section 6104 also authorizes the Secretary to disclose to certain state officials charged with overseeing charitable organizations described in section 501(c)(3) information relating to any organization's failure to qualify for, or subsequent loss of, section 501(c)(3) status, or the mailing of certain notices of tax deficiency.

Section 3802 of the IRS Restructuring and Reform Act of 1998 requires the Secretary of the Treasury to study the scope and use of provisions regarding taxpayer confidentiality Specifically, the study is to examine:

1. The present protections for taxpayer privacy,

2. Any need for third parties to use tax reform information,

3. Whether greater levels of voluntary compliance may be achieved by allowing the public to know who is legally required to file tax returns, but does not file tax returns,

4. The interrelationship of the taxpayer confidentiality provisions in the Internal Revenue Code of 1986 with provisions in other Federal law, including 5 U.S.C. 552a (commonly known as the Freedom of Information Act),

5. The impact on taxpayer privacy of the sharing of incoming tax return information for purposes of enforcement of state and local tax laws other than income tax laws, including the impact on the taxpayer privacy intended to be protected at the Federal, state, and local levels under Public Law 105–35, the Taxpayer Browsing Protection Act of 1997, and,

6. Whether the public interest would be served by greater disclosure of information relating to tax-exempt organizations described in section 501 of the Internal Revenue Code of 1986.

Request for Public Comment

The Department of the Treasury invites comments relative to the six topics described. In particular, the Department of the Treasury invites comments with respect to the following:

1. How is the privacy protection provided by section 6103 beneficial to taxpayers?

2. How is the section 6103 statutory scheme burdensome for taxpayers? Does section 6103 affect the IRS's ability to deliver quality customer service and, if so, in what ways?

3. Is the statutory structure and/or administration of section 6103 consistent, simple, administrable, and fair? What changes, if any, should be made to the content and/or administration of section 6103?

4. What is the relationship between taxpayer confidentiality as provided by

section 6103 and compliance with the internal revenue laws? What effect, if any, might publishing the names of nonfilers have on compliance with the internal revenue laws? What effect, if any, might broadening the scope of permissible disclosures have on compliance with the internal revenue laws?

5. What impact has technology had on the protection of taxpayer privacy and what, if any, additional safeguards may be necessary as a result? As the IRS moves toward electronic filing and maintenance of tax records, what, if any, changes should be made to the confidentiality rules under section 6103?

6. What impact have taxpayer privacy protections had on the ability of federal, state, and local agencies to receive information critical to their operation, particularly information not easily obtainable from other sources?

7. Should tax information be used for nontax purposes? If so, what factors should influence whether agencies and others should be permitted direct access under section 6103 to taxpayer information for nontax purposes? What factors should influence whether agencies and others should be allowed to obtain such information by consent from the taxpayer, for example, as a condition to approval of mortgages or other loans, or for obtaining government benefits? Should there be any conditions or restrictions on the recipient's use of tax information obtained by consent?

8. What factors should influence whether federal, state, or local agencies that receive tax information to carry out particular programs, and who use private contractors for data processing and other services, should be permitted to disclose tax information to those contractors for the purpose of performing those programs?

9. What changes, if any, should be made to either the safeguard program or the consent process?

10. What, if any, additional restrictions should be placed on the ability of those who receive tax information to redisclose the information to other parties? What means should be used to implement any such redisclosure protections?

11. How can taxpayer privacy concerns and a desire for more information-sharing within government be balanced?

12. Would the public interest be served by allowing greater sharing of information between the IRS and other federal and state agencies for joint investigations relating to the enforcement of federal and state laws affecting tax-exempt organizations? What restrictions, if any, should be imposed on use of the information by those agencies?

13. Do the public inspection provisions of section 6104 and section 6110 provide adequate disclosure of IRS determinations affecting tax-exempt organizations? If not, what additional information should be made available?

14. Is the information currently reported by tax-exempt organizations to the IRS adequate to ensure effective oversight? If not, what additional information should be reported? Should there be more detailed disclosure regarding transactions between tax-exempt organizations and their subsidiaries or other affiliates?

Joseph Mikrut,

Tax Legislative Counsel.

[FR Doc. 99–26228 Filed 10–7–99; 8:45 am]

BILLING CODE 4810–25–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, October 28, 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 the 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, October 28, 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, October 25, 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 years 1999 and 2000.

Authority: 12 U.S.C. 4703; Chapter X, Pub. L. 104–19, 109 Stat. 237.

Dated: October 4, 1999.

Ellen Lazar,

Director, Community Development Financial Institutions Fund.

[FR Doc. 99–26263 Filed 10–7–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Open Meeting of the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the Information Reporting Program Advisory Committee.

SUMMARY: In 1991 the IRS established the Information Reporting Program Advisory Committee (IRPAC) in response to a recommendation made by the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between the officials of the IRS and representatives of the payer/practitioner community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures and, when necessary, suggests ways to improve the operation of the Information Reporting Program (IRP).

There will be a meeting of IRPAC on Wednesday, October 27, 1999. The meeting will be held in Room 3313 of the Internal Revenue Service Main Building, which is located at 1111 Constitution Avenue, NW., Washington, DC. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting on Wednesday, October 27, 1999

9:00—Meeting Opens
11:30—Break for Lunch
1:00—Meeting Resumes
4:00—Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) TIN Listings and Tapes for the Backup Withholding and IRP Penalty Programs.

(2) Tax Reporting on Sick-pay.

(3) Form 1065 Schedule K–1 Electronic Filing.

(4) IRPAC Articles in the SSA/IRS Reporter.

(5) Change in Publication 531 Instructions.

(6) Follow-up Paper on Investment Advisors.

(7) Follow-up Paper on Electronic Filing of Forms 1099 by Large Filers.

(8) IRS Update on the Martinsburg Computing Center's Magnetic Media/ Electronic Filing Seminars.

(9) IRS Update on the Report to Congress about Extending the Due Date for Payee Statements.

(10) IRS Update on Changes to the Form 1099 Instructions.

(11) IRS Update on the Creation of an IRS Web Site.

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for information reporting payer compliance. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service.

IRPAC is currently comprised of 21 representatives from various segments of the information reporting payer/ practitioner community. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend two public meetings each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 80 people, including members of IRPAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. In order to get your name on the building access list, notification of intent to attend this meeting must be made with Ms. Thomasine Matthews no later than Friday, October 22, 1999. Ms. Matthews can be reached by e-mail at thomasine.matthews@M1.irs.gov, or by telephone at 202–622–4214. Notification of intent to attend should include your name, organization and phone number. If you leave this information for Ms. Matthews in a voice-mail message, please spell out all names.

A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call or e-mail Ms. Thomasine Matthews on or after Monday, October 18, 1999, to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

ADDRESSES: If you would like to have IRPAC consider a written statement at a future IRPAC meeting (not this upcoming meeting), please write to Kate LaBuda at the IRS, Office of Payer Compliance, OP:EX:ST:PC, Room 2013, 1111 Constitution Avenue, NW., Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, or to have a copy of the agenda faxed to you on or after October 18, 1999, e-mail Ms. Thomasine Matthews at thomasine.matthews@M1.irs.gov, or call her at 202–622–4214. For general information about IRPAC call Ms. Kate LaBuda at 202–622–3404.

Dated: October 1, 1999.

Allen Jones,

Acting Director, Office of Payer Compliance, Office of Examination.

[FR Doc. 99–26227 Filed 10–7–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Receipt of Cultural Property Request From the Government of the Republic of Bolivia

AGENCY: United States Information Agency.

ACTION: Notice of receipt of cultural property request from the Government of the Republic of Bolivia.

The Government of the Republic of Bolivia, concerned that its cultural heritage is in jeopardy from pillage, made a request to the Government of the United States under Article 9 of the 1970 UNESCO Convention. The request was received on September 29, 1999, by the United States Information Agency. It seeks U.S. import restrictions on categories of archaeological and ethnological material of the Pre-Columbia and Colonial periods made of, but not limited to, stone, metal, ceramic, shell, bone, wood, leather, painted materials and cloth. In accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2602 and 2603), the request will be reviewed by the Cultural Property Advisory Committee which will report on its findings and recommendations thereunder. A meeting of the Committee will be announced at a later time. Information about the Act and U.S. implementation of the 1970 UNESCO Convention can be found at http://e.usia.gov/education/culprop.

Dated: September 30, 1999.

William B. Bader,

Associate Director for Education and Cultural Affairs, United States Information Agency.

[FR Doc. 99–26393 Filed 10–7–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 195

Friday, October 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

48 CFR Part 415

[AGAR Case 96-04]

RIN 0599-AA07

Agriculture Acquisition Regulation; Part 415 Reorganization; Contracting by Negotiation

Correction

In rule document 99–25474 beginning on page 52673 in the issue of Thursday, September 30, 1999, make the following correction:

415.207 [Corrected]

On page 52674, in the third column, in section 415.207(b), under ''AGREEMENT GOVERNING THE USE AND DISCLOSURE OF PROPOSALS'', ''21'' should read ''1''.

[FR Doc. C9–25474 Filed 10–7–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 99–042]

RIN 2115 AA97

Safety Zone; Tampa Bay, Tampa, FL

Correction

In proposed rule document 99–22654 beginning on page 47752 in the issue of Wednesday, September 1, 1999, make the following correction:

On page 47753, in the second column, in the sixth line, ''not'' should read ''now''.

[FR Doc. C9–22654 Filed 10–7–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday
October 8, 1999

Part II

Department of Labor

Employment Standards Administration

20 CFR Part 718 et al.

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969; Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Parts 718, 722, 725, 726, and 727

RIN 1215–AA99

Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended

AGENCY: Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: On January 22, 1997, the Department issued a proposed rule to amend the regulations implementing the Black Lung Benefits Act. The Department initially allowed interested parties until March 24, 1997 to file comments, but extended that deadline twice. When the comment period finally closed on August 21, 1997, the Department had received almost 200 written submissions from coal miners, coal mine operators, insurers, physicians, and attorneys. In addition, the Department held two hearings, one on June 19, 1997 in Charleston, West Virginia, and another on July 22–23, 1997 in Washington, D.C. Over 50 people testified at the Department's hearings. In total, the Department heard from over 100 former coal miners and members of their families, over 50 coal mine operators and insurance companies that provide black lung benefits insurance, eight physicians, eight attorneys representing both claimants and coal mine operators, nine legislators at the federal and state levels, and groups as diverse as the United Mine Workers of America, the National Black Lung Association, the National Mining Association, the American Insurance Association, and the American Bar Association.

The Department has reviewed all of the comments and testimony, and has decided to issue a second proposal, revising a number of the most important regulations contained in the earlier proposal. In some cases, the Department has proposed additional changes to these regulations. In other cases, the Department has explained its decision not to alter its proposal based on the comments received to date. Finally, the Department has prepared an initial regulatory flexibility analysis. The Department's second proposal is intended to accomplish two purposes. First, it will provide notice to all interested parties of the proposed revisions, as well as of the initial regulatory flexibility analysis set forth in this document. Second, the re-proposal will allow small entities that may have been unaware of the Department's earlier proposal to submit comments on the entire proposed rule.

DATES: Comments must be submitted on or before December 7, 1999.

ADDRESSES: All comments concerning these proposed regulations should be addressed to James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C–3520, Frances Perkins Building, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James L. DeMarce, (202) 693–0046.

SUPPLEMENTARY INFORMATION:

This notice reprints 20 CFR Parts 718, 722, 725, and 726 in their entirety for the convenience of interested parties. This notice thus necessarily includes proposed revisions contained in the Department's original notice of proposed rulemaking. 62 FR 3338 (Jan. 22, 1997). The Department intends this notice to supplement the original notice, however, and not to replace it. To the extent that previously proposed regulatory changes have not been altered by the revisions contained in this notice, the explanation of those changes contained in the Department's initial notice remains valid. Where the Department has proposed additional changes, those changes are explained below.

Summary of Noteworthy Proposed Regulations

Evidentiary Development

Documentary Medical Evidence

The Department's initial proposal governing evidentiary development in black lung claims resulted in the greatest volume of public comment, from coal mine operators, their insurers, claims servicing organizations and miners. Many commenters were critical of the Department's proposal that all documentary medical evidence was to be submitted to the district director in the absence of extraordinary circumstances. Numerous commenters, expressing widely varying points of view, also addressed the proposed limitation on the amount of documentary medical evidence that each side could submit in a given claim.

After carefully considering the many valid objections to the required submission of documentary medical evidence to the district director, the Department now proposes to retain the current process for submitting documentary medical evidence into the record. Under this process, parties may submit documentary medical evidence either to the district director or to an administrative law judge (ALJ) up to 20 days before an ALJ hearing, or even thereafter, if good cause is shown. This proposal does retain, however, the Department's original limitation on the amount of documentary medical evidence which may be submitted in each claim. To clarify its intent, the Department has defined differently the applicable evidentiary limitations. These limitations are now expressed in terms of the types of evidence most commonly used to establish or refute entitlement to benefits under §§ 718.202 and 718.204. Thus, rather than describing the evidentiary limitations in terms of two pulmonary evaluations or consultative reports, the revised § 725.414 speaks in terms of two chest X-ray interpretations, the results of two pulmonary function tests, two arterial blood gas studies, and two medical reports.

The revised § 725.414 also would make explicit the amount of evidence which each side may submit in rebuttal of its opponent's case. A party may submit no more than one physician's interpretation of each chest X-ray, pulmonary function test, or arterial blood gas study submitted by its opponent. In addition, the Department proposes to permit a party to rehabilitate evidence that has been the subject of rebuttal. For example, where a party submits a physician's interpretation in rebuttal of a chest X-ray interpretation or objective test, the party that originally submitted the chest X-ray or test into evidence may introduce a contrary statement from the physician who originally interpreted it.

This proposal would alter in one significant way the limitations on the amount of medical evidence admissible in each claim. In order to allow for a more careful consideration of the unique facts and circumstances of each case, and to provide an additional procedural safeguard, this proposal would permit an administrative law judge to admit medical evidence into the record in excess of the limits outlined in § 725.414 upon a showing of good cause. The Department's prior proposal would have permitted the admission of such evidence only if a moving party could demonstrate extraordinary circumstances.

Complete Pulmonary Evaluation

The Department also proposes a change in the manner in which it administers the complete pulmonary evaluation required by the Black Lung Benefits Act. Under the Department's original proposal, a miner could be examined either by a physician selected

by the Department or by a physician of his choosing. If the miner selected the physician, however, the report of that examination would have counted as one of the two pulmonary evaluations the miner was entitled to submit into evidence. The Department now proposes to allow the miner to choose the physician or facility to perform the complete pulmonary evaluation from a list of providers maintained by the Department. The authorized list of physicians and facilities in a given case would include all those in the state of the miner's residence and contiguous states. If, however, a miner chose a provider more than one hundred miles from his residence to administer the 413(b) evaluation, the designated responsible operator could choose to send the miner a comparable distance for its examination. The 413(b) examination results would not count against the miner's quota. § 725.406.

The Department believes that this proposal would benefit all parties to a claim. It would make possible the best quality respiratory and pulmonary evaluation and would insure each miner a thorough examination, performed in compliance with the applicable quality standards. Such a pulmonary evaluation would therefore give the Department a sound evidentiary basis upon which to make an initial finding, a finding which both the claimant and the operator may find credible. The Department intends to develop more rigorous standards for physicians and facilities that perform pulmonary evaluations and to reevaluate the fees it pays physicians to perform and explain the results of these examinations. The Department has discussed in the preamble to § 725.406 several possible criteria that the Office might use in selecting appropriate physicians and facilities, and invites comment on these and other possible criteria.

Developing medical evidence relevant to the claimant's respiratory and pulmonary condition, including the objective medical testing required by the Department's quality standards, may involve costs beyond the reach of some claimants. Thus, this proposal would require a district director to inform the claimant that he may have the results of the Department's initial objective testing sent to his treating physician for use in the preparation of a medical report that complies with the Department's quality standards. The district director's notice would also inform the claimant that, if submitted, a report from his treating physician would count as one of the two reports he is entitled to submit under § 725.414, and that he may wish to seek advice, from a lawyer or other qualified representative, before requesting his treating physician to supply such a report. In this way, the Department hopes to assist claimants who may not be able to afford the necessary objective testing.

Documentary Evidence Pertaining to the Liability of a Potentially Liable Operator or the Responsible Operator

Although the Department now proposes to allow the submission of new documentary medical evidence while a case is pending before the Office of Administrative Law Judges, it has not altered the proposal with respect to the required submission to the district director of all documentary evidence relevant to potentially liable operators and the responsible operator. Proposed §§ 725.408, 725.414 and 725.456 would continue to require that such evidence be submitted to the district director and that an administrative law judge may admit additional evidence on such issues only if the party seeking to submit the evidence demonstrates extraordinary circumstances justifying its admission. The Department has revised proposed § 725.408, however, in response to operators' comments. That section would now allow an operator, notified of its potential liability under proposed § 725.407, 90 days, rather than 60, to submit documentary evidence challenging the district director's determination that it meets the requirements in § 725.408(a)(2). In addition, the 90 day period could be extended for good cause pursuant to § 725.423.

Witnesses

This proposal alters the provisions governing witnesses testimony. §§ 725.414, 725.456, 725.457. The revisions would allow a physician to testify, either at a hearing or pursuant to deposition, if he authored a ''medical report'' admitted into the record pursuant to § 725.414. Alternatively, if a party has submitted fewer than the two medical reports allowed as an affirmative case, a physician who did not prepare a medical report could testify in lieu of such a report. No party would be allowed to offer the testimony of more than two physicians, however, unless the administrative law judge found good cause to allow evidence in excess of the § 725.414 limitations. The Department also has proposed altering its original limitation on the scope of a physician's testimony. If a physician is permitted to testify, he may testify as to any medical evidence of record, and not solely with respect to the contents of the report he prepared.

The regulations governing witnesses testimony would continue to require that the parties notify the district director of any potential witness whose testimony pertains to the liability of a potentially liable operator or the responsible operator. Absent such notice, the testimony of such a witness may not be admitted into a hearing record absent an administrative law judge's finding of extraordinary circumstances. §§ 725.414, 725.457.

Witnesses' Fees

The Department received comments from both miners and coal mine operators criticizing its initial proposal, which would have assessed liability for witnesses' fees on the party seeking to cross-examine a witness if the witness's proponent did not intend to call the witness to appear at the hearing. In response to these objections, the Department now proposes to assess the costs of cross-examination of a witness on the party relying on that witness's affirmative testimony. This change will make the regulation more consistent with the manner in which witnesses' fees are paid in general litigation. Under the proposal, the party whose witness is to be cross-examined may request the administrative law judge to authorize a less burdensome method of cross-examination than an actual appearance at a hearing, provided that the alternative method authorized will produce a full and true disclosure of the facts.

The only exception to this general rule would be in the case of an indigent claimant. If a claimant is the proponent of the witness whose cross-examination is sought, and the claimant demonstrates that he would be deprived of ordinary and necessary living expenses if required to pay the witness's fee and mileage necessary to produce the witness for cross-examination, the administrative law judge may apportion the costs of the cross-examination between the parties, up to and including the assessment of the total cost against the party opposing claimant's entitlement. A claimant shall be considered deprived of funds required for ordinary and necessary living expenses under the standards set forth at 20 CFR 404.508. The Black Lung Disability Trust Fund may not be held liable for such witness's fee in any case in which the district director has designated a responsible operator, except that the fund may be assessed the cost associated with the cross-examination of the physician who performed the miner's complete pulmonary evaluation.

Subsequent Claims

Subsequent applications for benefits are filed more than one year after the denial of a previous claim and may be adjudicated only if the claimant demonstrates that an applicable condition of entitlement has changed in the interim. In its initial notice of proposed rulemaking, the Department attempted to clarify the regulation governing subsequent claims by summarizing and incorporating into the regulation's language the outcome of considerable appellate litigation. 62 FR 3351–3353 (Jan. 22, 1997). Because the courts of appeals have issued additional decisions since the Department's initial proposal, the proposal now merely codifies caselaw that is already applicable to more than 90 percent of the claimants who apply for black lung benefits. The Department's complete discussion of the numerous comments received in response to the first notice of proposed rulemaking is found under § 725.309.

This second proposal contains two changes to § 725.309 as initially proposed. Both changes affect § 725.309(d)(3). The Department now proposes elimination of the rebuttable presumption that the miner's physical condition has changed if the miner proves with new medical evidence one of the applicable conditions of entitlement. Commenters responded that the proposal was confusing and would lead to considerable litigation. The Department agrees that the presumption is unnecessary and suggests its deletion. Under the new proposal, a subsequent claim will be denied unless the claimant demonstrates that one of the applicable conditions of entitlement has changed since the date upon which the order denying the prior claim became final. Section 725.309(d)(3) of this proposal also clarifies the Department's original intent with respect to subsequent survivors' claims. In order to avoid an automatic denial, the applicant in a subsequent survivor's claim must demonstrate that at least one of the applicable conditions of entitlement is unrelated to the miner's physical condition at the time of his death. Thus, if the prior denial was based solely on the survivor's failure to establish that the miner had pneumoconiosis, that the miner's pneumoconiosis was caused by coal mine employment, or that the pneumoconiosis contributed to the miner's death, any subsequent claim must also be denied, absent waiver by the liable party.

By allowing the filing of a subsequent claim for benefits which alleges a worsening of the miner's condition, the Department merely recognizes the progressive nature of pneumoconiosis. The proposed regulation does not allow the reopening of any prior claim which was denied more than one year before the filing of the subsequent claim. It also prohibits any award of benefits for a period of time covered by that prior denial. Responsible operators have argued to the circuit courts of appeals that the Department's regulatory scheme allows the ''recycling'' of an old claim in violation of the Supreme Court's holding that a black lung claimant may not ''seek[] to avoid the bar of res judicata [finality] on the ground that the decision was wrong.'' *Pittston Coal Group* v. *Sebben,* 488 U.S. 105, 123 (1988). The courts have uniformly rejected this argument, see *Lovilia Coal Co.* v. *Harvey,* 109 F.3d 445, 449–450 (8th Cir. 1997), *cert. denied,* 118 S. Ct. 1385 (1998). Thus, the Department's proposal is fully consistent with the Supreme Court's holding in *Sebben,* and gives appropriate finality to prior denials.

The Department's experience with subsequent claims also demonstrates the need for such filings. During the period between January 1, 1982, when the Black Lung Benefits Amendments of 1981 took effect, and July 16, 1998, 10.56 percent of the subsequent claims filed by living miners were ultimately awarded as opposed to only 7.47 percent of first-time claims. To prevent a miner who has previously been denied benefits from filing a subsequent claim would force each miner to ''guess'' correctly when he has become totally disabled due to pneumoconiosis arising out of coal mine employment because a premature and unsuccessful filing would forever bar an award. In addition, the total number of subsequent claims filed by miners during that same time period, 30,964, as compared to the total number of claims filed, approximately 107,000, indicates that the provision is not abused. Of the total number of claims filed, only approximately 1,400, or 1.3 percent, were from individuals who had been denied benefits three or more times. Thus, in general, only an individual who believes his condition has truly worsened files a subsequent claim.

Although the Department's proposal would allow the filing of subsequent claims, the Department also intends to take steps to better educate claimants with respect to the requirements for entitlement. The Department intends to provide better initial pulmonary evaluations and better reasoned, more detailed explanations of denials of claims. By providing claimants with a more realistic view of their possible entitlement, the Department expects that the number of nonmeritorious applications will be reduced.

Attorneys' Fees

In its first notice of proposed rulemaking, the Department attempted to clarify an operator's liability for a claimant's attorney's fees and the dates on which the operator's liability commenced. The Department also recognized the Trust Fund's liability for attorneys' fees and made it coextensive with a liable operator's. In general, the Department used the date of the event which created an adversarial relationship between the claimant and either the operator or the fund as the date on which liability for a claimant's attorney's fees commenced. The Department used this date based on the theory that it was the creation of an adversarial relationship which required employment of an attorney. Thus, for example, a successful claimant's attorney could only collect a fee from an operator or the fund for necessary work performed after the liable operator first contested the claimant's eligibility or the fund first denied the claim. *See* 62 FR 3354, 3399 (Jan. 22, 1997).

Upon further reflection and consideration of the comments received, however, the Department now proposes to allow successful claimants' attorneys to collect fees from an operator or the fund for all necessary work they perform in a case rather than only the work performed after creation of an adversarial relationship. Although the creation of an adversarial relationship and the ultimately successful prosecution of a claim are still necessary to trigger employer or fund liability for attorneys' fees, the date on which the adversarial relationship commenced will no longer serve as the starting point of liability. The Department believes this change may be appropriate in light of the evidentiary limitations present in the proposal. These limitations significantly alter the consequences of an early submission of evidence and make the quality of each piece of evidence submitted significantly more important. Thus, in an attempt to avoid setting a trap for the unwary claimant and to encourage early attorney involvement in these claims, the Department proposes allowing successful attorneys to collect fees for all of the necessary work they perform.

Treating Physicians' Opinions

In the preamble accompanying its initial proposal, the Department noted that its proposal to allow a fact-finder to give controlling weight to the opinion of

a treating physician attempted to codify principles embodied in case law and also drew on a similar regulation adopted by the Social Security Administration, 20 CFR 404.1527(d)(2). See 62 Fed. Reg. 3338, 3342 (Jan. 22, 1997). The Department's proposal elicited widely divergent comment from numerous sources. The Department now invites comment on alternative ways to determine when a treating physician's opinion may be entitled to controlling weight.

The purpose of this proposal is not to limit a factfinder's consideration of any properly admitted medical or other relevant evidence. Rather, this regulation would mandate only that the factfinder recognize that a treating physician may possess additional insight into the miner's respiratory or pulmonary condition by virtue of his extended treatment. The Department has proposed two changes to § 718.104(d). In the absence of contrary probative evidence, the adjudication officer would be required to accept the physician's statement with regard to the nature and duration of the doctor's treatment relationship with the miner, and the frequency and extent of that treatment. § 718.104(d)(5). The Department has also added language to § 718.104(d) to make explicit its intent that a treating physician's opinion may establish all of the medical elements of entitlement. Finally, the Department has retained the language in the original proposal that whether controlling weight is given to the opinion of a treating physician shall also be based on the credibility of that opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.

Waiver of Overpayments

In its previous notice of proposed rulemaking, the Department extended the right to seek waiver of recovery of an overpayment to all claimants, without regard to whether recovery was sought by a responsible operator or the Black Lung Disability Trust Fund. 62 FR 3366–3367 (Jan. 22, 1997). The Department received numerous comments in response, many urging adoption of a more generous waiver provision fashioned after the Longshore and Harbor Workers' Compensation Act. Many other comments opposed the extension of waiver rights to all claimants as an unconstitutional deprivation of responsible operators' property rights and right to appeal. Thus far, these comments have not provided the Department with a sufficient basis for altering its original proposal. *See* the discussion under § 725.547.

The Department also heard testimony from a number of witnesses generally critical of the application of the criteria used to determine whether recoupment of an overpayment would defeat the purposes of title IV of the Federal Coal Mine Health and Safety Act or would be against equity and good conscience. These waiver criteria are incorporated into the Black Lung Benefits Act from the Social Security Act, 30 U.S.C. 923(b), 940, incorporating 42 U.S.C. 404(b), and the Social Security Administration uses them in its adjudication of overpayments arising under title II of the Social Security Act. Thus, Social Security's current interpretation of these criteria is found in Social Security regulations governing title II claims, 20 CFR 404.506 through 404.512, not in their regulations governing Part B claims filed under the Black Lung Benefits Act, 20 CFR 410.561 through 410.561h. In order to make the standards for waiver of recovery of a black lung overpayment more current, the Department proposes to amend section 725.543 to incorporate Social Security's title II standards, rather than its Part B regulations.

Definition of Pneumoconiosis and Establishing Total Disability Due to Pneumoconiosis

The Department has suggested no further change to its initial proposal defining pneumoconiosis, § 718.201, and no significant change to its regulation defining total disability and disability causation, § 718.204. The miner retains the burden of proving each of these required elements of entitlement.

The Department received widely divergent comments from medical professionals on its proposed definition of pneumoconiosis. Some commenters argued that the proposal lacked a sound medical basis and would therefore unjustifiably increase the number of claims approved. Other physicians, also with expertise in pulmonary medicine, supported the proposal. As a result, the Department sought additional guidance on this issue from the National Institute for Occupational Safety and Health (NIOSH). The Department forwarded to NIOSH all of the comments and testimony it had received relevant to § 718.201 and requested that NIOSH advise the Department whether any of the material altered that agency's original opinion, submitted during the comment period, which supported the Department's proposal. NIOSH concluded that the unfavorable comments and testimony did not alter its previous position: NIOSH scientific analysis supports the proposed definitional changes.

The Department also received numerous comments on its proposed regulation defining total disability and disability causation, and setting out the criteria for establishing total disability. The Department has proposed no significant change to § 718.204. It has proposed, however, a change in the methodology by which pulmonary function tests are administered. § 718.103(a) and Appendix B to Part 718. This proposal would require that pulmonary function testing be administered by means of a flow-volume loop, a more reliable method of ensuring valid, verifiable results in pulmonary function testing. The Department invites comment on these proposed changes.

True Doubt

The ''true doubt'' rule was an evidentiary weighing principle under which an issue was resolved in favor of the claimant if the probative evidence for and against the claimant was in equipoise. In its first notice of proposed rulemaking, the Department proposed deleting subsection (c) of the current regulation at § 718.3, because the Supreme Court held that this language failed to define the ''true doubt'' rule effectively. 62 FR 3341 (Jan. 22, 1997). Although the Department received a number of comments urging the proposal of a ''true doubt'' rule, the Department has not done so in this second notice of proposed rulemaking.

The Department believes that evaluation of conflicting medical evidence requires careful consideration of a wide variety of disparate factors, making the applicability of any true doubt rule extremely limited. The availability of these factors makes it unlikely that a factfinder will be able to conclude that the evidence, although in conflict, is equally probative. Thus, the Department does not believe that promulgation of a true doubt rule will enhance decision-making under the Act.

Federal Coal Mine Health and Safety Act Endorsement

Section 726.203 was not among the regulations the Department opened for comment in its previous notice of proposed rulemaking. Representatives of the insurance industry commented, however, that a different version of the endorsement contained in § 726.203(a) has been in use since 1984, with the Department's knowledge and consent. The Department is now opening § 726.203 for comment. Although this proposal does not suggest alternative language for the endorsement, the

preamble does contain the version of the endorsement which the industry provided. The Department invites comment on its possible use, but urges commenters to bear in mind the requirement in § 726.205 that endorsements other than those provided by § 726.203 may be used only if they do not ''materially alter or attempt [] to alter an operator's liability for the payment of any benefits under the Act.* * *'' The Department also requests that the insurance industry submit for the record any document it might possess from the Department authorizing use of the different endorsement.

Medical Benefits

Since the Department's initial proposal, the U.S. Court of Appeals for the Sixth Circuit has issued a decision addressing the compensability of medical expenses incurred as a result of treatment for totally disabling pneumoconiosis. *Glen Coal Co.* v. *Seals,* 147 F.3d 502 (6th Cir. 1998). A majority of that panel held that the Benefits Review Board had erred by applying the Fourth Circuit's presumption to a miner whose coal mine employment took place within the jurisdiction of the Sixth Circuit. In the Fourth Circuit, if a miner entitled to monthly black lung benefits receives treatment for a pulmonary disorder, it is presumed that that disorder is caused or aggravated by the miner's pneumoconiosis. *Doris Coal Co.* v. *Director, OWCP,* 938 F.2d 492 (4th Cir. 1991); *Gulf & Western Indus.* v. *Ling,* __ F.3d __, 1999 WL 148851 (4th Cir. Mar. 19, 1999).

The Department believes that black lung benefit claims adjudication should vary as little as possible from circuit to circuit, and consequently continues to propose a regulatory presumption, based on the Fourth Circuit's approach, that would apply nationwide. The Sixth Circuit's opinion would allow such a result, given the separate views expressed by each of the three judges sitting on that panel. The Department also believes that a regulatory presumption governing the compensability of medical expenses for the treatment of totally disabling pneumoconiosis is appropriate given the rational connection between the facts proven and the facts presumed.

Explanation of Proposed Changes

Open Regulations

The Department invites comments from interested parties on the following regulations: § 718.3, § 718.101, § 718.102, § 718.103, § 718.104, § 718.105, § 718.106, § 718.107, § 718.201, § 718.202, § 718.204, § 718.205, § 718.301, § 718.307, § 718.401, § 718.402, § 718.403, § 718.404, Appendix B to part 718, Appendix C to Part 718, part 722 (entire), § 725.1, § 725.2, § 725.4, § 725.101, § 725.103, § 725.202, § 725.203, § 725.204, § 725.209, § 725.212, § 725.213, § 725.214, § 725.215, § 725.219, § 725.221, § 725.222, § 725.223, § 725.306, § 725.309, § 725.310, § 725.311, § 725.351, § 725.362, § 725.367, § 725.403, § 725.405, § 725.406, § 725.407, § 725.408, § 725.409, § 725.410, § 725.411, § 725.412, § 725.413, § 725.414, § 725.415, § 725.416, § 725.417, § 725.418, § 725.421, § 725.423, § 725.452, § 725.454, § 725.456, § 725.457, § 725.458, § 725.459, § 725.465, § 725.478, § 725.479, § 725.490, § 725.491, § 725.492, § 725.493, § 725.494, § 725.495, § 725.502, § 725.503, § 725.515, § 725.522, § 725.530, § 725.533, § 725.537, § 725.543, § 725.544, § 725.547, § 725.548, § 725.606, § 725.608, § 725.609, § 725.620, § 725.621, § 725.701, § 725.706, § 726.2, § 726.8, § 726.101, § 726.104, § 726.105, § 726.106, § 726.109, § 726.110, § 726.111, § 726.114, § 726.203, § 726.300, § 726.301, § 726.302, § 726.303, § 726.304, § 726.305, § 726.306, § 726.307, § 726.308, § 726.309, § 726.310, § 726.311, § 726.312, § 726.313, § 726.314, § 726.315, § 726.316, § 726.317, § 726.318, § 726.319, § 726.320, and part 727 (entire).

New Regulations Open for Comment

The Department's initial notice of proposed rulemaking contained a list of regulations, entitled ''Substantive Revisions,'' that the Department proposed to revise. 62 FR at 3340 (Jan. 22, 1997). That list of regulations is reproduced above with six additions. The Department is now proposing changes to ten regulations that were not open for comment previously: § 725.351, § 725.403, § 725.465, § 725.515, § 725.533, § 725.543, § 725.544, § 725.548, § 726.3, and § 726.203. Although the Department has not proposed any specific changes to section 726.203, the Department seeks comment from interested parties on the changes to that regulation suggested by the insurance industry. Accordingly, the Department now invites comment from all interested parties on the regulations listed above as Open Regulations.

Additional Technical changes

The Department's first proposal identified a number of regulations to which the Department was proposing to make technical revisions. *See* 62 FR 3340–41 (Jan. 22, 1997). The Department is now proposing additional technical revisions. Among other things, these proposed changes delete references to the control numbers used by the Office of Management and Budget to approve revisions to the regulations in 1984 because the inclusion of these numbers is neither necessary nor helpful to understanding the Department's regulations. *See, e.g.,* 20 CFR 718.102 (1999). In addition, at the request of the Office of the Federal Register, the Department is proposing to change references to various components of title 20 of the Code of Federal Regulations and to various statutory provisions and to add a colon to § 726.1. The following regulations should be added to the list of regulations to which the Department is making only technical revisions: Appendix A to Part 718, § 725.201, § 725.218, § 725.220, § 725.531, § 725.536, § 726.1, § 726.103, § 726.207, § 726.208, § 726.209, § 726.210, § 726.211, § 726.212, and § 726.213.

Complete List of Technical Revisions

The complete list of regulations to which the Department is making technical changes is as follows: § 718.1, § 718.2, § 718.4, § 718.303, Appendix A to Part 718, § 725.102, § 725.201, § 725.216, § 725.217, § 725.218, § 725.220, § 725.301, § 725.302, § 725.350, § 725.360, § 725.366, § 725.401, § 725.402, § 725.404, § 725.419, § 725.420, § 725.450, § 725.451, § 725.453A, § 725.455, § 725.459A, § 725.462, § 725.463, § 725.466, § 725.480, § 725.496, § 725.501, § 725.503A, § 725.504, § 725.505, § 725.506, § 725.507, § 725.510, § 725.513, § 725.514, § 725.521, § 725.531, § 725.532, § 725.536, § 725.603, § 725.604, § 725.605, § 725.607, § 725.701A, § 725.702, § 725.703, § 725.704, § 725.705, § 725.707, § 725.708, § 725.711, § 726.1, § 726.4, § 726.103, § 726.207, § 726.208, § 726.209, § 726.210, § 726.211, § 726.212, and § 726.213. Pursuant to the authority set forth in 5 U.S.C. 552(b)(3)(A), which allows federal agencies to alter ''rules of agency organization, procedure, or practice'' without notice and comment, the Department is not accepting comments on any of these regulations.

Unchanged Regulations

Certain regulations are merely being re-promulgated without alteration and are also not open for public comment. To the extent appropriate, the Department's previous explanations of

these regulations, set forth in the **Federal Register**, *see* 43 FR 36772–36831, Aug. 18, 1978; 48 FR 24272–24294, May 31, 1983, remain applicable. The same is true of those regulations to which the Department is making only technical changes. The following regulations are being re-promulgated for the convenience and readers: § 718.203, § 718.206, § 718.302, § 718.304, § 718.305, § 718.306, § 725.3, § 725.205, § 725.206, § 725.207, § 725.208, § 725.210, § 725.211, § 725.224, § 725.225, § 725.226, § 725.227, § 725.228, § 725.229, § 725.230, § 725.231, § 725.232, § 725.233, § 725.303, § 725.304, § 725.305, § 725.307, § 725.308, § 725.352, § 725.361, § 725.363, § 725.364, § 725.365, § 725.422, § 725.453, § 725.460, § 725.461, § 725.464, § 725.475, § 725.476, § 725.477, § 725.481, § 725.482, § 725.483, § 725.497, § 725.511, § 725.512, § 725.520, § 725.534, § 725.535, § 725.538, § 725.539, § 725.540, § 725.541, § 725.542, § 725.545, § 725.546, § 725.601, § 725.602, § 725.710, § 726.5, § 726.6, § 726.7, § 726.102, § 726.107, § 726.108, § 726.112, § 726.113, § 726.115, § 726.201, § 726.202, § 726.204, § 726.205, and § 726.206.

Changes in the Department's Second Proposal

The Department's second proposal contains substantive changes, either in the regulation or the preamble language, or both, to the following regulations: § 718.3, § 718.101, § 718.103, § 718.104, § 718.105, § 718.106, § 718.107, § 718.201, § 718.204, § 718.205, Part 718, Appendix B, § 725.2, § 725.101, § 725.209, § 725.223, § 725.309, § 725.310, § 725.351, § 725.367, § 725.403, § 725.406, § 725.407, § 725.408, § 725.409, § 725.411, § 725.414, § 725.416, § 725.456, § 725.457, § 725.459, § 725.465, § 725.491, § 725.492, § 725.493, § 725.494, § 725.495, § 725.502, § 725.503, § 725.515, § 725.533, § 725.543, § 725.544, § 725.547, § 725.548, § 725.606, § 725.701, § 726.3, § 726.8 and § 726.203. The Department has carefully considered all of the comments that it has received to date with regard to the regulations. The preamble contains an explanation of the Department's proposed changes as well as its reason for rejecting other suggestions.

In particular, the Department invites comment from small businesses that may not have been aware of the potential impact of the Department's proposed rule. In order to ensure that small businesses have adequate information, the Department intends to mail a copy of this proposal to each coal mine operator who is identified in current records maintained by the Mine Safety and Health Administration.

Several commenters suggest that the Department lacks the authority to revise the regulations governing claims filed under the Black Lung Benefits Act. Although some of these objections are limited to individual regulations, such as the definition of ''pneumoconiosis,'' and will be addressed in the discussion of those regulations, two of the objections apply to a substantial number of the revisions made by the Department. They are: first, that the Department lacks the authority to promulgate regulations covering matters that were the subject of an unsuccessful attempt to amend the Act in 1994; and, second, that the Supreme Court's decision in *Director,* OWCP v. *Greenwich Collieries*, 512 U.S. 267 (1994), prohibits the Department from adopting any regulation that requires coal mine operators to bear a burden of proof.

Regulatory Authority

In 1994, the 104th Congress considered legislation that would have amended the Black Lung Benefits Act by, among other things, limiting the amount of evidence parties may submit, providing claimants with overpayment relief, and allowing previously denied applicants to seek *de novo* review of their claims. The House passed a version of this legislation, H.R. 2108, on May 19, 1994, but the Senate adjourned in September, 1994 without acting on several similar bills. Numerous commenters have argued that in ''rejecting'' H.R. 2108, the Congress has already disapproved certain of the revisions now proposed by the Department. This argument fails on two grounds. First, Congress' failure to act does not deprive the Department of the authority to promulgate regulations otherwise conferred by the Black Lung Benefits Act. Second, Congress did not reject the legislation. Instead, the Senate adjourned without considering its version of the bill passed by the House.

The starting point for determining the validity of any regulation is the legislation authorizing the agency to issue binding rules. As a general matter, ''[t]he power of an administrative agency to administer a congressionally created * * * program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress.'' *Morton* v. *Ruiz,* 415 U.S. 199, 231 (1974). ''If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.'' *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 843–44 (1984).

In *Pauley* v. *Bethenergy Mines, Inc.*, 501 U.S. 680 (1991), the Supreme Court recognized the applicability of the *Chevron* analysis to regulations implementing the Black Lung Benefits Act:

> It is precisely this recognition that informs our determination that deference to the Secretary is appropriate here. The Black Lung Benefits Act has produced a complex and highly technical regulatory program. The identification and classification of medical eligibility criteria necessarily require significant expertise, and entail the exercise of judgment grounded in policy concerns. In those circumstances, courts appropriately defer to the agency entrusted by Congress to make such policy determinations.

Id. at 696. In addition to providing this general authority, the Black Lung Benefits Act contains several explicit provisions authorizing rule-making by the Department of Labor. Section 422(a) of the Act provides that ''[i]n administering this part [Part C of the Act], the Secretary is authorized to prescribe in the **Federal Register** such additional provisions * * * as [s]he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.'' 30 U.S.C. 932(a). Section 426(a) of the Act similarly authorizes the Secretary to ''issue such regulations as [she] deems appropriate to carry out the provisions of this title.'' 30 U.S.C. 936(a). As the Fourth Circuit has pointed out, these two provisions represent a ''broad grant of rulemaking authority.'' *Harman Mining Co.* v. *Director,* OWCP, 826 F.2d 1388, 1390 (4th Cir. 1987). Finally, the Act contains several other provisions authorizing the Secretary to promulgate regulations on specific subjects. *See, e.g.*, 30 U.S.C. 902(f)(1)(D) (criteria for medical tests which accurately reflect total disability), 932(h) (standards for assigning liability to operators), and 933(b)(3) (required insurance contract provisions).

The Secretary's rulemaking authority is not unlimited. For example, section 422(a) prohibits the Department from promulgating regulations that are inconsistent with Congress's decision to exclude certain provisions of the Longshore and Harbor Workers' Compensation Act from those

incorporated into the Black Lung Benefits Act. Moreover, under *Chevron*, the Department clearly has no authority to issue regulations on a subject which Congress has addressed unambiguously. *Pittston Coal Group* v. *Sebben*, 488 U.S. 105 (1988). For example, in 1981, Congress amended the Act to limit the eligibility of surviving spouses of deceased coal miners who filed claims on or after January 1, 1982. Congress provided that such a spouse would be entitled to survivors' benefits only if [s]he could establish that the miner had died due to pneumoconiosis. Pub. L. 97–119, 95 Stat. 1635, § 203(a)(2), (3). The bill passed by the House in 1994 would have reinstated so-called unrelated death benefits so as to allow a surviving spouse to collect benefits, no matter the miner's cause of death, so long as the miner was totally disabled due to pneumoconiosis at the time of death. Because that bill did not become law, however, the 1981 requirement remains in effect, and quite obviously limits the Department's ability to regulate in this area.

The mere fact that Congress considered legislation affecting some of the same subjects addressed by the Department's regulatory proposal, however, cannot be construed as a similar limitation. ''Ordinarily, and quite appropriately, courts are slow to attribute significance to the failure of Congress to act on particular legislation.'' *Bob Jones University* v. *United States*, 461 U.S. 574, 600 (1983). In particular, the Department is not aware of any case holding that the failure of a previous Congress to enact legislation prevents an administrative agency from promulgating regulations on similar topics.

Moreover, the regulations proposed by the Department are, for the most part, quite different in content from the provisions of either the bill that was passed by the House or the bills that were under consideration by the Senate when it adjourned. The Department's proposed revision of the definition of ''pneumoconiosis'' is similar in one respect to a provision in H.R. 2108 (recognizing that both obstructive and restrictive lung disease may be caused by exposure to coal mine dust). Other provisions, however, are significantly different. For example, H.R. 2108 would have completely relieved claimants of the obligation to repay overpaid amounts. In contrast, the Department's proposal would ensure only that the rules governing waiver of overpayments are applied without regard to whether the overpayment was made by the Black Lung Disability Trust Fund or a responsible operator. In fact, the Department has specifically rejected comments urging it to use certain provisions incorporated from the Longshore and Harbor Workers' Compensation Act that would bar the recoupment of overpayments by employers, an approach similar to that considered by the 104th Congress. Although the Department is not proposing the widespread overpayment relief that was contained in H.R. 2108 and was sought by these commenters, the Department also does not believe that Congress intended that claimants who receive payment from the Trust Fund be treated differently than claimants who receive payments from liable coal mine operators. The Department's proposal would simply guarantee the equitable treatment of both claimant groups.

The Department's proposed evidentiary limitation is also significantly different from the limitation set forth in H.R. 2108. Under the bill passed by the House, claimants would have been allowed to submit three medical opinions, and responsible operators or the Trust Fund would have been allowed only one. The Department agrees that evidentiary limitations are needed to level the playing field between operators and claimants, but does not believe that the playing field should be tilted in favor of one party. Rather, the Department's proposal treats all parties equally and encourages them to rely on the quality of their medical evidence rather than its quantity. Hopefully, the proposal's evidentiary limitations will improve the decisionmaking process in black lung benefit claims.

Finally, the Department's treatment of denied claims also differs significantly from that proposed in the legislation. H.R. 2108 would have allowed any claimant denied benefits based on a claim filed on or after January 1, 1982 to seek readjudication of that claim without regard to the previous denial. The Department's proposed revision of § 725.309, on the other hand, specifically forbids the parties from seeking readjudication of the earlier denial of benefits. § 725.309(d). Instead, the Department has proposed the codification of a solution that has already been accepted by five courts of appeals with jurisdiction over more than 90 percent of black lung claims filed. That solution requires a claimant to establish, with new evidence, at least one of the elements previously resolved against him before a new claim may even be considered on the merits. Even if a claimant establishes his entitlement to benefits based on a subsequent claim, benefits will be paid based only on that application and not for time periods covered by the earlier, final denial.

The Department therefore cannot accept the argument that Congress' failure to enact legislation in 1994 prevents the Department from revising regulations that have not been amended since 1983. In many cases, the Department is simply proposing to codify the decisions of a majority of the appellate courts. In other cases, the Department's proposed revisions represent reasonable methods of dealing with problems that have arisen since the black lung benefits regulations were first promulgated in 1978. The Department's ability to address those problems in regulations is independent of any Congressional effort to reform the Black Lung Benefits Act, and should be judged according to the standards set forth in *Chevron*. For the reasons set forth in its initial notice of proposed rulemaking, 62 FR 3337 (Jan. 22, 1997) and in this notice, the Department believes that its proposed revisions meet those standards.

Administrative Procedure Act

A number of commenters also suggest that the Department's ability to create regulatory presumptions is constrained by the Administrative Procedure Act and the Supreme Court's decision in *Greenwich Collieries*. In *Greenwich Collieries*, the Supreme Court invalidated the use of the ''true doubt'' rule, an evidentiary principle that effectively shifted the risk of non-persuasion from black lung applicants to coal mine operators. Under the ''true doubt'' rule, fact-finders were required to resolve any issue in favor of the claimant if the evidence for and against entitlement was equally probative. In contrast, section 7(c) of the Administrative Procedure Act (APA), 5 U.S.C. 556(d), states that ''[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.'' The Court held that, even assuming that the Department could displace the APA through regulation, the Department's existing regulation, 20 CFR 718.403, was insufficient to do so. Finally, the Court determined that the party assigned the ''burden of proof'' by the APA bore the risk of non-persuasion. As a result, the court held the APA required that the Department resolve cases of equally probative evidence against the claimant, the party seeking an order compelling the payment of benefits.

The commenters argue that the Court's decision effectively prohibits the Department from imposing any burden of proof on an operator under the Black Lung Benefits Act. The Department does

not believe that *Greenwich Collieries* requires such a result. At the outset, it should be clear that the Court's decision did not address the relationship between the Department's rulemaking authority and the APA. Section 956 of the Federal Mine Safety and Health Act (FMSHA) provides as follows:

> Except as otherwise provided in this chapter, the provisions of sections 551 to 559 and sections 701 to 706 of Title 5 shall not apply to the making of any order, notice, or decision made pursuant to this chapter, or to any proceeding for the review thereof.

30 U.S.C. 956. ''This chapter'' is a reference to chapter 22 of Title 30, United States Code, which codifies the FMSHA. Because the Black Lung Benefits Act is subchapter IV of the FMSHA, section 956 generally exempts the Act from the requirements of the section 7(c) of the APA. Similarly, although section 19 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 919, incorporated into the BLBA by 30 U.S.C. 932(a), makes the APA applicable to the adjudication of claims under the LHWCA, that provision is incorporated into the Black Lung Benefits Act only ''except as otherwise provided * * * by regulations of the Secretary.'' The clear language of the FMSHA and the BLBA thus authorize the Secretary to depart from the dictates of section 7(c) when she determines it is in the best interest of the black lung benefits program.

Moreover, the Court's decision in *Greenwich Collieries* did not purport to decide the issues on which a particular party bears the burden of persuasion. Rather, the Court merely decided that with respect to two issues on which the claimant bears the burden of proof under the Secretary's existing regulations (the existence of pneumoconiosis and the cause of that disease), the claimant must prevail by a preponderance of the evidence. As the Court observed in its subsequent decision in *Metropolitan Stevedore Co.* v. *Rambo*, 117 S. Ct. 1953, 1963 (1997), ''the preponderance standard goes to how convincing the evidence in favor of a fact must be in comparison with the evidence against it before that fact may be found, but does not determine what facts must be proven as a substantive part of a claim or defense.''

Under *Greenwich Collieries*, then, the Department remains free to assign burdens of proof to parties as necessary to accomplish the purposes of the Black Lung Benefits Act. The Department has historically used regulatory presumptions where they were appropriate. For example, current 20 CFR 725.492(c), presumes that each employee of a coal mine operator was regularly and continuously exposed to coal dust during the course of his employment. In promulgating this regulation, the Department noted that such a showing required evidence that was not generally available to the Department; rather such evidence was within the control of the employer. 43 FR 36802–03 (Aug. 18, 1978). Current 20 CFR 725.493(a)(6) presumes that a miner's pneumoconiosis arose in whole or in part out of employment with the employer that meets the conditions for designation as the responsible operator. Unless the presumption is rebutted, the regulation requires the responsible operator to pay benefits to the claimant on account of the miner's total disability or death. One commenter objected to this presumption, set forth in revised § 725.494(a), as a violation of *Greenwich Collieries*, notwithstanding the Act's specific provision authorizing the use of presumptions with respect to assignment of liability to a miner's former employers. 30 U.S.C. 932(h).

Even where the BLBA is silent, the Act grants the Secretary sufficiently broad rulemaking authority to authorize the adoption of other presumptions. In *American Hospital Association* v. *NLRB*, 499 U.S. 606 (1991), the Court considered the ability of the National Labor Relations Board, using similarly broad regulatory authority, to define an appropriate bargaining unit by rulemaking even though the statute required the Board to decide the appropriate bargaining unit ''in each case.'' Citing a series of previous decisions, the Court held that ''even if a statutory scheme requires individualized determinations, the decisionmaker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority.'' *Id.* at 612. The Court expanded on the NLRB's rulemaking authority in *Allentown Mack Sales and Service, Inc.* v. *NLRB*, 118 S. Ct. 818 (1998). In *dicta*, the Court concluded as follows:

> The Board can, of course, forthrightly and explicitly adopt counterfactual evidentiary presumptions (which are in effect substantive rules of law) as a way of furthering legal or policy goals—for example, the Board's irrebuttable presumption of majority support for the union during the year following certification, *see, e.g., Station KKHI*, 284 N.L.R.B. 1339, 1340, 1987 WL 89811 (1987), *enf'd*, 891 F.2d 230 (C.A.9 1989). The Board might also be justified in forthrightly and explicitly adopting a rule of evidence that categorically excludes certain testimony on policy grounds, without regard to its inherent probative value. (Such clearly announced rules of law or of evidentiary exclusion would of course by subject to judicial review for their reasonableness and their compatibility with the Act.)

Id. at 828.

The NLRB's rulemaking authority in this regard is not unique. The federal courts have upheld the use of presumptions by agencies as diverse as the Department of Transportation, *see Chemical Manufacturers Association* v. *Department of Transportation*, 105 F.3d 702, 705 (D.C. Cir. 1997) (''It is well settled that an administrative agency may establish evidentiary presumptions''); the Interstate Commerce Commission, *see Western Resources, Inc.* v. *Surface Transportation Board*, 109 F.3d 782, 788 (D.C. Cir. 1997); the Nuclear Regulatory Commission, *see New England Coalition on Nuclear Pollution* v. *NRC*, 727 F.2d 1127, 1129 (D.C.Cir.1984) (Scalia, J.) (even a statutory mandate requiring consideration of a specific issue ''does not preclude the adoption of appropriate generalized criteria that would render some case-by-case evaluations unnecessary''); and the Department of Education, *see Atlanta College of Medical and Dental Careers, Inc.* v. *Riley*, 987 F.2d 821, 830 (D.C. Cir. 1993) (''* * * under the circumstances, it would seem quite reasonable for the Secretary to adopt regulations or even adjudicatory presumptions—bright-line rules—as to what a school must show * * *''). To the extent that the Department, like any other administrative agency, uses rulemaking to establish a presumption, that presumption must be based on a rational nexus between the proven facts and the presumed facts. *Chemical Manufacturers Association*, 105 F.3d at 705; *NLRB* v. *Baptist Hosp., Inc.*, 442 U.S. 773, 787 (1979).

The Department's proposed regulations include provisions that adjust burdens of proof among the parties. Section 725.495(c)(2), for example, provides that the potentially liable operator designated as the responsible operator by the Office of Workers' Compensation Programs bears the burden of establishing that another operator that employed the miner more recently is financially capable of assuming liability for the payment of benefits. Section 726.312 specifically allocates various burdens of proof between the Department and a coal mine operator against which the Department is seeking a civil money penalty for failure to secure the payment of benefits.

In its initial notice of proposed rulemaking, 62 FR 3337 (Jan. 22, 1997) and in this notice, the Department has demonstrated that such assignments of

burdens of proof have been carefully tailored to meet the specific needs of the black lung benefits program. Accordingly, the Department does not agree with those commenters who argue that the Supreme Court's decision in *Greenwich Collieries* prohibits the Department from requiring responsible operators and their insurers to meet any burden of proof in adjudications under the Act.

20 CFR Part 718—Standards for Determining Coal Miners' Total Disability or Death Due to Pneumoconiosis

Subpart A—General

20 CFR 718.3

(a) In its earlier proposal, the Department proposed to delete subsection (c) of § 718.3, which the Department had cited to the Supreme Court in support of its argument in favor of a ''true doubt'' rule. Under the ''true doubt'' rule, an evidentiary issue was resolved in favor of the claimant if the probative evidence for and against the claimant was in equipoise. In *Director, OWCP* v. *Greenwich Collieries,* 512 U.S. 267 (1994), the Court held that an administrative law judge's use of the rule violated the Administrative Procedure Act, and that § 718.3 was an ambiguous regulation that could not be read as authorizing such a rule.

A number of commenters argue that the Supreme Court held any ''true doubt'' rule improper. Other comments urge the Department to reinstate the ''true doubt'' rule by promulgating a regulation that clearly authorizes fact-finders to use the rule in evaluating evidence in black lung benefits claims. Throughout this rulemaking, however, the Department has consistently stressed the need for factfinders to conduct in-depth analyses of the evidence based on its quality rather than quantity. Moreover, opinions by the courts of appeals and the Benefits Review Board over the past twenty years have firmly established that the evaluation of conflicting medical evidence includes consideration of a wide variety of disparate factors, thus making the applicability of any true doubt rule extremely limited. In the case of a medical report, for example, the factfinder must examine the report's documentation, its reasoning, its relationship to the other medical reports of record, and the physician's qualifications or other special status. The availability of all of these factors makes it unlikely that a factfinder will be able to conclude that the evidence, although in conflict, is equally probative. Accordingly, the Department does not believe that the promulgation of a revised ''true doubt'' rule will enhance decision-making under the Black Lung Benefits Act.

(b) Several comments urge the Department to retain subsection (c) of the current version of § 718.3. They argue that even if the language does not explicitly provide a ''true doubt'' rule, it is a useful reminder to factfinders of the purposes of the Black Lung Benefits Act. In particular, they point to the Department's quality standards for medical evidence and issues in which medical science does not provide a definitive answer. The Department recognizes that the adjudication of black lung benefits claims requires recognition of the difficulties faced by claimants in establishing their entitlement to benefits. Revised § 718.101, for example, will require ''substantial compliance'' with all of the quality standards applicable to medical evidence, rather than strict adherence. Requiring ''substantial compliance'' with the quality standards will give the fact-finder sufficient flexibility to determine whether a particular piece of evidence is probative of the claimant's condition notwithstanding its failure to meet a relatively minor quality standard provision. The Department does not agree, however, that section 718.3 should contain a separate, and wholly unenforceable, statement of general principles. Subsection (c) simply restates Congressional intent reflected in the legislative history of the 1972 and 1978 amendments to the Black Lung Benefits Act, *see* S. Rep. No. 743, 92nd Cong., 2nd Sess. 11, 1972 U.S.C.C.A.N. 2305; S. Rep. No. 95–209, 95th Cong., 2nd Sess. 13, 1978 U.S.C.C.A.N. 237. That legislative history may be used to support a party's argument regardless of whether it is repeated in the Secretary's regulations.

Subpart B

20 CFR 718.101

(a) The Department's proposed revision is intended to make clear its disagreement with Benefits Review Board case law holding that the Department's quality standards are applicable only to evidence developed by the Director, OWCP. *See Gorzalka* v. *Big Horn Coal Co.,* 16 Black Lung Rep. 1–48, 1–51 (Ben. Rev. Bd. 1990). Accordingly, the Department proposed to amend the regulations to ensure that all evidence developed in connection with black lung benefits claims meets certain minimal quality standards. One comment observes that, as drafted, the Department's revisions would allow factfinders to invalidate medical evidence in claims already pending before the Department although that evidence was valid under Board precedent when it was developed. The Department agrees that upsetting settled expectations regarding the applicability of the quality standards may work a substantial hardship in some cases, particularly those involving unrepresented claimants. Consequently, the Department has revised the language in section 718.101(b) to clarify that the mandatory nature and general applicability of the quality standards is prospective only. Once a final rule takes effect, any testing or examination conducted thereafter in connection with a black lung benefits claim that does not substantially comply with the applicable quality standard will be insufficient to establish the fact for which it is proffered.

(b) Four comments oppose the general requirement in § 718.101(b) that all evidence developed by any party in conjunction with a claim for black lung benefits must be in substantial compliance with the quality standards contained in subpart B. One comment notes the special hardship imposed on miners in trying to generate conforming evidence. Three comments assert that exclusion of nonconforming evidence violates the statutory mandate that ''all relevant evidence'' be considered in determining whether a claimant is entitled to benefits. 30 U.S.C. 923(b). The Department disagrees. The quality standards have been an integral part of claims development and adjudication since the Part 718 regulations were first promulgated in 1980. The Department has also consistently taken the position that the standards apply to all evidence developed by any party for purposes of prosecuting, or defending against, a claim for benefits. The proposed change simply makes this position clear. Finally, employing quality standards to ensure the use of reliable and technically accurate evidence is consistent with section 923(b). Evidence which fails the ''substantial compliance'' standard is inherently unreliable and thus necessarily inadequate to prove or disprove entitlement issues, and therefore is not ''relevant'' to the adjudication of the claim.

(c) One comment asks that the Department clarify that the quality standards represent the only basis on which the reliability of a medical opinion or test may be challenged. As an example, the comment states that physicians cite the correlation between the one-second Forced Expiratory Volume and the Maximum Voluntary Ventilation as a basis for invalidating a

pulmonary function test, even though the MVV is not a required part of the test. In the Department's view, the quality standards provide factfinders with flexibility in their examination of the medical evidence of record. If an alleged flaw in medical evidence is not relevant to the necessary test results, the factfinder may properly ignore that flaw. The Department's quality standards, however, are not intended to serve as the sole basis upon which medical evidence may be evaluated. Instead, parties are free to develop any evidence that pertains to the validity of the medical evidence in order to provide the factfinder with the best evidence upon which to base a finding regarding the miner's physical condition.

(d) Two comments are concerned that the quality standards could result in the exclusion of a miner's hospitalization and/or medical treatment records, or a report of biopsy or autopsy. Section 718.101, however, makes the quality standards applicable only to evidence ''developed * * * in connection with a claim for benefits'' governed by 20 CFR Parts 725 and 727. Therefore, the quality standards are inapplicable to evidence, such as hospitalization reports or treatment records, that is not developed for the purpose of establishing, or defeating, entitlement to black lung benefits.

(e) One comment advocates permitting consideration of nonconforming tests which produce clinical results comparable to conforming tests. This suggestion is rejected for the reasons expressed in paragraph (b): failure to comply with the applicable quality standards deprives the evidence of its probative worth. Moreover, a nonconforming test which produces results similar to a conforming test does not significantly enhance the fact-finding process, given the availability of the technically accurate results.

(f) One comment would require the Department to notify a party who submits nonconforming evidence, and afford an opportunity to rehabilitate the evidence. This requirement is unnecessary. Each party is responsible for developing evidence in support of its position which complies with the quality standards. Moreover, proposed § 725.406 does impose a duty on the district director to ensure that the medical examination sponsored by the Department is valid and conforming. If the district director identifies any deficiency in that examination, he must notify the physician and the miner, and take reasonable steps to correct that deficiency. Finally, evidence may be submitted up to twenty days before the formal hearing up to the limits provided in proposed § 725.414. If the opposing party submits evidence in rebuttal, proposed § 725.414 will permit the party that proffered the original evidence to attempt to rehabilitate evidence by submitting an additional report from the preparer of the original report.

(g) Other comments oppose the use of quality standards in general terms. For the reasons expressed in the preamble to the proposed regulations, 62 FR 3341–42 (Jan. 22, 1997), the Department believes that such standards are necessary to ensure the development of reliable and technically accurate evidence for the adjudication of claims. Several comments express general support for requiring all parties to develop their medical evidence in conformance with the relevant quality standards.

20 CFR 718.103

(a) One physician who testified at the Department's Washington, D.C. hearing objected to the proposal, set forth in Appendix B to Part 718, that would have precluded miners undergoing pulmonary function testing from taking an initial inspiration from room air and instead would have required an initial inspiration from the spirometer. Transcript, *Hearing on Proposed Changes to the Black Lung Program Regulations* (July 22, 1997), p. 306 (testimony of Dr. David James). Under questioning by the Department's medical consultant, Dr. Leon Cander, Dr. James stated that use of the flow-volume loop would be more widely acceptable than the Department's proposal prohibiting an initial open-air inspiration. Transcript, pp. 319–320. After careful consideration, the Department agrees that the flow-volume loop may offer a more reliable method of ensuring valid, verifiable results in pulmonary function testing, and proposes to revise § 718.103 in order to require that the flow-volume loop be used for every pulmonary function test administered to establish or defeat entitlement under the Black Lung Benefits Act. Spirometers capable of producing a flow-volume loop, and of electronically deriving a set of tracings showing volume versus time, are in use in a number of clinics and facilities specializing in the treatment of pulmonary conditions. While this notice of proposed rulemaking is open for public comment, the Department intends to conduct a survey of those clinics and facilities. Among the information the Department will seek is the extent to which they already use spirometers capable of producing flow-volume loops. The Department further notes that for clinics that do not already possess such a spirometer, the cost is less than $2,000. Because the use of flow-volume loops will increase the reliability of the pulmonary function study evidence submitted in black lung claims with only minimal cost, the Department proposes that all pulmonary function tests conducted after the effective date of the final rule be submitted in this form. Proposed changes have been made to subsections (a) and (b), as well as Appendix B, to accomplish this result. The Department invites comment on these changes.

(b) Dr. James also observed that the language of subsection (a) is misleading in suggesting that pulmonary function testing may produce either a Forced Vital Capacity (FVC) or a Maximum Voluntary Ventilation (MVV) value. Transcript, *Hearing on Proposed Changes to the Black Lung Program Regulations* (July 22, 1997), pp. 304–5 (testimony of Dr. David James). Dr. James noted that a test must produce an FVC value in order to obtain a Forced Expiratory Volume for one second (FEV1), which is required by the regulation. The Department agrees, and has proposed revising subsection (a) accordingly.

(c) The Department also proposes to revise subsection (b) in order to conform the regulation to the requirements of Appendix B. Currently, section 718.103(b) requires that three tracings of the MVV be performed unless the largest two values of the MVV are within 5 percent of each other. 20 CFR 718.103(b). Appendix B, however, provides that MVV results will be considered to have excessive variability if the two largest values vary by more than 10 percent. The Department proposes to adopt the 10 percent standard uniformly.

(d) Two comments request the Department to amend section 718.103 to ensure that a miner's failure to produce a valid MVV value will not affect the validity of the FEV1 and FVC values. The Department agrees that the validity of the two tests should be assessed independently. The proposed change to subsection (a) will highlight the optional nature of the MVV test. Both comments also suggest that the failure of a test report to meet all of the requirements of subsection (b), such as the DOL claim number, should not wholly invalidate a test. Like other medical evidence, pulmonary function tests will be subject to the requirement of proposed § 718.101 that they be in ''substantial compliance'' with the Department's quality standards. In a particular case, the parties remain free

to argue that a report's failure to meet certain technical requirements contained in the quality standards should not necessarily invalidate the report. The Department does not believe, however, that it would be appropriate to wholly remove these requirements from its quality standards.

(e) One commenter observes that pulmonary function tests are not appropriate in all cases, noting that such testing may pose a danger to the health of some claimants. Section 718.103 does not affirmatively require the performance of pulmonary function tests, but merely sets forth the standards applicable to such studies, if performed. The Department agrees, however, that there may be cases in which performance of a pulmonary function test may be medically contraindicated. As a result, the Department has proposed revising § 718.104(a)(6) to recognize that a medical report may not be excluded from consideration simply because the claimant's condition does not allow a physician to administer a pulmonary function test. The Department has also proposed reinstating language in § 718.204(b)(2)(iv) that was inadvertently deleted from its initial proposal, 62 FR 3377 (Jan. 22, 1997).

20 CFR 718.104

(a) One commenter objects to the requirement in subsection (a)(6) that all medical reports contain the results of pulmonary function testing. The commenter notes that in some cases, a miner may be physically unable to perform a pulmonary function test, or such a test may be medically contraindicated. The Department agrees, and has proposed revising subsection (a)(6) in order to recognize this possibility. When a miner cannot take a pulmonary function test, a physician writing a medical report must substantiate his conclusion(s) with other medically acceptable clinical and laboratory diagnostic techniques. This proposed addition merely recognizes the Department's longstanding position that pulmonary function tests may be medically contraindicated. The current regulation at 20 CFR 718.204(c)(4), which provides that a reasoned medical judgment may establish the presence of a totally disabling respiratory or pulmonary impairment, expressly recognizes that pulmonary function tests may be contraindicated. Similarly, the 1980 discussion accompanying promulgation of 20 CFR 718.103 acknowledged the same point: ''If the physician believes that pulmonary function testing would impose a risk to the patient's well-being, the physician should so state and refuse to have the patient perform the pulmonary function tests.'' 45 FR 13682 (Feb. 29, 1980).

(b) Several commenters request that the regulation recognize that a treating physician's opinion may be used to establish all elements of a miner's entitlement to benefits. Although the proposed regulation was not intended to restrict the use of such a report, the Department has revised subsection (d) to explicitly list the elements of entitlement which a treating physician's opinion may establish.

(c) Several commenters suggest that the Department accept a physician's statement as to the nature and duration of his relationship with the miner, and the frequency and extent of his treatment of the miner. The Department agrees that a claimant should not have to produce additional proof documenting these factors beyond that provided in the four corners of the physician's report unless the opposing party supplies credible evidence that demonstrates that the physician's statement is mistaken. The Department has therefore proposed an addition to subsection (d)(5) to make its intent clear.

(d) Proposed paragraph (d), which would allow a fact-finder to give controlling weight to the opinion of a treating physician provided certain conditions are met, elicited a great deal of comment. Many commenters supported the proposal, noting that a treating physician has a greater familiarity with the miner's physical condition than a doctor who has only seen him once. Others opposed giving special credence to ''small-town'' doctors without special expertise or training in respiratory or pulmonary disorders. Others simply expressed general opposition to the proposal. In the preamble accompanying its initial proposal, the Department explained that the proposed regulation attempted to codify existing case law and drew on a similar regulation adopted by the Social Security Administration, 20 CFR 404.1527(d)(2). *See* 62 FR 3338, 3342 (Jan. 22, 1997). The Department specifically invites comment on alternative methods for determining when a treating physician's opinion is entitled to controlling weight, including whether to adopt the Social Security Administration's rule.

(e) Several commenters suggest that the proposed subsection (d)(5) is unnecessary and undermines any Departmental attempt to give a treating physician's opinion controlling weight. They request that the Department delete certain language in subsection (d)(5), which requires the factfinder to consider not only the treating physician's documentation and reasoning but also the other relevant evidence of record in determining whether the treating physician's opinion is entitled to controlling weight. These commenters would have the finder of fact credit a treating physician's opinion which meets the criteria in (d)(1)–(4) and is documented and reasoned without regard to the other relevant evidence of record. Another comment suggests that the Department has already accomplished this result, in violation of section 413(b) of the Act, 30 U.S.C. 923(b). The Department does not accept either suggestion. The purpose of the regulation is not to limit a factfinder's consideration of any properly admitted medical or other relevant evidence. Indeed, to do so might result in a mechanistic crediting of a treating physician's opinion which the courts have cautioned the Department to avoid. *See Sterling Smokeless Coal Co.* v. *Akers*, 131 F.3d 438, 441 (4th Cir. 1997); 62 FR at 3342 (Jan. 22, 1997). Rather, the proposed regulation would mandate only that the factfinder recognize that a physician's long-term treatment of the miner may give that physician additional insight into the miner's respiratory or pulmonary condition.

(f) Several commenters oppose any rule suggesting treating physicians' opinions may be given controlling weight. They argue that a factfinder's evaluation of a medical opinion should be based solely on the documentation and reasoning of that opinion as well as the qualifications of the physician. As the Department noted in its initial notice of proposed rulemaking, 62 FR 3342 (Jan. 22, 1997), special weight may be given a treating physician's opinion because that physician has been able to observe the miner over a period of time, and therefore may have a better understanding of the miner's physical condition. Although the factfinder must still evaluate the treating physician's report in light of all of the other relevant evidence of record, he should nevertheless be aware of the additional insight that a treating physician may bring to bear on the miner's respiratory or pulmonary condition.

(g) Some commenters suggest that the ''treating physician'' rule should be removed from § 718.104 and made a separate regulation. One suggests that its current placement appears to require that the treating physician's opinion must conform to the quality standards applicable to a report of physical examination. The Department intends that all reports of physical examination, including a report submitted by the

miner's treating physician, conform to the quality standards set forth in § 718.104 if they are to be sufficient to establish or refute entitlement. The Department thus does not agree that subsection (d), governing treating physicians' opinions, should be made a separate regulation.

(h) Several commenters state that the miner should be able to submit his treating physician's opinion without regard to the limitation on the amount of evidence each party would be able to submit under § 725.414. These commenters argue that claimants, who are often unrepresented at the earliest stages of claims processing, will submit opinions from their treating physicians that do not conform to the Department's quality standards. The Department recognizes that the limitation on documentary medical evidence could have a substantial impact on unrepresented claimants who submit reports prematurely. Although the Department cannot agree to provide claimants with the opportunity to submit additional reports, the Department takes very seriously its obligation to inform all claimants of the evidentiary limitations in language that is clear and easily understood. In addition, as set forth in the proposed revision of § 725.406, the Department intends to make the objective test results from each miner's section 413(b) pulmonary evaluation available to his treating physician at the miner's request. By providing these test results to the treating physician, the Department hopes to ensure that the ensuing opinion is as well documented as the other medical opinions of record and meets the § 718.104 quality standard.

(i) Several commenters argue that the terms ''treating physician'' and ''controlling weight'' are not defined. The intent of subsection (d), however, is not to create a strict rule to determine the outcome of a factfinder's evaluation of the medical evidence. Instead, the Department's goal is simply to require the factfinder to recognize the additional weight to which a physician's opinion may be entitled, in light of all of the other relevant evidence of record, where that physician has observed and treated the claimant over a period of time.

(j) Several commenters object to certain language the Department used in the preamble of its initial notice of proposed rulemaking to explain its proposed revisions to § 718.104. In the ''Summary of Noteworthy Proposed Changes,'' 62 FR 3339 (Jan. 22, 1997), the Department indicated that in evaluating a treating physician's opinion, a factfinder ''must'' consider, among other things, the physician's training and specialization. The Department did not intend to suggest that a factfinder's failure to consider such factors would necessarily represent reversible error. Only when a party raises the issue, for example, in the context of comparing the credentials of physicians offering contrary opinions, would the factfinder be required to consider such a factor. Moreover, even under such circumstances, a physician's training and specialization are only one factor for the factfinder to weigh in his evaluation of this evidence.

(k) One commenter states that the quality standard applicable to medical reports should not require that the report include a chest X-ray. The Department disagrees. A chest X-ray, administered and read in accordance with § 718.102, is an important component of any evaluation for pneumoconiosis. Although a physician remains free to explain an opinion contrary to the medical testing that he conducted or reviewed, he must nevertheless have the benefit of that testing and account for its results. The requirement set forth in § 718.101, that all evidence must be in ''substantial compliance'' with the applicable quality standards, affords all parties the opportunity to establish the reliability of any evidence notwithstanding its failure to strictly conform to the quality standards.

(l) Two commenters request that the Department remove the clause from subsection (c) that limits the factfinder's use of non-conforming evidence in cases in which the miner is deceased and the physician is unavailable to clarify or correct his report. In such cases, the factfinder may consider a non-conforming medical report only if the record does not contain another conforming report. In this way, the Department hopes to ensure that entitlement determinations are based on the best quality medical evidence possible.

(m) One comment requests that the Department include ''cardio-pulmonary exercise testing'' as an ''other procedure[]'' under subsection (b). The Department does not intend that subsection (b) contain an exclusive list of medically acceptable procedures that may be used by a physician in the course of a physical examination. A physician is free to use any test, including cardio-pulmonary exercise testing, if he believes that it would aid in his evaluation of the miner.

20 CFR 718.105

(a) One comment directed toward Appendix C is also relevant to paragraph (c)(6). The comment notes that the correct nomenclature for partial pressure of oxygen and carbon dioxide is an upper-case ''P'', not the lower-case ''p'' currently in use. The comment is correct, and the reference to the partial pressures will be changed.

(b) Four comments oppose proposed paragraph (d), which requires the claimant to obtain a physician's opinion that a qualifying blood gas study conducted during a miner's terminal illness reflects a chronic respiratory or pulmonary condition caused by coal dust exposure. The comments suggest that qualifying scores should be presumed indicative of a totally disabling respiratory impairment unless the party opposing the claim produces evidence linking the test results to some other condition. While recognizing the concerns expressed by the comments, the Department nevertheless believes that paragraph (d) imposes an appropriate evidentiary burden on the claimant. Arterial blood gas studies conducted during a terminal illness hospitalization may be especially susceptible to producing low values unrelated to chronic respiratory or pulmonary disease. Consequently, reliance on such studies should be predicated on an additional showing that the qualifying (or abnormal) test results can be medically linked to chronic lung disease. One comment supported this proposal.

(c) Two comments object to the requirement in paragraph (d) that the chronic respiratory or pulmonary impairment demonstrated by the ''deathbed'' blood gas study must also be ''related to coal mine dust exposure.'' The Department agrees. The primary objective behind paragraph (d) is to ensure a connection between the qualifying blood gas values and a chronic respiratory or pulmonary impairment, rather than some other acute pathologic cause incidental to the miner's terminal illness. Thus, paragraph (d) addresses only the existence of a chronic respiratory or pulmonary impairment itself, not its cause. Including a requirement linking the chronic impairment to coal mine dust exposure is therefore inappropriate for purposes of § 718.105. The claimant must still prove that any totally disabling respiratory or pulmonary impairment demonstrated by these blood gas study results arose out of coal mine employment in order to receive benefits, 20 CFR 718.204(c)(1). Paragraph (d) has been revised to delete

the phrase ''related to coal mine dust exposure.''

20 CFR 718.106

(a) Five comments urge the Department to restore the current paragraph (c), 20 CFR 718.106(c), which was omitted from the proposed regulation. This paragraph provides that the negative findings on a biopsy are not conclusive evidence that pneumoconiosis is absent, while positive findings do constitute evidence of the disease. The omission was inadvertent, and paragraph (c) will be restored in the final rule.

(b) Two comments oppose the requirement in paragraph (a) that the autopsy protocol must include a gross macroscopic inspection of the lungs. The comments suggest that the requirement would implicitly preclude a pathologist from submitting an opinion based exclusively on a review of microscopic tissue samples. Paragraph (a) was not altered when the Department proposed changes to § 718.106. This provision only requires macroscopic findings for purposes of the autopsy itself; no such findings are required for a reviewing physician. Consequently, a physician other than the autopsy prosector may submit an opinion based exclusively on the microscopic tissue samples. No change is necessary to permit such opinions.

(c) Several comments urge the Department to adopt the criteria for diagnosing pneumoconiosis by autopsy or biopsy generated by the American College of Pathologists and Public Health Service in 1979. The Department has previously declined to promulgate specific pathological standards for diagnosing pneumoconiosis by autopsy or biopsy. 45 FR at 13684 (Feb. 29, 1980); 48 FR at 24273 (May 31, 1983). Furthermore, the record does not contain any evidence addressing, or establishing, a consensus in the medical community about the accepted standards for diagnosing pneumoconiosis by autopsy or biopsy. Although the comment refers to Kleinerman *et al.*, ''Pathologic Criteria for Assessing Coal Workers' Pneumoconiosis,'' in the *Archives of Pathology and Laboratory Medicine* (June 1979), the record does not establish whether this article reflects the current prevailing standards for diagnosing pneumoconiosis. The recommendation is therefore rejected.

20 CFR 718.107

(a) One comment suggests modifying the reference to ''respiratory impairment'' in paragraph (a) to ''respiratory or pulmonary impairment.'' The Department accepts this suggestion because the current paragraph (a) refers to ''respiratory or pulmonary impairment,'' and the omission of ''pulmonary'' was inadvertent. Another comment recommended adding disability and disability causation to the list of issues for which a party may submit ''other medical evidence.'' Paragraph (a) is unchanged from the current provision, except as described in the previous discussion, and satisfactorily sets forth the general purposes for which ''other medical evidence'' may be offered. The suggested change is therefore unnecessary.

(b) One comment supports the addition of proposed paragraph (b).

Subpart C

20 CFR 718.201

(a) In its initial notice of proposed rulemaking, 62 FR 3343, 3376 (Jan. 22, 1997), the Department proposed revising the definition of the term ''pneumoconiosis'' to recognize the progressive nature of the disease. The Department also proposed clarifying the existing definition to make clear that obstructive lung disease may fall within the definition of pneumoconiosis if it is shown to have arisen from coal mine employment. The proposal would not alter the current regulations' requirement that each miner bear the burden of proving that he has pneumoconiosis, 20 CFR 718.403, 725.202(b); proposed §§ 725.103, 725.202(d)(2)(i). Thus, notwithstanding the proposed revision, in order to demonstrate that he has pneumoconiosis, each miner would be required to prove that his lung disease arose out of coal mine employment. If a miner's chest X-rays, autopsy or biopsy demonstrate the presence of the disease, and the miner has at least ten years of coal mine employment, he is aided by a statutory presumption that his pneumoconiosis arose out of coal mine employment. 30 U.S.C. 921(c)(1). If, however, the miner fails to demonstrate the existence of pneumoconiosis by means of X-ray, biopsy or autopsy, he must prove that his lung disease arose out of coal mine employment in order to carry his burden of proof and establish that he has pneumoconiosis.

A number of commenters representing coal mine operators and the insurance industry object strongly to both revisions, arguing that the Department lacks the authority to elaborate on the statute's definition of pneumoconiosis, and that, in any event, the Department had violated the statute by failing to consult with the National Institute for Occupational Safety and Health (NIOSH) before proposing the changes. 30 U.S.C. 902(f)(1)(D). The commenters also argue that the Department's proposed revision lacks a sound medical basis and would therefore unjustifiably increase the number of claims approved. In support of their arguments, these commenters presented testimony at the Department's Washington, DC, hearing from a panel of physicians with expertise in pulmonary medicine. Transcript, *Hearing on Proposed Changes to the Black Lung Program Regulations* (July 22, 1997), pp. 19–83.

The Department also received comments, as well as testimony, supporting the proposed changes from black lung associations, miners, and several physicians with expertise in pulmonary medicine. Among the favorable comments was one from NIOSH, which approved both aspects of the Department's proposed revision to § 718.201. In so doing, NIOSH referenced its own 1995 publication, the same document that the Department had cited in its initial notice of proposed rulemaking, ''National Institute for Occupational Safety and Health, Occupational Exposure to Respirable Coal Mine Dust,'' §§ 4.1.2, 4.2.2 *et seq.* (1995). 62 FR 3343 (Jan. 22, 1997).

NIOSH was created by the Occupational Safety and Health Act ''in order to carry out the policy set forth in section 651'' of that Act as well as to perform certain functions in support of the Occupational Safety and Health Administration. 29 U.S.C. 671. Among its other provisions, section 651 encourages the Occupational Safety and Health Administration to ''explor[e] ways to discover latent diseases, establish [] causal connections between diseases and work in environmental conditions, and conduct [] other research relating to health problems.'' 29 U.S.C. 651(b)(6). Accordingly, Congress created NIOSH as a source of expertise in occupational disease and as an expert in the analysis of occupational disease research. Given the widely divergent comments received from medical professionals on this proposed regulation, the Department sought additional guidance from NIOSH by providing it with all of the comments and testimony the Department had received relevant to the proposed revisions to § 718.201. The Department requested that NIOSH advise it whether any of the material altered that agency's original opinion.

NIOSH concluded as follows:

The unfavorable comments received by DOL do not alter our previous position: NIOSH scientific analysis supports the proposed definitional changes. Research indicates that the proposed changes are reasonable and could be incorporated to further refine the definition of pneumoconiosis in the BLBA regulations.

Letter from Dr. Paul Schulte, Director, Education and Information Division (Dec. 7, 1998). In addition to the 1995 NIOSH publication, Dr. Schulte cited several recent studies and other sources: ''Coal mining and chronic obstructive pulmonary disease: a review of the evidence'' [Coggon and Newman-Taylor 1998]; ''The British Coal Respiratory Disease Litigation'' [Judgment of Mr. Justice Turner]; ''Progression of simple pneumoconiosis in ex-coalminers after cessation of exposure to coalmine dust'' [Donnan et al. 1997]; ''Adverse effects of crystalline silica exposure'' [American Thoracic Society (ATS) 1997]; ''Risk of silicosis in a Colorado mining community'' [Kriess and Zehn 1996]; and ''Risk of silicosis in a cohort of white South African gold miners'' [Hnizdo and Sluis-Cremer 1993]. He concluded as follows:

These publications provide additional support for the NIOSH position stated in the August 20, 1997 letter: ''NIOSH continues to support the proposed amendment to Section 718.201 to include chronic obstructive pulmonary disease in the definition of pneumoconiosis; NIOSH also supports the revision of the definition of pneumoconiosis to reflect the scientific evidence that pneumoconiosis is an irreversible, progressive condition that may become detectable only after cessation of coal mine employment, in some cases.''

Given this NIOSH review and conclusion, the Department sees no scientific or legal basis upon which to alter its original proposal. To the extent that the Department was required to consult with NIOSH, it has now done so. Finally, as addressed elsewhere in this proposal, the Department believes that it possesses the statutory authority to promulgate a legislative regulation defining the term ''pneumoconiosis.'' *See Old Ben Coal Co.* v. *Scott*, 144 F.3d 1045, 1048 (7th Cir. 1998), citing *Peabody Coal Co.* v. *Spese*, 117 F.3d 1001, 1009–1010 (7th Cir. 1997) (*en banc*).

(b) One commenter objects to the proposed definition of ''legal pneumoconiosis'' on the ground that § 718.202(a)(2) does not contain the requirement that the covered disease must be a ''dust'' disease of the lung. The commenter also believes that this definition would include all obstructive pulmonary disease. The Department disagrees with both points. Section 718.201 begins in paragraph (a) with the statutory definition of pneumoconiosis, stating that pneumoconiosis means a chronic ''dust'' disease of the lung and its sequelae. Paragraph (a)(2) is a subdivision of the introductory paragraph and in no way contradicts it. In fact, by its very terms, the proposed definition of pneumoconiosis would cover only that lung disease arising out of coal mine employment, *i.e.*, lung disease significantly related to, or substantially aggravated by, dust exposure in coal mine employment. § 718.201(b).

(c) Two commenters argue that Congress rejected an amendment to the definition of pneumoconiosis that would have included obstructive lung disorders, and that the Department therefore lacks the authority to make such a change. Above, the Department explained that Congress's consideration of, but failure to enact, legislation on particular subjects does not bar the Department from promulgating regulations on those subjects, provided the Department is acting within the scope of Congress's grant of regulatory authority. Thus, the Department does not agree that Congressional inaction renders invalid its proposed amendment of the definition of ''pneumoconiosis.''

20 CFR 718.204

(a) In reviewing the comments submitted in response to the initial notice of proposed rulemaking, the Department realized that it had inadvertently omitted language from the current version of 20 CFR 718.204(c)(4) setting out circumstances under which a claimant may establish total disability by means of a medical report. The Department intended no change in the regulation's meaning and has restored the omitted language to proposed § 718.204(b)(2)(iv).

(b) A number of commenters object to the Department's proposed amendment to subsection (a), while others support it. That revision is intended to ensure that disabling nonrespiratory conditions are not considered a bar to entitlement when the miner also suffers from totally disabling pneumoconiosis. As the Department explained in its initial notice of proposed rulemaking, the revision announces the Department's preference for the Sixth Circuit's decision in *Youghiogheny & Ohio Coal Co.* v. *McAngues*, 996 F.2d 130 (6th Cir. 1993), *cert. den.*, 510 U.S. 1040 (1994), over the Seventh Circuit's decision in *Peabody Coal Co.* v. *Vigna*, 22 F.3d 1388 (7th Cir. 1994). 62 FR 3344–45 (Jan. 22, 1997). After preparation of the Department's proposal, the Sixth Circuit held, for the first time in a Part 718 case, that a miner may not be denied black lung benefits simply because he may also be totally disabled by a coexisting non-respiratory impairment. *Cross Mountain Coal Co., Inc.* v. *Ward*, 93 F.3d 211, 216–217 (6th Cir. 1996). The commenters have provided no basis upon which to alter the Department's original proposal.

(c) A number of commenters object to the Department's proposal to revise subsection (b)(1) to codify the Department's position that a miner is entitled to benefits only if his respiratory or pulmonary impairment is totally disabling. The commenters urge that the Department adopt a ''whole person'' approach, allowing an award of benefits if pneumoconiosis contributed at least in part to the miner's overall disability, considering both respiratory and nonrespiratory impairments. Although the commenters argue that the Department's position violates the statute, the Third and Fourth Circuits have reached a contrary conclusion. *Beatty* v. *Danri Corp. & Triangle Enterprises*, 49 F.3d 993 (3d Cir. 1995); *Jewell Smokeless Coal Corp.* v. *Street*, 21 F.3d 241 (4th Cir. 1994). Because the commenters offer no other basis upon which to amend the Department's proposal, subsection (b)(1) has not been changed.

(d) A number of commenters take issue with the Department's proposal to define disability causation in subsection (c). Several commenters state that the Department has no authority to issue such a regulation, suggesting that the statutory language is clear. The Department disagrees. The statute authorizes the payment of benefits ''[i]n the case of total disability of a miner due to pneumoconiosis,'' 30 U.S.C. 922(a)(1), and explicitly provides that ''[t]he term ''total disability'' has the meaning given it by regulations * * * of the Secretary of Labor under part C of this title * * *.'' 30 U.S.C. 902(f)(1). Even absent such an explicit grant of rulemaking authority, Congress' use of the broad phrase ''due to'' leaves significant questions in resolving the issue of disability causation. In *Atlanta College of Medical and Dental Careers, Inc.* v. *Riley*, 987 F.2d 821 (1993), the D.C. Circuit noted that the Secretary of Education was authorized to promulgate interpretative regulations under the Student Loan Default Prevention Initiative Act. That statute authorized the Secretary to calculate a default rate from participating schools, but required him to exclude loans which ''due to improper servicing or collection, would result in an inaccurate or incomplete calculation.'' Addressing Congress' use of the phrase ''due to,'' the court held:

And must the school show ''but for'' causation, proximate causation or merely some reasonable link? The statute itself provides no answers to these riddles; accordingly, under Chevron's second step, we would defer to any reasonable interpretation of the ''due to'' language that the Secretary proffered. *See also* Jerry Mashaw, A Comment on Causation, Law Reform, and Guerilla Warfare, 73 Geo. L. Rev. 1393, 1396 (1985) (identifying the ''cause'' of something necessarily implicates a policy choice).

Id. at 830. The Department's definition of disability causation under the Black Lung Benefits Act is similarly necessary and well within the scope of its regulatory authority.

Other commenters argue that the Department has selected the wrong definition. Several commenters suggest that the Department delete the word ''substantially'' from paragraph (c)(1). Another asks that the standard be ''due at least in part.'' One commenter requests that the Department add the word ''substantially'' to paragraphs (c)(1)(i) and (c)(1)(ii). Several comments suggest that the term ''substantially contributing'' is undefined, and urge that the Department set a percentage of disability as the threshold, while another commenter asks that the Department use the term ''actual contributing cause'' in order to bar the award of benefits where pneumoconiosis has made only a *de minimis* contribution to total disability.

The Department discussed its selection of the ''substantially contributing cause'' standard in its initial notice of proposed rulemaking. 62 FR 3345 (Jan. 22, 1997). The Department explained that its selection was intended to codify a body of caselaw from various federal appellate courts that differed very little in determining disability causation. In addition, the proposal paralleled the standard used by the Department to determine whether a miner's death was caused by pneumoconiosis. Because the language of the death standard is a direct reflection of Congressional intent, *see* 48 FR 24275–24278 (May 31, 1983), the Department believes that it should be used for disability causation as well. Finally, the Department does not agree that a percentage threshold is appropriate. As the Department previously explained, the ''substantially contributing cause'' standard requires that pneumoconiosis make a tangible and actual contribution to a miner's disability. The standard is also further defined in the proposed regulation. It requires that pneumoconiosis must either have an adverse effect on the miner's respiratory or pulmonary condition or worsen an already totally disabling respiratory or pulmonary impairment. Whether a particular miner meets the ''substantially contributing cause'' standard is a matter to be resolved based on the medical evidence submitted in each case.

Finally, several commenters suggest that the Department's proposal will allow compensation where a miner's totally disabling respiratory impairment has been caused by cigarette smoking. Neither the Black Lung Benefits Act, nor the court of appeals decisions, nor the Department's proposed regulation allows benefits to be awarded where a miner's totally disabling respiratory impairment is caused solely by cigarette smoking. The courts have held irrelevant, however, the existence of causes of a miner's total respiratory or pulmonary disability in addition to pneumoconiosis. *See Jonida Trucking, Inc.* v. *Hunt*, 124 F.3d 739, 744 (6th Cir. 1997) (coexisting heart disease). In such a case, the miner meets the statutory and regulatory criteria for an award of benefits.

20 CFR 718.205

(a) Several comments request that the Department reinstate unrelated death benefits, that is, benefits to surviving spouses of miners who were totally disabled due to pneumoconiosis at the time of their death but who did not die due to pneumoconiosis. Although such benefits were formerly available, Congress amended the Act in 1981 to require that a surviving spouse who filed her claim on or after January 1, 1982 establish that the miner died due to pneumoconiosis. Pub. L. 97–119, 95 Stat. 1635, § 203(a)(2), (3). The Department cannot issue regulations contrary to the expressed will of Congress.

Another comment, however, suggests that the Department has done just that by proposing that a surviving spouse may establish death due to pneumoconiosis by proving that pneumoconiosis hastened the miner's death. The Department disagrees. Rather, the Department has simply proposed codifying a standard that has been unanimously adopted by the federal courts of appeals, a fact recognized by other commenters. In addition to the Third, Fourth, Sixth, and Seventh Circuit decisions cited in the initial notice of proposed rulemaking, 62 FR 3345–3346 (Jan. 22, 1997), the Tenth and Eleventh Circuits have also deferred to the Director's interpretation of the current regulation, and announced their support for the standard that the Department is proposing to codify. *Northern Coal Co.* v. *Director, Office of Workers' Compensation Programs*, 100 F.3d 871, 874 (10th Cir.1996); *Bradberry*, v. *Director, Office of Workers' Compensation Programs*, 117 F.3d 1361, 1365–1366 (11th Cir. 1997). The Department's proposal thus does no more than recognize the decisions of appellate courts with jurisdiction over more than 90 percent of the claims filed under the Black Lung Benefits Act. The suggestion that the Department has violated Congressional intent is simply incorrect.

(b) One commenter asks the Department to apply the standard set forth in subsection (b)(2) to claims filed on or after January 1, 1982, the effective date of the Black Lung Benefits Amendments of 1981. Subsection (b)(2) permits an award of benefits in a survivor's claim filed before January 1, 1982 if death was due to multiple causes, including pneumoconiosis, and it is not medically feasible to distinguish which disease caused death or the extent to which pneumoconiosis contributed to the miner's death. This provision is derived in substantial part from the presumption set forth in section 411(c)(2) of the Act, 30 U.S.C. 921(c)(2), and implemented by 20 CFR 718.304. Under section 411(c)(2), a deceased miner with ten or more years of coal mine employment, who died from a respirable disease, is presumed to have died due to pneumoconiosis. In implementing this provision, the Secretary added § 718.303(a)(1) to the regulations, allowing death to be found due to a respirable disease if such disease was one of several causes of the miner's death and it is not feasible to determine which disease caused death or the extent to which the respirable disease contributed to the cause of death. Section 718.205(b)(2) permitted an award under similar circumstances in cases in which the miner had less than 10 years of coal mine employment, but the survivor had established that pneumoconiosis was one of the multiple causes of death. In 1981, Congress eliminated the section 411(c)(2) presumption for survivors' claims filed on or after January 1, 1982. Pub. L. 97–119, § 202(b)(1). In promulgating regulations to effectuate Congress's intent, the Department applied the same limitation to subsection (b)(2). *See* comment (p), 48 FR 24278 (May 31, 1983). Because subsection (b)(2) is so closely connected with the section 411(c)(2) presumption, the Department continues to believe that it may not apply this regulatory provision to claims filed on or after January 1, 1982.

Appendix B to Part 718

(a) The proposed changes to Appendix B are designed to implement the Department's proposed requirement that physicians use the flow-volume loop in reporting the results of pulmonary function tests. *See* Explanation of proposed § 718.103. The Department invites comment on these changes.

(b) A number of commenters suggest that one Appendix provision is unnecessarily restrictive. It requires that the two highest FEV1 results of the three acceptable tracings agree within 5 percent or 100 ml, whichever is greater. Appendix B(2)(ii)(G). They suggest that the standard either be eliminated entirely, or that it be replaced with a variability limit of 10 percent or 200 ml. One comment recommends that the Department should have a separate standard for ensuring the reliability of FVC results. As proposed, Appendix B limits the variability only of FEV1 and MVV results.

The Department is reluctant to eliminate the Appendix B(2)(ii)(G) standard entirely; the standard provides a baseline measurement which serves to guarantee the reproducibility, and thus the validity, of each conforming pulmonary function study. However, the Department recognizes that there may be individuals who are physically unable to produce results that fall within the 5 percent limit, but whose results are, in the opinion of the physician administering the test, a valid reflection of the individual's best effort to perform the test. Accordingly, the Department invites comment as to how to maintain a standard that guarantees the reproducibility of the FEV1 and FVC values, but also allows consideration of valid FEV1 results in excess of the current 5 percent requirement.

(c) Several commenters argue that the Appendix B tables are too stringent and should be revised. These tables set forth pulmonary function test results which may establish that a miner's respiratory or pulmonary impairment is totally disabling. The Black Lung Benefits Reform Act of 1977 required the Department to consult with the National Institute for Occupational Safety and Health in the development of criteria for medical tests that accurately reflect total disability in coal miners. 30 U.S.C. 902(f)(1)(D). On April 25, 1978, the Department proposed the pulmonary function test criteria set forth in Appendix B, setting the ''qualifying'' values for the FEV1 and MVV test at 60 percent of normal pulmonary function, as adjusted for sex, height, and age. 43 FR 17730–31 (Apr. 25, 1978). When the Department published the final Part 718 rules on February 29, 1980, it added tables for the FVC test. 45 FR 13703–06 (Feb. 29, 1980). The Department also responded to comments urging that the qualifying values be reduced, observing that although there was no consensus on the correct values, the record contained substantial support from experts for the 60 percent figure. *Id.* at 13711. The Department did not re-propose the Appendix B tables in its initial notice of proposed rulemaking, *see* 62 FR 3373 (Jan. 22, 1997) (noting that the tables in Appendix B remain unchanged), and the commenters offer no medical support for the request that they be revised. Consequently, the Department has not proposed any revision of the table values.

20 CFR Part 725—Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, As Amended

Subpart A—General

20 CFR 725.2

(a) The Department has made several technical changes to the language of the proposed regulation to make the regulation easier to read.

(b) This proposal changes § 725.2(c) to add § 725.351 to the list of amended regulations which will apply only to claims filed after the effective date of the final rule. The Department's proposal requires the district director's development of a complete evidentiary record identifying the proper responsible operator. Once a case is referred to the Office of Administrative Law Judges, neither the Director, OWCP, nor a potentially liable operator identified by the district director will be able to submit any additional evidence on issues relevant to the responsible operator question. For example, only while a claim is pending before the district director may a potentially liable operator contest that it was an operator after June 30, 1973, that it employed the miner for one year, or that the miner's employment included at least one working day after December 31, 1969, § 725.408. Accordingly, the district director must be able to obtain all of the information necessary to meet the Department's burden of proof under § 725.495.

To aid the district director in gathering such information, this proposal revises and streamlines § 725.351, which grants district directors the power to issue subpoenas duces tecum. A district director will no longer be required to seek written approval from the Director, OWCP, prior to issuing such a subpoena. *See* explanation of § 725.351. Because the revised regulations governing the identification of responsible operators, §§ 725.407–.408, will apply only to newly filed claims, however, the district director's new authority under § 725.351 must be similarly limited. Accordingly, § 725.351 is added to the list of amended regulations which will not be effective with respect to claims pending on the effective date of the final rule.

(c) A number of comments request that the Department make the final rule applicable to all pending claims. As the Department explained in its original proposal, 62 FR 3347–48 (Jan. 22, 1997), however, it lacks the statutory authority to make many changes retroactive. In addition, certain changes, such as the limitation on the quantity of medical evidence, would seriously disrupt the adjudication of currently pending claims if they were made universally applicable.

(d) A number of commenters believe that the Department lacks the authority to make any of the changes retroactive, particularly because those changes will apply to subsequent claims filed by miners who have previously been denied benefits. They argue that subsequent claims are typically based on employment that ended many years ago, and that the insurance industry is not permitted to charge additional premiums in order to cover the increased liability that will result under the Department's proposal. In support of their argument that the Department is not permitted to effect such a change, they cite the Contract Clause of the United States Constitution. The Contract Clause is in Section 10 of Article I, which is a series of prohibitions against actions by state governments. In relevant part, it states that ''[n]o State shall * * * pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.'' The Supreme Court has observed that ''[i]t could not justifiably be claimed that the Contract Clause applies, either by its own terms or by convincing historical evidence, to actions of the National Government.'' *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 732, n. 9 (1984). Thus, the Contract Clause does not bar Congress from enacting any legislation. Similarly, the Contract Clause is inapplicable to the Secretary's rulemaking by its very terms, and the comment has cited no precedent to the contrary.

Moreover, the Department does not agree that its proposed rulemaking results in the impairment of any contracts. At the hearing held in Washington, D.C., on July 22–23, 1997,

the Department heard testimony suggesting that the Supreme Court's recent decision in *United States* v. *Winstar*, 518 U.S. 839 (1996), prohibits the Department's regulatory efforts. At issue in *Winstar* was Congress's enactment of legislation that effectively revoked promises made by the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation to induce three thrift institutions to acquire financially distressed savings and loans. Although the case did not produce a majority opinion, a majority of the Justices concurred in the holding that the United States was liable to the thrift institutions for breach of contract. Justice Souter's plurality opinion observed that the promises at issue were central to the institutions' agreement to acquire the troubled savings and loans; absent the government's promise, ''the very existence of their institutions would then have been in jeopardy from the moment their agreements were signed.'' 518 U.S. at 910.

The Department's regulatory revisions present a fundamentally different case. Initially, the Department notes that Justice Souter stated that the government's regulatory authority was unaffected by the contracts: ''the agreements [at issue in that case] do not purport to bind the Congress from enacting regulatory measures.'' 518 U.S. at 881. Instead, the Court held, the agreements obligated the government to assume the risk of loss, and thus be liable for damages, if the regulations were changed. By contrast, the contracts purchased by the coal mining industry to insure themselves against black lung claims contain no provision requiring the Department to assume any risk of loss. Although the Department prescribes the form of such contracts, and the Black Lung Disability Trust Fund may be considered a beneficiary of them, these are not contracts between the government and a private party. Moreover, as reflected in the endorsement authorized by the Department, § 726.203, the contracts specifically recognize the possibility that the Act may be amended while the policy is in force, and place the risk of those amendments on the insurer. *See National Independent Coal Operators Association* v. *Old Republic Insurance Company*, 544 F. Supp. 520 (W.D. Va. 1982). The Department has explained above that its rulemaking is fully consistent with, and authorized by, the provisions of the Black Lung Benefits Act. Accordingly, the Court's decision in *Winstar* presents no bar to the Department's promulgation of regulations, and does not obligate the Department to pay damages to the insurance industry.

(e) One comment urges the Department to adopt a bright-line test making all of the revisions applicable only to claims filed after the final rule becomes effective. In particular, the commenter points to changes in Part 726 which will unfairly prejudice coal mine operators that have purchased insurance in compliance with the existing regulations. As the Department explained in its earlier notice of proposed rulemaking, the only revisions which will apply to pending claims are those which clarify the Department's longstanding interpretation of the Act and the current regulations. 62 FR 3348 (Jan. 22, 1997). Those revisions are not considered retroactive. *See Pope* v. *Shalala*, 998 F.2d 473, 483 (7th Cir. 1993). The Department believes that they should be applied to all pending claims to ensure the claims' uniform treatment. Moreover, the Department does not believe that the changes to Part 726 will result in the imposition of any additional liability on the part of coal mine operators in compliance with the Act's insurance requirements.

20 CFR 725.101

(a) Several written comments and hearing statements oppose amending the definition of ''benefits'' in § 725.101(a)(6) to include the cost of the medical examination of the claimant authorized under § 725.406 and subsidized by the Trust Fund. The opponents suggest that the amended definition would impose the cost of the examination on the claimant if he later decides to withdraw the claim or becomes liable for the repayment of overpaid benefits. The Department acknowledges the commenters' concerns, but assures them that the cost of the examination, although a ''benefit'', cannot be shifted to the claimant. In the preamble accompanying the proposed revision of § 725.306, the Department stated it ''will not require reimbursement of the amount spent on the claimant's complete pulmonary evaluation as a condition for withdrawing a claim.'' 62 FR 3351 (Jan. 22, 1997). Similarly, a claimant who must repay overpaid ''benefits'' is not liable for reimbursing the Trust Fund for the medical examination. An overpayment encompasses payments to which the individual is ultimately not entitled, 20 CFR 725.540, while each applicant for benefits is entitled by virtue of the Black Lung Benefits Act to the complete pulmonary examination. 30 U.S.C. 923(b). In addition, § 725.522 contemplates that only payments made pursuant to an initial determination of eligibility by the district director or pursuant to an ''effective order by a district director, administrative law judge, Benefits Review Board, or court'' may be treated as an overpayment pursuant to § 725.540 in the event the claimant is ultimately found ineligible for benefits. The cost of the initial pulmonary evaluation is not such a payment. Consequently, the claimant cannot be required to repay the cost of that examination whatever the outcome of the adjudication of the claim.

(b) One comment opposes the revised definition of ''benefits'' in subsection (a)(6) because it imposes liability for the examination on the responsible operator if the claimant ultimately secures benefits. The comment argues that the cost-shifting is not authorized by the Black Lung Benefits Act. The Department, however, has consistently taken the position that an operator found liable for the payment of the claimant's benefits is also liable to the Trust Fund for the cost of the initial pulmonary evaluation authorized by 30 U.S.C. 923(b). This requirement is in the current regulations at 20 CFR 725.406(c). The revision of § 725.101(a)(6) merely makes this language consistent with § 725.406.

(c) The Department proposes to revise subsection (a)(6) in order to include a cross-reference to § 725.520(c), which defines the term ''augmented benefits.'' Because regulations that precede § 725.520, such as § 725.210, also use the term ''augmented benefits,'' the Department believes that the parties seeking a definition of that term should be able to find an appropriate reference in § 725.101.

(d) Three comments support the revised definitions of ''coal preparation'' (§ 725.101(a)(13)) and ''miner'' (§ 725.101(a)(19)), which exclude coke oven workers from coverage of the Black Lung Benefits Act.

(e) Two comments oppose the proposed revision of § 725.101(a)(31), which would exclude certain benefits paid from a state's general revenues from the definition of ''workers' compensation law.'' One comment supported the change. The opposing comments broadly suggest the proposed change would adversely affect the Trust Fund by making certain state benefits ineligible for offset against federal benefits, creating uncertainty in benefits funding, and contradicting the holding in *Director, OWCP* v. *Eastern Associated Coal Corp.*, 54 F.3d 141 (3d Cir. 1995). The Department disagrees. The Black Lung Benefits Act requires federal black lung benefits to be offset by any amount of compensation received under state or

federal workers' compensation laws for disability or death due to pneumoconiosis. In *Eastern Associated Coal,* the Third Circuit held that the BLBA is ambiguous as to the meaning of a ''workers' compensation law.'' The Court also held that the Director's long-standing practice of excluding state-funded benefits from the ambit of ''workers' compensation law'' was inconsistent with the plain meaning of the implementing regulations. Finally, the Court suggested the agency ''has the means and obligation to amend its regulations to provide for [an] exception'' for state benefits funded through general revenues. 54 F.3d at 150. The Department has therefore proposed to exercise its regulatory authority and eliminate any perceived inconsistency between the agency's position and the black lung program's implementing regulations. The Department's position is entirely consistent with the decision in *Eastern Associated Coal;* the Court held only that the agency's practice was inconsistent with existing regulations, and not that it was prohibited by the statute. Moreover, the Court invited the Department to undertake the present course of action.

(f) One comment opposes the revised definition of ''year'' in § 725.101(a)(32) because it includes approved absences from work in computing the length of time the miner worked for the coal company. Case law has established the validity of including certain periods of time when the miner is not working in establishing the duration of the miner's work relationship with a coal company. *Northern Coal Co.* v. *Director, OWCP [Pickup],* 100 F.3d 871, 876–877 (10th Cir. 1996); *Boyd* v. *Island Creek Coal Co.,* 8 Black Lung Rep. 1–458, 1–460 (1986); *Verdi* v. *Price River Coal Co.,* 6 Black Lung Rep. 1–1067, 1–1069/1–1070 (1984); *cf. Thomas* v. *BethEnergy Mines, Inc.,* 21 Black Lung Rep. 1–10, 1–16/1–17 (1997) (upholding inclusion of sick leave in determining length of miner's employment with operator, but rejecting Director's position that sick leave cannot be counted in determining whether miner was ''regularly'' employed during the year of employment with operator). No reason for deviating from this precedent has been offered.

(g) One comment broadly opposes the definition of the term ''year'' in subsection (a)(32), but identifies only one specific objection: the commenter contends that use of the 125-day exposure standard is invalid because of the reduced incidence of pneumoconiosis in current miners. A current reduction in the occurrence of pneumoconiosis, assuming that such a decline has occurred, is not a sufficient basis for revisiting the exposure standard. The pool of potential claimants who may apply for benefits under these regulations is not restricted to those individuals mining coal over the recent past. Consequently, a decline in the current incidence of the disease does not necessarily undermine the 125-day standard.

(h) One comment objects to the use of wages, compared to annual average wage rates, to calculate the miner's employment history for purposes of determining a ''year'' of coal mine employment under subsection (a)(32); two other comments generally support the definition, but express concern over the undue reliance on Social Security itemized wage earning records. All three comments emphasize the potentially inaccurate information contained in the itemized earnings records. No changes in the proposed definition are necessary to alleviate these concerns. Section 725.101(a)(32) does not accord special deference to any particular type of record for determining when a miner worked or how much he earned during any given period of time. In any specific case, a party may provide testimony or other evidence as to the length of coal mine employment, amount of wages, or accuracy or inaccuracy of any particular record.

(i) The Department is proposing one additional change to subsection (a)(32). In order to account for leap years, which have 366 days instead of 365, the Department proposes to use the larger figure in computing a ''year'' when one of the days in the period at issue is February 29.

Subpart B

20 CFR 725.209

The Department proposed a change to § 725.209(a)(2)(ii) in its initial notice of proposed rulemaking by adding a requirement that a dependent child who is at least 18 years of age and not a student must be under a disability which began before the age of 22 for purposes of augmenting the benefits of a miner or surviving spouse. 62 FR 3390 (Jan. 22, 1997). This proposal changes § 725.209(a)(2)(ii) to eliminate the age requirement. The change implements the statutory definition of ''dependent,'' as it pertains to a child. Section 402(a) of the Black Lung Benefits Act (BLBA) defines a ''dependent child'' to mean ''a child as defined in subsection (g) without regard to subparagraph (2)(B)(ii) thereof[.]'' 30 U.S.C. 902(a)(1). The reference to section 402(g)(2)(B)(ii) is the statutory requirement that a child be disabled before the age of 22. By removing the reference to age for purposes of a dependent child, Congress allowed any disabled child who meets the remaining statutory criteria to be considered a dependent of the miner or his widow without regard to when the child's disability began. A miner or his widow may receive augmented benefits for up to three dependents. 30 U.S.C. 922(a)(4). The Benefits Review Board has reached the same conclusion concerning the intended operation of 30 U.S.C. 902(a)(1). *See Hite* v. *Eastern Associated Coal Co.,* 21 Black Lung Rep. 1–46 (1997); *Wallen* v. *Director, OWCP,* 13 Black Lung Rep. 1–64 (1989). Finally, the change in the regulation effectuates a distinction between classes of dependent children drawn by the statute. In order for a child to establish dependency on a deceased miner as a condition to receipt of benefits in his own right, the BLBA requires the ''child'' to meet all the requirements of 30 U.S.C. 902(g). 30 U.S.C. 922(a)(3). These requirements include a deadline for the onset of disability: either age 22 or, in the case of a student, before the individual ceases to be a student. *See also* § 725.221. A child/beneficiary therefore must meet the age requirement for disability while the child/augmentee is relieved of this burden under the BLBA and the regulations. *Hite,* 21 Black Lung Rep. at 1–49; *Wallen,* 13 Black Lung Rep. at 1–67–68. Accordingly, the proposed version of § 725.209 is revised to reflect the statutory definition of ''dependent child'' and the distinction between a child/beneficiary and child/augmentee.

20 CFR 725.223

The Department proposed paragraph (d) in the initial notice of rulemaking to create a vehicle for reentitling a miner's dependent brother or sister whose eligibility terminates upon marriage, if that marriage ends and the individual again meets all the criteria for entitlement. 62 FR 3393 (Jan. 22, 1997). Upon further consideration, the Department has concluded that permitting reentitlement in such circumstances is contrary to longstanding and consistent agency policy. 20 CFR 725.223(c) (DOL regulation); 410.215(c), (d) (SSA regulation). The only situation in which reentitlement is allowed involves a surviving spouse or surviving divorced spouse who remarries after the death of, or divorce from, the miner, but later regains single status and satisfies the remaining criteria for eligibility. *See* response to comments, § 725.213. The Department has declined to extend similar treatment to children who marry

because marriage is a permanent bar to their entitlement under the statute. No reason exists to accord preferential treatment to the miner's surviving dependent siblings. Once an otherwise eligible brother or sister marries or remarries, entitlement terminates, and the marriage operates as a bar to future entitlement. If the brother or sister is already married when he or she becomes a dependent of the miner, the fact of marriage does not preclude entitlement if the brother or sister has not received any amount of support from his or her spouse. Once support is provided, then the married brother or sister loses eligibility. In either case, the termination of entitlement is justified by the reasonable assumption that the individual will receive financial support from the spouse during the marriage, and rely on savings or other benefits acquired during the marriage should it terminate. The Department therefore proposes to remove paragraph (d) from § 725.223.

Subpart C

20 CFR 725.309

(a) Numerous comments support this proposal, which simply reflects the nearly unanimous holdings of the federal courts of appeals affirming the Department's treatment of subsequent claims. The proposal also brought responses from a number of commenters, however, who generally oppose allowing claimants to file subsequent claims, and argue that the Department's proposal would further expand the right to file subsequent applications. Subsequent applications are filed more than one year after the denial of a previous claim. They may be awarded only if the claimant demonstrates that an applicable condition of entitlement has changed in the interim. As the Department explained in its initial proposal, the subsequent claims provision represents a recognition of the progressive nature of pneumoconiosis. *See* 62 FR 3351–3353 (Jan. 22, 1997).

The limited nature of the Department's proposed revisions cannot be overemphasized. The Third, Fourth, Sixth, and Eighth Circuits have adopted the Department's position. *Lovilia Coal Co.* v. *Harvey,* 109 F.3d 445 (8th Cir. 1997), *cert. denied,* 118 S. Ct. 1385 (1998); *Lisa Lee Mines* v. *Director, OWCP,* 86 F.3d 1358 (4th Cir. 1996); *LaBelle Processing Co.* v. *Swarrow,* 72 F.3d 308 (3d Cir. 1995); *Sharondale Coal Co.* v. *Ross,* 42 F.3d 993 (6th Cir. 1994). The Seventh Circuit's view is substantially similar. *Peabody Coal Co.* v. *Spese,* 117 F.3d 1001 (1997). Only the Tenth Circuit has adopted a contrary view. *Wyoming Fuel Co.* v. *Director, OWCP,* 90 F.3d 1502 (10th Cir. 1996). The Department's proposed regulation thus merely codifies caselaw that is already applicable to more than 90 percent of the claimants who apply for black lung benefits. In addition, as discussed earlier in this document, the Department's revisions will not result in the automatic reopening of claims, as was required by the Black Lung Benefits Reform Act of 1977, or the *de novo* adjudication of claims, as would have been required by H.R. 2108, the 1994 legislative initiative discussed in more detail above. The 1977 Reform Act resulted in the reopening of over 100,000 claims. The Department estimated that H.R. 2108 would have resulted in a substantial number of refilings based on its promise of *de novo* adjudication, that is, adjudication without the need to establish that the miner's condition has changed. By contrast, between January 1, 1982 and July 16, 1998, the Department received only 30,964 claims filed by claimants who had previously been denied. Because the revised regulations will offer no assistance to claimants whose condition has not changed, it is not likely to encourage the filing of a large number of additional subsequent claims.

Moreover, the Department's experience with subsequent claims clearly demonstrates the need for allowing miners to file them. Of the 49,971 first-time claims filed by living miners between January 1, 1982 (the date upon which the Black Lung Benefits Amendments of 1981 took effect) and July 16, 1998, 3,731, or 7.47 percent, were ultimately awarded. In that same time period, the Department received 30,964 subsequent claims from miners who had previously been denied benefits under the Act. Of those claims, 3,269, or 10.56 percent, were awarded. These figures suggest that many miners file applications for benefits before they are truly disabled. Elsewhere in this reproposal, the Department has outlined the steps it intends to take in order to provide claimants with a realistic view of their possible entitlement, including better initial pulmonary evaluations and better reasoned explanations of the denial of their claims. As a result of these steps, the Department hopes that claimants will be able to assess more accurately the strength of their applications throughout the process. To automatically deny those who previously filed claims, however, would unfairly penalize those miners who have truly become totally disabled due to pneumoconiosis and would deprive them of the benefits to which they may be entitled.

One commenter suggested that the Department's subsequent claims provision allows unsuccessful claimants to file multiple times, resulting in the waste of considerable resources by companies required to defend against them. The Department's experience with the current subsequent claims regulation, which has not been substantially changed, indicates that the provision has not led to widespread misuse. Approximately 107,000 claims were filed between January 1, 1982 and July, 1998. Approximately 1,400 of these were from individuals who had previously been denied benefits three or more times. This represents only 1.3 percent of the total. While the Department hopes to discourage filings by individuals who are not totally disabled due to pneumoconiosis by providing more information about the process to the potential claimant population, the Department does not believe that a strict rule requiring the denial of all subsequent claims is appropriate in a program intended to compensate the victims of a progressive disease.

(b) The Department's first proposal created a rebuttable presumption that the miner's physical condition had changed if the miner proved with new medical evidence one of the applicable conditions of entitlement. The regulation also included a provision allowing a miner to establish a serious deterioration in his physical condition whether or not the presumption was rebutted. The Department now believes that this regulatory presumption is unnecessary and would lead to considerable litigation. One commenter suggested its deletion. Accordingly, the revised proposal eliminates the presumption in favor of a simple threshold test: If the miner produces new evidence concerning his physical condition that establishes any of the elements of entitlement previously resolved against him, he is entitled to litigate his entitlement to benefits without regard to findings made in the earlier adjudication. The only exception is an issue resolved earlier by stipulation or by a failure to contest.

The Department's subsequent claims provision gives full effect to the Fourth Circuit's decision in *Lisa Lee Mines* v. *Director, OWCP,* 86 F.3d 1358 (4th Cir. 1996), *cert. denied,* 117 S.Ct. 763 (1997). In *Lisa Lee,* the *en banc* Fourth Circuit affirmed an award of benefits on a subsequent claim despite the operator's objections that the miner should have been awarded benefits in the prior claim

based on evidence of complicated pneumoconiosis. The court held that while the previous denial represented a final adjudication of the miner's condition at that time, that denial should not bar the miner from establishing his entitlement to benefits where his condition has clearly changed. The court's emphasis on accepting the correctness of the first adjudication, as well as the factual findings underlying that result, was echoed by Judge Niemeyer in his concurring opinion: ''This test avoids improper review of the first decision denying benefits.'' 86 F.3d at 1365 (Niemeyer, J., concurring).

(c) Several comments argue that the Department has incorrectly eliminated the requirement in the current regulations that a subsequent survivor's claim be automatically denied. That requirement is based on the common-sense premise that a miner's physical condition cannot change after his death, a premise with which the Department continues to agree. Thus, where the denial of a prior survivor's claim is based solely on the survivor's failure to establish that the miner suffered from pneumoconiosis, that the pneumoconiosis was caused by the miner's coal mine employment, or that the pneumoconiosis contributed to the miner's death, the Department agrees that a subsequent survivor's claim must be denied absent waiver by the liable party. Subsection (d)(3) is amended to clarify that intent. Where the earlier denial was based in whole or in part on a finding that is subject to change, however, for example, that the survivor had remarried, or a child has left school, it is inconsistent with the basic tenets of issue preclusion to prohibit that survivor from establishing entitlement to benefits. *See* 62 FR 3352 (Jan. 22, 1997). Accordingly, the Department has eliminated the automatic denial of all subsequent survivor's claims, and replaced it with a more equitable assessment of the survivor's right to assert entitlement. One comment suggests that allowing waiver of the provision requiring denial of a survivor's claim is inconsistent with the Secretary of Labor's fiduciary responsibility toward the Black Lung Disability Trust Fund. The Department is fully cognizant of its duty to protect the fund against non-meritorious claims. In exercising its responsibilities, however, the Department also believes that it should not deny meritorious claims on technical legal grounds where, for example, a surviving spouse was unable to obtain legal representation in the earlier proceeding.

(d) Several comments suggest that section 725.309 is impermissible in light of the one-year limitation for seeking reconsideration based on a change in conditions set forth in section 22 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 922. The Department disagrees. A section 22 reconsideration request asks that the existing denial be modified. A subsequent claim, however, does not allow reopening, or require relitigation, of the existing denial. Instead, it constitutes a new cause of action adjudicating the miner's entitlement at a later time. Thus, section 22 is not implicated by the subsequent claims provision. Moreover, even assuming that section 22 could be read to preclude subsequent claims under the Longshore and Harbor Workers' Compensation Act, the Department's authority to depart from the Longshore Act in order to administer the Black Lung Benefits Act is well established. *Director, OWCP* v. *National Mines Corp.*, 554 F.2d 1267, 1274 (4th Cir. 1977). The Department believes that a departure in this instance is fully justified. Unlike Longshore Act claims, the majority of which involve discrete, traumatic injuries, all claims filed under the Black Lung Benefits Act seek compensation for a latent, progressive disease. Moreover, the Supreme Court has construed the Longshore Act, in cases involving similar types of conditions, to allow the entry of nominal benefit awards which may be subject to later and repeated modification if the employee's condition worsens. *Metropolitan Stevedore Co.* v. *Rambo*, 117 S. Ct. 1953, 1963 (1997). Under the BLBA, however, entry of a nominal benefit award is not possible. Awards are permissible only in a case of total disability. Thus, the Department allows subsequent claims as an acknowledgment that the miner's condition may worsen.

(e) One comment argues that claimants should not have to relitigate elements of entitlement that they established in earlier litigation. For example, if the miner established that he suffers from pneumoconiosis, but failed to prove that he was totally disabled, he should not be required to re-prove the existence of the disease in a subsequent claim. The Department disagrees. Just as the rules of issue preclusion would not allow a coal mine operator to rely on the miner's previous inability to prove one element of entitlement when the miner's condition with respect to another element has changed, those rules also prohibit a miner from relying on a previous finding which the opposing party did not have an opportunity to fully litigate. Where a miner's claim was denied, and the miner did not file an appeal, the party opposing entitlement had no opportunity to seek to overturn findings that were favorable to the miner. Consequently, those findings may not have any preclusive effect.

(f) One comment suggests that the Department should clarify the date from which benefits are payable in subsequent claims. The date for commencing payment in subsequent claims is governed by the same rules applicable to any other claim, *see* 20 CFR 725.503, with the proviso that no benefits may be awarded for any period prior to the date on which the order denying the prior claim became final. This rule, spelled out in subsection (d)(5), gives effect to the language of the Fourth Circuit in *Lisa Lee*, that parties ''must accept the correctness of [the denial's] legal conclusion—[the claimant] was not eligible for benefits at that time—and that determination is as off-limits to criticism by the respondent as by the claimant.'' 86 F.3d at 1361.

(g) One comment argues that the Department's treatment of subsequent claims violates section 413(d) of the Act, 30 U.S.C. 923(d), which allows working miners who have been determined eligible for benefits to receive those benefits only if they terminate their employment within one year after the determination becomes final. The Department disagrees. Section 725.504, to which only technical changes were proposed, *see* 62 FR 3341 (Jan. 22, 1997), implements the Act's working miner provisions. The regulation currently allows individuals whose claims are denied as a result of continued coal mine employment for more than one year to file new applications after that employment ends. This regulation was first promulgated (as § 725.503A) in 1978, *see* 43 FR 36806 (Aug. 18, 1978), and the Department sees no need to revise it in light of the treatment afforded subsequent claims filed by individuals who do not continue to work. In neither case would the factfinder be permitted to look behind the denial of the earlier application. Moreover, miners who continue to work, and thus continue to be exposed to coal mine dust, present an even more compelling justification for being allowed to file subsequent claims than in the case of non-working miners.

20 CFR 725.310

(a) The Department is re-proposing section 725.310 in order to make two specific changes. The first, set forth in the third and fourth sentences of

subsection (d), would allow the Department or responsible operator, as appropriate, to recoup amounts paid erroneously to a claimant where the claimant is at fault in incurring the overpayment. For example, an overpayment may occur if a claimant in award status fails to timely notify the Department or responsible operator of an event requiring a reduction in the amount of monthly benefits paid. Such events might include an award of state workers' compensation benefits, a child's withdrawal from an educational institution, or a surviving spouse's remarriage. The second change, set forth in the fifth and sixth sentences of subsection (d), conforms the language of the regulation to the Department's intention, set forth in the Department's earlier proposal at 62 FR 3354 (Jan. 22, 1997). By making this change, the Department recognizes that those claimants whose awards have become final have a heightened expectation that they will be able to keep the monthly benefits they receive. Thus, if a final award is terminated after modification, those benefits paid pursuant to the award before modification commenced are not subject to recoupment. By contrast, those claimants whose awards are modified to denials while still on appeal may be the subject of recoupment proceedings. The two sentences at the end of subsection (d), as originally proposed, have been further divided in order to clarify the regulation's meaning.

(b) One comment objects that the revised regulation would prohibit an administrative law judge from denying a claimant's request for modification based on the claimant's failure to present any additional evidence. This comment is apparently based on the mistaken belief that the current regulations authorize such a denial. However, it is clear that any party has the right to seek modification under section 22 of the Longshore Act based ''merely on further reflection on the evidence initially submitted.'' *O'Keeffe* v. *Aerojet-General Shipyards, Inc.*, 92 S. Ct. 405, 407 (1971). The Department's current black lung regulations do not depart from this authority. Thus, current law prohibits an ALJ from denying a claimant's modification request based on a claimant's failure to submit new evidence. It is also well-established that a claimant who requests modification, whether or not he submits new evidence, is entitled to a *de novo* adjudication of his entitlement to benefits and, if requested, to a formal hearing before an administrative law judge. *Robbins* v. *Cyprus Cumberland Coal Co.*, 146 F.3d 425, 430 (6th Cir. 1998); *Cunningham* v. *Island Creek Coal Co.*, 144 F.3d 388, 390 (6th Cir. 1998). The revisions to subsection (c) merely restate these basic holdings. A similar comment suggests that the changes to subsection (c) create opportunities for claimants to file repeated requests for modification and thus avoid the one-year time limitation. Current law, however, does not permit a fact-finder to deny a modification request simply because a previous modification request has been denied. The one-year time limitation, in fact, commences to run anew when an earlier denial has become final. Subsection (c) does not alter the current state of the law.

(c) Two comments argue that the district director should not be permitted to initiate modification in any case in which a coal mine operator is liable for the payment of benefits to the claimant. The Department does not agree that such a limitation would be appropriate. Although coal mine operators are generally able to represent their own interests effectively, and thus to request modification when they believe it appropriate, section 22 of the Longshore Act specifically authorizes the district director to initiate modification on his own initiative. The Department sees no need to modify this Longshore Act provision in order to properly administer the Black Lung Benefits Act. In addition, there exists a group of awards in which a coal mine operator is nominally liable for the payment of benefits but, because of bankruptcy, dissolution, or other events, can no longer pay benefits. In such cases, the Trust Fund, pursuant to 26 U.S.C. 9501(d), must assume responsibility for paying benefits. The limitation urged by this comment would effectively prohibit the Department from initiating modification in those cases, a limitation that the Department considers unacceptable. For example, the Department must remain free to adjust the terms of an award of benefits to reflect changes in the number and status of the claimant's dependents, such as when a previously eligible child becomes ineligible for augmented benefits. Another comment suggests that parties should be able to initiate modification proceedings before an administrative law judge. The Department disagrees. Section 22 explicitly requires that modification proceedings under the LHWCA be commenced before the district director, and there is no need to alter this provision to meet the needs of the black lung benefits program. In fact, filing a modification request before the district director allows him to administratively process the request, develop the appropriate evidence, and attempt an informal resolution of the claim. *See Saginaw Mining Co.* v. *Mazzulli*, 818 F.2d 1278, 1282 (6th Cir.1987) (discussing the policy reasons supporting the regulation requiring modification proceedings to be commenced before the district director).

(d) The Department has extensively revised § 725.414 in order to define more precisely the quantitative limits on documentary medical evidence that the parties may submit. *See* explanation to § 725.414. Subsection (b) of § 725.310, which limits the amount of additional documentary medical evidence that parties may submit in cases involving requests for modification, contained language similar to the language deleted from § 725.414. In order to clarify the amount of evidence admissible in a modification case, the Department has made a corresponding change to subsection (b). Each party will be entitled to submit one additional chest X-ray interpretation, pulmonary function test, arterial blood gas study, and medical report. The opposing party may introduce one opposing interpretation of each objective test, in accordance with the rules set forth in § 725.414. Finally, the party that originally offered the evidence may seek to rehabilitate its evidence by introducing an additional statement from the physician who administered the test.

Subpart D

20 CFR 725.351

Section 725.351 was not among the provisions which the Department opened for comment in its previous notice of proposed rulemaking, 62 FR 3341 (Jan. 22, 1997), and the Department did not receive any comments specifically directed to this section. In the course of reviewing the procedures to be used in the identification and notification of potentially liable operators, however, the Department has identified one aspect of this regulation which might benefit from change. The Department's proposal requires the submission to the district director of all evidence relevant to the identification of the liable responsible operator. §§ 725.408, 725.414(b). The Department must have access to this evidence while a claim is pending before the district director because it will be unable to identify additional responsible operators after a case is referred to the Office of Administrative Law Judges, § 725.407(d). It will therefore be the

district director's responsibility to develop the evidence necessary to meet the Director's evidentiary burden under the responsible operator regulations, Subpart G of Part 725.

In order to allow district directors to exercise their responsibilities more efficiently, and in a manner which does not unduly delay the adjudication of a claimant's entitlement, the Department proposes to eliminate the requirement that district directors obtain approval from the Director, OWCP, prior to the issuance and enforcement of subpoenas duces tecum. The authority to issue subpoenas requiring the production of documents is a well-recognized investigative tool of administrative agencies, *see* Comment, ''Administrative Subpoenas for Private Financial Records: What Protection for Privacy does the Fourth Amendment Afford?,'' 1996 Wisc. L. Rev. 1075, 1076–77 (1996), and the Department believes that the current additional layer of internal review is unnecessary. Instead, the Department fully expects that the district directors, working in cooperation with the appropriate officials of the Office of the Solicitor, will issue subpoenas that comply with the standards established by the Supreme Court in United States v. Morton Salt Co., 338 U.S. 632, 652 (1950). Those standards require that the information sought must be relevant to the district director's investigation and the subpoena must not be ''too indefinite.'' The latter requirement ensures that the district director's request not be excessively burdensome, *i.e.,* that compliance does not threaten the normal operation of the recipient's business. *See EEOC* v. B*ay Shipbuilding Corp.,* 668 F.2d 304, 313 (7th Cir. 1981).

20 CFR 725.367

(a) Several comments urge the Department to allow successful claimants' attorneys to collect reasonable fees for all necessary work they perform in a case rather than only the work performed after the liable operator first contested the claimant's eligibility or the fund first denied the claim. The Department agrees that such a change is appropriate. Since the revised version of section 725.367 was proposed on January 22, 1997, the Department has spent considerable time weighing how to adequately compensate claimants' attorneys under the Black Lung Benefits Act. The issue was raised in part by the Benefits Review Board's June 30, 1997 decision in *Jackson* v. *Jewell Ridge Coal Corp.,* 21 Black Lung Rep. (MB) 1–27 (en banc). In *Jackson,* the Board, by a 3–2 majority, held that successful claimants' attorneys in black lung cases are entitled to fees for all the work they perform, regardless of whether it is performed before or after the employer controverts the claimant's entitlement. The Fourth Circuit subsequently affirmed the Board's decision but disavowed its reasoning. *Clinchfield Coal Co.* v. *Harris,* 149 F.3d 407 (4th Cir. 1998). Faced with three seemingly reasonable interpretations of the statutory language and regulations, the Fourth Circuit deferred to the existing interpretation of the Director, Office of Workers' Compensation Programs. Under that interpretation, a claimant's attorney's fees are limited to those services performed after the agency's initial denial of the claim or the operator's rejection of the agency's initial approval. The court noted that the Director's interpretation was based on the agency's reasonable identification of the point in time at which a claimant would have reason to seek the assistance of an attorney. 149 F.3d at 310.

The evidentiary limitations now proposed by the Department, however, significantly alter the circumstances under which a claimant may be expected to seek representation. For example, although the Department now proposes the elimination of the requirement in the initial notice of proposed rulemaking that all medical evidence be submitted while a case is pending before the district director, these proposed regulations nevertheless still limit the amount of evidence each party may submit. Attorneys could play an important role in ensuring that this evidence, including evidence submitted before the Department's initial approval or denial of the claim for benefits, complies with the Department's quality standards and effectively presents the claimant's case. In addition, the Department is proposing significant changes in connection with the complete pulmonary evaluation afforded claimants under § 413(b) of the Act. As detailed in the explanation of these changes at § 725.406, the Department intends to send to the claimant a copy of the results of the objective tests obtained in the Department's evaluation, so that the claimant may in turn give those results to his treating physician. Obviously, the choice of whether or not to submit a report from that physician is important, in light of the regulations' evidentiary limitations. The Department intends to recommend that claimants seek legal advice before making that choice.

In light of the significant changes proposed by the Department, the commenters' suggestion is well-taken. Allowing successful attorneys to collect reasonable fees for all of the necessary work they perform, rather than only the work performed after creation of an adversarial relationship, hopefully will encourage early attorney involvement in these cases. Because such involvement can only improve the quality of evidence submitted, and thus the quality of decision-making in all claims for benefits, the Department proposes to amend section 725.367 to accomplish this result. Although the creation of an adversarial relationship and the ultimately successful prosecution of a claim are still necessary to trigger employer or fund liability for attorney's fees, the date on which the adversarial relationship commenced will no longer serve as the starting point for such liability.

(b) One comment suggests that lay representatives should be entitled to collect fees from responsible coal mine operators or the fund. The Department explained in 1978, when it rejected the same suggestion, that the statute does not require operators to pay the fees of representatives who are not attorneys. 43 FR 36789 (Aug. 18, 1978). It is the Department's intention in this regulation to make the trust fund's attorney's fee liability coextensive with a liable operator's, 62 FR 3354 (Jan. 22, 1997).

(c) One comment suggests that the Department erred in preferring the Third Circuit's decision in *Bethenergy Mines* v. *Director, OWCP,* 854 F.2d 632 (3d Cir. 1988) over the Sixth Circuit's decisions in *Director, OWCP* v. *Bivens,* 757 F.2d 781 (6th Cir. 1985) and *Director, OWCP* v. *Poyner,* 810 F.2d 99 (6th Cir. 1987). The Department's proposal, however, reflects no such preference. Both *Bivens* and *Poyner* stand for the proposition that the fund is liable for attorney's fees only when the Director, OWCP, unsuccessfully contests the claimant's entitlement to benefits. In *Bethenergy,* the Third Circuit held that a coal mine operator became liable for the payment of attorney's fees when it failed to accept liability for the claimant's entitlement within 30 days of the Department's initial finding that the claimant was not eligible for benefits. The Department's proposal is consistent with all three decisions. As in *Poyner* and *Bivens,* the regulations allow fees to be awarded against the trust fund only if the Department has denied the claimant's eligibility. In addition, the revisions follow *Bethenergy* in imposing liability on employers based either on their failure to respond to the Department's initial finding or their contest of it, whether or not the Department finds that the claimant is eligible for benefits.

In each case, the proposal allows the responsible party time to collect and evaluate medical evidence before determining whether to create the type of adversarial relationship that would result in liability for attorney's fees if the claimant ultimately proves successful.

(d) One comment states that the Department has ignored Supreme Court case law governing attorney's fee liability. The comment contains no citation to specific precedent and no further explanation. This sparse comment affords the Department an insufficient basis for altering its original proposal.

Subpart E

20 CFR 725.403

Section 725.403 was not among the regulations which the Department opened for comment in its previous notice of proposed rulemaking, 62 FR 3341 (Jan. 22, 1997). The regulation is applicable only to claims filed under section 415 of the Black Lung Benefits Act, 30 U.S.C. 925, between July 1 and December 31, 1973. Such claims were filed with the Department of Health, Education, and Welfare, but administered by the Department of Labor. Section 413(c) of the Act, 30 U.S.C. 923(c), provides that no benefits could be paid on any claim filed on or before December 31, 1973 unless the miner filed a claim for benefits under the applicable state workers' compensation law. Section 725.403 implemented this prohibition for purposes of section 415 claims. Because the deadline for filing section 415 claims expired over 25 years ago, the Department proposes to delete section 725.403. The Department does not intend to alter the rules applicable to any section 415 claim that may still be in litigation, and section 725.403 will remain applicable to any such claim. Parties interested in reviewing section 725.403 may consult earlier editions of the Code of Federal Regulations or the **Federal Register** in which the regulation was originally published. The Department invites comment on whether section 725.403 should be retained in the Code of Federal Regulations.

20 CFR 725.406

(a) The Department received a number of comments, from coal mine operators and miners alike, criticizing its initial proposal for providing claimants with the complete pulmonary evaluation required by 30 U.S.C. 923(b). Section 413(b) of the Act, 30 U.S.C. 923(b), requires the Department to afford each miner who applies for benefits an opportunity to substantiate his claim by means of a complete pulmonary evaluation. Under the Department's original proposal, a miner could either be examined by a physician selected by the Department or by a physician of his choosing. If the miner selected the physician, however, the report of that examination would count as one of the two pulmonary evaluations the miner was entitled to submit into evidence. § 725.414.

One comment suggested that the Department's proposal, in combination with the proposed limits on the quantity of documentary medical evidence each party may submit, would interfere with a miner's statutory right to have a complete pulmonary evaluation performed by a physician of his choice. Many miners, the commenter argued, would make a selection of the physician to perform the examination without the benefit of counsel, and would be able to submit only one additional medical report when they did secure counsel. Another comment suggested that the responsible operator be permitted to choose the physician, while a third comment suggested that the Department take steps to ensure that the facilities and physicians it uses to perform the complete pulmonary evaluation are impartial and of the highest quality.

The Department does not agree that the Black Lung Benefits Act guarantees claimants the right to have the Department pay for a pulmonary evaluation performed by a physician selected by the claimant. The statute obligates the Department only to provide a miner who applies for benefits ''an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation.'' 30 U.S.C. 923(b). In the past, when the regulations allowed parties to submit unlimited amounts of evidence in claims, the Department did allow miners to request a specific physician or facility to perform the complete pulmonary evaluation and to have the examination and/or testing done there as long as the miner's request was approved by the district director. 20 CFR 725.406(a).

The Department's proposal, however, now sets forth limitations on the quantity of evidence each side may submit. As a result, allowing a claimant to choose the physician to perform the initial pulmonary evaluation without the benefit of counsel could have an adverse effect on his case. Such a claimant might not obtain the best quality report, and would be able to submit only one more. The Department has considered a number of options to address this problem, and believes that the purposes of the Black Lung Benefits Act will best be served if the complete pulmonary evaluation authorized by 30 U.S.C. 923(b) is performed by an impartial and highly qualified physician, a solution proposed by one of the commenters. The Department will therefore maintain a list of physicians and facilities authorized to perform pulmonary evaluations. The Department will provide each miner with a list of authorized physicians and facilities in the state of the miner's residence as well as the states contiguous to that state. For example, a miner living in Ohio may choose from among authorized physicians and facilities in Ohio, Pennsylvania, West Virginia, Kentucky, Indiana, and Michigan. The Department will further inform the miner that the designated responsible operator may require him to travel 100 miles, or a distance comparable to the distance traveled for the section 413(b) examination, whichever is greater, in order to submit to additional medical examinations and testing. *See* discussion accompanying § 725.414.

Another suggestion, exempting the complete pulmonary evaluation performed by a doctor of the claimant's choosing from the evidentiary limitations, would be unfair to the party opposing entitlement. In that case, the claimant would effectively have the opportunity to submit three medical opinions, while the operator or fund would be limited to two. The Department also does not believe that it would be appropriate, as one commenter suggests, to allow the responsible operator to select the physician or facility. The purpose of the section 413(b) examination is to provide the claimant with an opportunity to have his physical condition assessed in a non-adversarial setting in an attempt to substantiate his application for benefits.

Using a smaller group of physicians to perform the complete pulmonary evaluation will also allow the Department to meet one of its primary goals in the initial processing stage: providing applicants with the best respiratory and pulmonary evaluation possible. A thorough examination, performed in compliance with the applicable quality standards, will provide each claimant with a realistic appraisal of his condition and will also provide a sound evidentiary basis for the district director's initial finding. Developing the best quality medical evidence possible will benefit all the parties. The Department intends therefore to develop more rigorous standards for physicians who perform complete pulmonary evaluations at the

Department's request. These standards may include: (1) The physician should be qualified in internal or pulmonary medicine so that he is better able to analyze respiratory and pulmonary conditions (a request of one commenter); (2) the facility must be able to perform each of the tests that the Department considers appropriate to an inquiry into a miner's respiratory or pulmonary condition, *see* § 718.104; (3) the physician must be able to schedule the claimant promptly for a pulmonary evaluation; (4) the physician must be able to produce a timely report, which includes a comprehensive narrative addressing each of the elements of entitlement; and (5) the physician must make himself available to answer follow-up questions from the district director, and must be willing to explain and defend his conclusions upon questioning by opposing parties. The Department specifically seeks comment as to these and any other standards which may be used to select physicians and facilities to perform complete pulmonary evaluations. The Department intends to consider all suggestions carefully, with the goal of improving the quality and credibility of the ensuing reports. A list of the standards ultimately selected will be included in the Black Lung Program Manual prepared and used by the Department in its administration of the program. This document is open to the public and is available in each district office. Finally, in order to ensure a pool of physicians who meet these high standards, the Department intends to re-evaluate the fees that it pays physicians, both to perform and explain the results of the pulmonary evaluation and to participate in depositions and/or other forms of cross-examination. The Department intends to provide physicians with compensation at the rates prevailing in their communities for performing similar services. Information available to the Department, for example, indicates that, as of June, 1999, the West Virginia Occupational Pneumoconiosis Board paid facilities $270.43 per claimant for performing pulmonary testing, and paid physicians $300 per hour for testifying before administrative law judges. The survey of clinics and facilities which the Department will conduct while this notice is open for public comment will also solicit information on the fees needed to attract highly qualified physicians to perform the testing and evaluation required by the Department.

The Department recognizes that this proposed revision would significantly change the manner in which it administers the complete pulmonary evaluation required by the Black Lung Benefits Act. By raising the quality of these evaluations, the Department hopes to provide each miner with the best possible medical assessment of his respiratory and pulmonary condition early in the processing of his application. Where a miner meets the Department's eligibility standards, the higher quality evidence produced by these evaluations will further Congress's intent that miners be given an opportunity to substantiate their claims. In the case of miners who do not meet those standards, the increased credibility of the initial pulmonary evaluation may reduce litigation before the Office of Administrative Law Judges, the Benefits Review Board, and the federal appellate courts.

The Department is aware of difficulties that claimants may encounter in generating legally sufficient medical evidence in support of their applications. Two commenters state that claimants must be given the right to select the physician who performs the complete pulmonary evaluation because they often cannot afford to obtain their own medical evidence. Developing medical evidence relevant to the evaluation of a claimant's respiratory and pulmonary condition, including the objective medical testing required by the Department's quality standards, § 718.104, can involve costs that are beyond the reach of some claimants. Accordingly, the Department proposes to add a provision (subsection (d)) requiring the district director to inform the claimant that he may have the results of the Department's initial objective testing sent to his treating physician for use in the preparation of a medical report that complies with the Department's quality standards. Such objective test results would include a chest X-ray reading, § 718.104(a)(5), the results of a pulmonary function test, § 718.104(a)(1), and the results of an electrocardiogram, blood gas studies, and other blood analyses, if conducted, § 718.104(b). In addition, the district director will inform the claimant that, if submitted, a report from his treating physician will count as one of the two reports that he is entitled to submit under § 725.414, and that he may wish to seek advice, from a lawyer or other qualified representative, before requesting his treating physician to supply such a report. By providing the miner's treating physician with the results of objective testing that the miner might not otherwise be able to obtain, the Department will assist claimants who may not be able to afford to pay for a complete pulmonary evaluation on their own.

(b) Two commenters state that the Department should impose limitations on the district director's ability to clarify ''unresolved medical issues'' under subsection (e). Both suggest that the district director should be required to ask the physician who performed the complete pulmonary evaluation whether he is aware of unresolved issues, and both commenters also object to any attempt on the part of the district director to question the credibility of the medical evidence obtained as part of the complete pulmonary evaluation. The Department does not agree. District directors must be allowed considerable discretion in fulfilling their responsibility to develop the medical evidence relevant to the claimant's respiratory and pulmonary condition. They must develop complete evidence of the best possible quality to allow them an adequate evidentiary basis to determine whether the claimant is initially entitled to benefits. Limiting district director discretion in the manner suggested by the commenters could result in evaluating a miner's entitlement with medical evidence that is neither complete nor credible. If the district director selects a different physician or facility to re-examine the miner under subsection (e), however, he will be limited to selecting that physician or facility from the same list available to the claimant. The district director may use a physician who is not on the approved list only under subsection (c), which allows the district director to seek a review of objective testing. For example, this provision allows a district director to have a chest X-ray reread by a qualified radiologist who meets the requirements for a ''B'' reader, *see* 20 CFR 718.202(a)(1)(ii)(E), but who is not qualified to perform a complete pulmonary evaluation. The Department also notes that the district director's use of the authority granted by subsection (e) should decrease under the revisions proposed in this notice. Under this proposal, the district director will be seeking an initial evaluation from a qualified physician with the ability to perform a complete evaluation in a timely manner, and likely will not have to seek a miner reexamination as provided by subsection (e). Finally, the Department has added language to subsection (e) to clarify that any additional report obtained by the district director shall not count against the limits on medical evidence imposed on parties other than the Director by § 725.414. Instead, where the district director requests merely that the

physician supplement his original report, the supplement shall be considered a part of that original report. Where the district director orders additional tests, however, the previous tests may not be admitted into the record at the hearing.

(c) Two commenters object to the contents of subsection (d), as originally proposed, now in subsection (c), which outlines the Department's obligation to evaluate each examination and objective test performed as part of the Department's section 413(b) pulmonary evaluation. The subsection allows the Department to determine whether all parts of the section 413(b) examination are in substantial compliance with the Department's quality standards. The Department's original proposal authorized the district director to seek additional tests where substantial compliance was lacking, except where the deficiencies in the testing were the result of a lack of effort on the part of the miner. The commenters argue that a miner whose test is considered invalid due to a lack of effort should be given an additional opportunity to obtain satisfactory results. The Department agrees. A number of factors may influence a miner's lack of effort on objective testing, including a failure to fully understand the test procedures. Accordingly, the Department proposes to revise this subsection to afford such miners one additional opportunity to produce results in compliance with the quality standards.

(d) Several comments argue that the Department should not provide complete pulmonary evaluations if the claim represents a request for modification or a subsequent claim. The Department does not provide an additional pulmonary evaluation if a claim is filed within one year of the date on which the claimant's previous application was finally denied. In such cases, the application is treated as a request for modification, *see Fireman's Fund Insurance Co.* v. *Bergeron*, 493 F.2d 545, 547 (5th Cir.1974), and has the effect of extending the processing and adjudication of the original claim. The Department has already satisfied its responsibilities under section 413(b) with respect to that claim, and does not provide an additional evaluation. By contrast, a subsequent claim is an entirely new assertion of entitlement to benefits, which covers a later period of time and is limited only by the requirement that the parties must accept as final the outcome of any earlier claims filed by the claimant. In such a case, the Department believes that section 413(b) requires that the claimant receive a new evaluation of his respiratory and pulmonary condition.

(e) The Department has made several technical changes to the language of proposed subsection (e) to make that provision easier to read.

20 CFR 725.407

(a) The Department has proposed to revise section 725.409 to require administrative law judges to remand cases in which they reverse a district director's determination that a claim should be denied by reason of abandonment. Because these cases will be returned to the district director for further administrative processing, the Department has revised section 725.407(d) to ensure that the district director retains the authority to notify additional potentially liable operators under such circumstances. Absent this revision, subsection (d) could have been read to prohibit further notification of operators on remand.

(b) One comment suggests that the Department provide guidelines limiting the circumstances under which it can identify more than one potentially liable operator in a claim. The commenter questions the Department's need to name multiple potentially liable operators in every case, citing the increased litigation costs which will be incurred by the operators named. The Department does not intend to name multiple operators in every case. The Department also does not believe, however, that guidelines are appropriate. A dispute over the identity of a liable responsible operator may present a variety of issues, such as the financial assets of a miner's employers, whether the claimant was employed as ''miner,'' and the consequences of various successor operator transactions. The Department's purpose is to ensure that liability for a miner's black lung benefits is borne by a miner's previous employer to the maximum extent possible. In light of the wide range of potential issues surrounding the naming of a responsible operator, the Department does not believe that guidelines are feasible.

(c) One comment supports this proposal, provided that when multiple potentially liable operators are named, they are collectively subject to the same limits on the quantity of documentary medical evidence as a single operator may submit. The Department has retained and applied the same limitation on the amount of documentary medical evidence that may be submitted in cases involving either one or multiple potentially liable operators. § 725.414(a)(3)(i), (ii). Two other comments offer similar support for the Department's proposal.

20 CFR 725.408

(a) Several comments suggest that the time allowed for submitting evidence regarding the identity of the responsible operator should be expanded, and that the Department should incorporate some provision for submitting later discovered evidence. Another comment similarly argues that the time frames in the proposed rules are unrealistic in light of the difficulties in obtaining necessary evidence. The comment points out that by the time miners file applications for benefits, their former employers may no longer be in operation, and necessary personnel records may have been lost, destroyed, or put into storage. At the Washington, D.C. hearing, representatives of the insurance and claims servicing industries suggested that the Department needed to provide more time, perhaps up to a year, within which to develop this evidence. Transcript, *Hearing on Proposed Changes to the Black Lung Program Regulations* (July 22, 1997), pp. 190 (testimony of Margo Hoovel), 193 (testimony of Betsy Sellers).

The Department appreciates the difficulty which may be faced by the insurance and claims servicing industries in developing employment information. Accordingly, the Department has extended the time under § 725.408 within which an operator must submit evidence from 60 days to 90 days following its receipt of notice of a claim pursuant to § 725.407. Because the Department hopes to streamline the processing and adjudication of claims for benefits under the Act, the Department declines to make this period longer. A longer time period could result in significant delays in the adjudication of an applicant's entitlement to benefits. Moreover, many applications for benefits under the Act are filed within a relatively short period of time after the miner leaves coal mine employment. In fact, one comment received on behalf of several coal companies indicated that the 60-day time limitation was inadequate only in the minority of cases. Finally, in cases in which even the 90-day period may not afford a potentially liable operator sufficient time to obtain employment evidence, this time period may be extended for good cause pursuant to the general authority for extensions of time contained in proposed § 725.423.

(b) One comment objects to the Department's proposal on the ground that it would require operator development of evidence in non-

meritorious claims. The Department recognizes that coal mine operators may currently ignore most claims of which they receive notice, because many claimants do not proceed after receiving an initial denial of benefits. The Department has been severely handicapped by this practice, however, because it did not know operators' positions with respect to their potential liability for benefits in cases that did proceed, and the Department was therefore unable to develop responsive evidence. See 62 FR 3355–3356 (Jan. 22, 1997) (discussing the proposed revision of section 725.408 set forth in the Department's previous notice of proposed rulemaking). The Department does not believe that it places an undue burden on potentially liable operators to request certain information at this early stage. The proposal would require them to submit only information regarding their status as a coal mine operator, their employment of the miner and their financial capacity to pay benefits. Contrary to the understanding of some commenters, information relevant to the identity of other potentially liable responsible operators need not be developed until after the issuance of an initial finding of the claimant's eligibility or, if the district director finds that the claimant is not eligible for benefits, after the claimant indicates his dissatisfaction with that result. Consequently, the Department does not believe that requiring the submission of a limited amount of evidence in every case would significantly increase the burden on coal mine operators.

(c) Several comments suggest that the Department provide a bifurcated hearing process to allow administrative law judges to resolve responsible operator issues prior to hearing the merits of entitlement. Although a bifurcated hearing would produce initial fact-finding on the issue, the Department cannot eliminate the possibility that an aggrieved party might appeal the ALJ's decision to the Benefits Review Board and the appropriate court of appeals. If the regulations authorized an immediate appeal of the responsible operator issue, there would be a substantial likelihood of significant delay in the adjudication of the claimant's entitlement. If, on the other hand, coal mine operators could appeal their responsible operator status only after an award of benefits, the proposed suggestion would not accomplish its purpose; the Department would still be required to keep each potentially liable operator as a party to the case to protect the Black Lung Disability Trust Fund in the event the liability determination was overturned on appeal. The Department thus cannot fashion a process which bifurcates the issues of liability and entitlement, but nevertheless serves the Department's purpose of ensuring a prompt adjudication of claimant entitlement involving all potentially liable parties.

20 CFR 725.409

(a) Several comments argue that the penalty for a claimant's failure to attend an informal conference without good cause, denial of the claim, is disproportionately harsh in comparison with the penalty imposed on an employer, waiver of the right to contest potential liability for an award. *See* § 725.416(c). The Department agrees that the proposed regulation may impose severe consequences on a claimant who fails to attend a scheduled informal conference without good cause. Unlike the situation involving potentially liable operators, however, the statute constrains the Department's ability to impose lesser sanctions on claimants. Requiring an operator to concede one of the issues being contested, such as its status as a responsible operator, limits that operator's ability to contest the claim without entirely foreclosing it. Requiring a claimant to concede an issue, however, is usually tantamount to a denial of benefits. The Department believes that a denial by reason of abandonment represents the only valid sanction for a claimant's failure to participate at each stage of the claims adjudication process, including the informal conference.

The Department could adjust the disproportionate effect of the penalty by imposing an equally severe sanction on an employer who fails to attend an informal conference without good cause. In general, however, the Department would prefer not to finally resolve a claim for benefits based solely on a party's failure to attend an informal conference. Where such a sanction is the only one available, as is the case with claimants, the Department has no alternative. In order to mitigate the disparity, however, and in recognition of the fact that, as several commenters point out, most claimants are unrepresented at this point in the proceedings, the Department proposes to add a new subsection, requiring the district director to affirmatively request that the claimant explain why he failed to attend the conference, and to evaluate the claimant's explanation in light of the claimant's age, education, and health as well as the distance of the conference from his residence. Elsewhere in this proposal, see proposed revisions to § 725.416, the Department has further required the district director to explain why he believes that an informal conference would assist in the voluntary resolution of issues in the case. The Department hopes that these revisions will lead to a better understanding of the informal conference process on the part of all parties, and that unjustified absences will be unusual.

(b) One comment urges that, in any case in which an administrative law judge finds that the district director erred in denying the claim by reason of abandonment, he should have the discretion to proceed to adjudicate the merits of the claimant's entitlement. The Department does not agree. A claim may be denied by reason of abandonment at several stages during the initial processing of that claim. For example, a claimant's unjustified failure to attend the required medical examination scheduled by the Department may result in a denial by reason of abandonment. At this stage, none of the evidence regarding issues such as potential operator liability would be in the administrative record, and it would be inappropriate for the administrative law judge to adjudicate the claim on its merits. Even when administrative processing is substantially complete before issuance of a denial by reason of abandonment, such as when a claimant refuses to attend an informal conference, a conference may nevertheless be appropriate. For example, the conference provides the district director with a final opportunity to question the claimant concerning his coal mine employment, and thus to ensure that all potentially liable operators are identified before the case is referred for a formal hearing on the merits. A conference also allows the district director to ensure that the claimant understands the requirements for establishing his entitlement to benefits. Consequently, the Department has added a sentence to subsection (c) to clarify the intent of the regulation and require that an administrative law judge remand a claim to a district director even if he finds that the district director erred in denying the claim by reason of abandonment.

(c) One comment suggests that the proposal will result in the filing of additional claims by applicants whose previous claims were denied by reason of abandonment. The Department does not believe that authorizing the dismissal of a claim based on the applicant's unexcused failure to attend an informal conference will result in a significant number of additional filings. In the Department's experience, the vast majority of informal conferences are attended by representatives of both parties. As a result, the authority set

forth in this section is not apt to be invoked frequently. The Department also believes, however, that the consequences of a claimant's unexcused failure to attend should be clearly explained. The commenter also states that the dismissal of a claim imposes additional burdens and costs on parties to the claim other than the claimant. Although this observation may be true when a claimant does file an additional claim, or further litigates the abandonment finding, the failure of one party to attend an informal conference also imposes significant costs on the parties who did attend and on the Department, whose officials scheduled the conference and set aside the time necessary to hold it. In order to reduce the possibility of needlessly incurring these costs, the Department has proposed a sanction which should ensure that all parties attend an informal conference that has been scheduled in accordance with § 725.416.

20 CFR 725.411

(a) Although the Department is not proposing any further revision to § 725.411, the Department wants interested parties to be aware that it intends to substantially rewrite the documents it uses in connection with an initial finding under § 725.411, in particular to assist unrepresented claimants who are denied benefits. The new letter will contain a detailed explanation, in clear language, of why the evidence developed up to that point fails to establish all of the necessary elements of entitlement. Revision of the initial finding letter is an important part of the Department's commitment to improve the quality of the information it provides parties to the adjudication of claims for black lung benefits. The Department hopes that this improved communication will accomplish two goals: (1) to make the processing of black lung claims by the Department's district offices easier to understand; and (2) to give claimants a clear picture of the medical evidence developed in connection with their claims so that they are able to make more informed decisions as to how to proceed.

(b)(i) Four comments express concern that subsection (a) prohibits treating a claimant's request for a hearing before an administrative law judge as a ''request for further adjudication'' if made within one year of the denial of a claim. The Department disagrees with this interpretation. The proposed regulation states explicitly that any expression of an intent to pursue a denied claim amounts to a ''request for further adjudication.'' An untimely hearing request would constitute a valid request for further adjudication by the district director.

(ii) Three comments also state that a claimant who responds to a denial by requesting a hearing should receive one. Paragraph (a) only precludes the claimant from receiving the hearing immediately as the next stage in the adjudication of the claim. Having invoked a continuation of the claims process by requesting ''further adjudication,'' the claimant must wait for the district director to issue a proposed decision and order. Once the district director issues such a decision, the claimant may pursue any available remedies, including a hearing, with an appropriate request. By invalidating premature hearing requests, the Department intends to ensure the orderly adjudication of claims through each sequential step in the process, and avoid the uncertainty engendered by case law such as *Plesh* v. *Director, OWCP*, 71 F.3d 103 (3d Cir. 1995) (holding that claimant's hearing request made before district director completed processing of claim and issued decision must nevertheless be honored after decision was issued, although not renewed by claimant). The Department has therefore made explicit that a hearing request is effective only when made within 30 days after the district director issues a proposed decision and order under § 725.419(a) or a denial by reason of abandonment under § 725.409(b). Any premature request will be ineffective as a request for a hearing before an administrative law judge.

(c) One comment contends the one-year period for requesting further adjudication in subsection (a) represents an impermissible extension of the one-year period for seeking modification of a claim under § 725.310 and § 922 of the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 922, as incorporated into the Black Lung Benefits Act by 30 U.S.C. 932(a). The commenter contends a claimant would have one year under paragraph (a) to request further adjudication of a denied claim, and one additional year to request modification of the claim. This interpretation, in effect, treats the two types of proceedings as mutually exclusive. The Department rejects this contention because it misinterprets the operation of, and relationship between, §§ 725.411 and 725.310.

Under modification, a claimant who has been denied benefits has one year in which to reopen the denied claim. The generally recognized standard for invoking the modification process is an intent to pursue the claim. *See generally Eifler* v. *Director, OWCP*, 926 F.2d 663, 667 (7th Cir. 1991). In its initial notice of proposed rulemaking, the Department explained at length that the one-year period for responding to a denial of benefits under § 725.411 merely reflects an incorporation of the one-year period for requesting modification. 62 FR 3356 (Jan. 22, 1997). By eliminating the hierarchy of response times in the current regulations, the Department has simplified the adjudication procedures for claimants. Under the current regulations, a claimant has 30 days, 60 days or one year in which to pursue a claim after the denial, depending on the type of decision and the options available. Proposed § 725.411 would replace this process with a single time period (one year) and a single action which the claimant may take: by indicating any intent to pursue the claim within one year, the claimant reopens the adjudication process and receives a new decision (a proposed decision and order) based on new evidence (if proffered) or reconsideration of the existing record. If the claimant is dissatisfied with that decision, (s)he may request a hearing before an administrative law judge. If, however, the claimant takes no action within one year of a denial, then the claim is finally denied and not subject to modification. The regulations specifically state that any submission by the claimant after the one-year time limit in § 725.411(a)(1)(i) will be treated as an intent to file a subsequent claim. *See* §§ 725.411(a)(1)(ii), 725.309. Consequently, § 725.411 does not violate the one-year modification period or expand the right of a claimant to reopen a denied claim.

(d) One comment offered in connection with proposed § 725.423 recommends permitting extension of the one-year period for requesting further adjudication in paragraph (a)(1)(i). The Department addressed this idea in its initial notice of proposed rulemaking. 62 FR 3361 (Jan. 22, 1997). The Department concluded that allowing an extension of the one-year period would not be appropriate because one year is an adequate response period, and any response within that period demonstrating an intent to pursue a claim is sufficient to reactivate the adjudication process. For those reasons, no change has been proposed in response to this comment.

20 CFR 725.414

(a) Numerous commenters criticized the Department's initial proposal which required the parties to submit all documentary medical evidence to the district director in the absence of extraordinary circumstances. A number

of commenters observed that claimants often are unable to obtain legal representation until after a case is referred to the Office of Administrative Law Judges. Thus, under the initial proposal, a claimant would often be making critical evidentiary decisions without the benefit of counsel. These commenters also stated that a miner should not be required to undergo five medical examinations (the section 413(b) pulmonary evaluation and the two examinations permitted each side) within the relatively short period from the date the claim is filed to the district director's conclusion of administrative processing. Other commenters stated that the Department's proposal would significantly increase operators' litigation costs by requiring them to develop medical evidence in all cases. Currently, operators have no need to develop medical evidence in cases in which the claimant does not take further action after the district director issues an initial denial of benefits. Statistics maintained by the Department indicate that in more than 60 percent of the black lung claims filed, adjudication ceases after a district director's decision.

The Department agrees that the required submission of all documentary medical evidence to the district director should be revised in light of the many valid objections received. Accordingly, the Department proposes instead to retain the current process for submitting documentary medical evidence into the record. Under this proposal, parties may continue to submit documentary medical evidence to the district director in accordance with the schedule issued under § 725.413. To the extent that those submissions do not reach the numerical limitations imposed on each side by § 725.414, the parties may submit additional documentary medical evidence into the record up to 20 days before an ALJ hearing, and even thereafter, if good cause is shown. The only other limitation on the submission of documentary medical evidence to the administrative law judge is found in the current regulations. The Department proposes to add subsection (e) to the revised version of this section in order to retain the requirement, set forth in the Department's current regulations at 20 CFR 725.414(e), that parties may not withhold evidence they develop while a case is pending before the district director. Such evidence will be admissible in further proceedings only if the party establishes extraordinary circumstances or obtains the consent of the other parties to the claim. *See Doss* v. *Director*, OWCP, 53 F.3d 654, 658 (4th Cir. 1995).

Although the Department now proposes to allow the submission of new documentary medical evidence while a case is pending before the Office of Administrative Law Judges, it has not altered the proposal with respect to the required submission to the district director of all evidence relating to potentially liable operators and the responsible operator. The Department explained in its previous notice of proposed rulemaking that this requirement is intended to provide the district director with all of the evidence relevant to the identification of the responsible operator liable for the payment of benefits, in the absence of extraordinary circumstances. 62 FR 3355–3356 (Jan. 22, 1997). The proposal was intended to accomodate two interests that may conflict in some cases: a claimant's interest in the prompt adjudication of his entitlement; and the Department's interest in protecting the Black Lung Disability Trust Fund from unwarranted liability. Under the Department's current regulations, the Director, OWCP, may seek to have a case remanded from the Office of Administrative Law Judges where evidence not previously submitted to the district director suggests that liability for a claim should be imposed on an operator that was not notified of its potential liability. Such remands necessarily delay the adjudication of the claimant's entitlement to benefits. Under the Department's proposed revision, the Director may not seek, and an Administrative Law Judge may not order, remand of a case to the district director's office in order to identify additional potentially liable operators. If the Department has failed to notify the correct operator of at least its potential liability, the Black Lung Disability Trust Fund will pay the claimant's benefits in the event of an award. The Department thus assumes the risk that its initial operator identification is flawed. This risk can be justified only if the Department is able to require the early submission of evidence relevant to the responsible operator issue.

Under proposed § 725.408, a potentially liable operator identified by the district director has 90 days from the date on which it is notified of that identification to submit evidence demonstrating that it does not meet the § 725.494 definition of a potentially liable operator with respect to a claim. For example, a potentially liable operator may submit evidence demonstrating that it did not employ the miner for at least one year, or that it was not an operator for any period after June 30, 1973. Following the district director's issuance of an initial finding, and a decision by a party aggrieved by that finding to seek further review, the operator designated as the responsible operator must develop and submit any evidence needed to support a contention that it is not the responsible operator liable pursuant to § 725.495 for the benefits payable to the claimant. This evidence, showing, for example, that a more recent employer should be liable for benefits, must be submitted to the district director in accordance with the schedule established under § 725.413. An administrative law judge may admit additional evidence on any issue regarding either potentially liable operators or the responsible operator only if the party submitting the evidence demonstrates extraordinary circumstances justifying its admission. The Department has also proposed revising subsection (c) to extend the extraordinary circumstances exception to testimony regarding such issues by a witness whose identity was not disclosed to the district director.

(b) Several commenters request that the Department further define a number of terms used in the initial proposal, such as ''rebuttal evidence,'' ''consultative report,'' and ''interpretive opinion.'' The Department agrees that some of the terms used in the proposal were ambiguous, and believes that the regulation would better serve all interested parties by describing the applicable evidentiary limitations in terms of the evidence needed to establish a claimant's entitlement to benefits under §§ 718.202 and 718.204. Accordingly, the Department is proposing extensive revisions to this section to ensure that the intended evidentiary limitations are clearly defined. Each party may submit two chest X-ray interpretations (of the same X-ray or two different X-rays, at the option of the party), the results of two pulmonary function tests and two arterial blood gas studies, and two medical reports. The medical reports may include a review of any other evidence of record. Each party may also submit one piece of evidence in rebuttal of each piece of evidence submitted by the opposing party, and may submit one piece of evidence challenging each component of the Department's complete pulmonary evaluation authorized by § 725.406. Thus, a party may have each chest X-ray submitted by the opposing party reread once, and may submit one report challenging the validity of each pulmonary function study or blood gas test submitted by the opposing party. In addition, one

commenter asked that the Department permit a party to rehabilitate evidence that has been the subject of rebuttal by the opposing party. For example, where a party submits a physician's opinion stating that the results of a pulmonary function study are invalid because the miner expended less than maximal effort in performing the test, the party submitting the test should be able to introduce a contrary statement from the physician who administered it. The Department agrees, and has revised paragraphs (a)(2)(ii) and (a)(3)(ii) accordingly.

(c) A large number of commenters favor the proposed limitation on the quantity of medical evidence each side may submit. A number of other commenters object to the proposed limitation on the amount of medical evidence. They argue: (1) That the limitation is unnecessary; (2) that the exclusion of evidence will decrease the quality of factfinding under the Black Lung Benefits Act; (3) that the limitation violates section 413(b) of the Act, 30 U.S.C. 923(b); (4) that the limitation violates the Administrative Procedure Act, 5 U.S.C. 551 et seq.; and (5) that the limitation violates employers' due process rights. The Department anticipated most of these criticisms in the explanation of § 725.414 contained in its initial notice of proposed rulemaking, 62 FR 3356–61 (Jan. 22, 1997), and the arguments advanced by the commenters provide no basis upon which to alter the regulation's proposed limitation as to the quantity of admissible evidence.

The Department continues to believe that the limitation represents a reasonable means of focusing the fact-finder's attention on the quality of the medical evidence in the record before him. In particular, the limitation ensures that the claimant will undergo no more than five pulmonary evaluations (two claimant evaluations, two responsible operator evaluations, and the initial pulmonary evaluation provided by the Department under 30 U.S.C. 923(b)) for purposes of assessing claimant's entitlement to benefits. In light of the strenuous nature of pulmonary testing, including both pulmonary function tests and arterial blood gas tests, no claimant should have to undergo repeated evaluations simply to create a numerically superior evidentiary record for one side or the other. Instead, five evaluations should be sufficient in most cases to allow the fact-finder to assess the miner's pulmonary condition. In the Department's view, additional evaluations would be of only marginal utility.

The Department's initial notice did not explicitly address, however, the extent to which a party's due process rights might be compromised by the Department's limitation on the amount of evidence that party may submit. The due process clause of the Fifth Amendment of the Constitution precludes governmental deprivations of life, liberty, or property without due process of law. Due process ''is not a technical conception with a fixed content unrelated to time, place and circumstances,'' but rather, a ''flexible'' doctrine that requires ''such procedural protections as the particular situation demands.'' *Mathews* v. *Eldridge,* 424 U.S. 319, 334 (1976). At a minimum, it requires an opportunity to be heard ''at a meaningful time and in a meaningful manner.'' *Id.* at 333. A meaningful administrative hearing does not require the ''wholesale transplantation'' of judicial rules and procedures. *Id.* at 348. Nonetheless, the judicial model is a guide for assuring ''fairness.'' *Id.* In the end, due process cases turn on ''the procedure's integrity and fundamental fairness.'' *Richardson* v. *Perales,* 402 U.S. 389, 410 (1971).

In determining whether an administrative practice satisfies due process, the courts balance three distinct factors:

> the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Mathews, 424 U.S. at 335.

The Department recognizes that both operators and claimants have significant, albeit competing, private interests at stake. Operators and their insurers have a monetary interest in each claim (involving an average payout over the life of the claimant of $175,000) and an interest in not being required to pay benefits in nonmeritorious cases. Claimants, on the other hand, are interested in the financial benefit of an award and in the opportunity to substantiate their claims without being overwhelmed by the superior economic resources of their adversaries.

As a general rule, the Department does not believe that there is a significant risk of the erroneous deprivation of private interests on either side if both the claimant and the party opposing entitlement are subject to similar limitations on the quantity of the evidence that they may develop. Applicants with non-meritorious claims will find it difficult to generate two favorable medical reports, accompanied by supportive objective testing, from well-credentialed physicians. Faced with well-documented reports from an equal number of physicians retained by operators and their insurers, claimants will be unable to meet their burden of establishing each element of entitlement. Consequently, there is no increased risk of an erroneous deprivation of the interests of parties opposing entitlement. Similarly, the Department does not believe that the proposed evidentiary limitations will result in the denial of meritorious claims that are currently being awarded. Awards are typically issued in cases containing qualifying objective testing, or a reasoned and documented medical report by a physician with in-depth knowledge of both the miner's respiratory and pulmonary condition and the exertional requirements of the miner's usual coal mine work. Moreover, the overwhelming support for this proposal from claimant groups and attorneys suggests that they also do not believe that it will erroneously deprive meritorious claimants of benefit awards.

In order to allow for the more careful consideration of the unique facts and circumstances of each case, however, and to provide an additional procedural safeguard, the Department has revised § 725.456 as initially proposed to permit an administrative law judge to admit medical evidence into the record in excess of the limits outlined in § 725.414 upon a showing of good cause. The Department's prior proposal would have permitted the admission of such evidence only if a moving party could demonstrate extraordinary circumstances. By adopting the more permissive good cause standard, the Department recognizes that a rigid rule prohibiting additional evidence may increase the risk of an erroneous deprivation of private interests in particular cases. For example, one commenter states that hearings in the Western states are frequently rescheduled due to weather conditions and rescheduling requests of the parties. In light of the time which elapses between the hearing request and the actual hearing, and the progressive nature of pneumoconiosis, the commenter argues that parties must be able to obtain and submit into the record more recent medical evidence. The commenter suggests that if a party has already submitted the maximum amount of evidence long before a case is heard, the record will be devoid of any evidence regarding the miner's

current medical condition. The Department agrees that in such a case, an administrative law judge may authorize the development of additional medical evidence in a manner that is equitable to all parties. Thus, to the extent that the evidentiary limits might heighten the risk of the erroneous deprivation of a private interest, the Department seeks to limit that result by allowing the submission of additional medical evidence upon a showing of good cause.

The Department continues to believe that the amount of medical evidence admissible under this provision will generally be adequate to guarantee a full and fair adjudication of the miner's entitlement to benefits. The government also has an interest in maintaining that guarantee, and in improving the public's perception of the fairness of the process. The government's interest represents the third factor to be balanced under the Supreme Court's due process analysis. The additional flexibility contained in the Department's revised proposal, requiring that a party seeking to submit additional medical evidence in any individual case must establish good cause justifying its admission, will not impair the government's interest. Moreover, the Department's proposal will provide additional safeguards to ensure that the adjudication process properly balances the interests of all parties to a black lung claim. Accordingly, the Department does not believe that the evidentiary limitations contained in this provision will be considered a violation of the due process clause.

(d) One comment objects to the Department's proposal to limit claimants' travel for responsible operator testing and/or examination to 100 miles from their homes. The Department's initial proposal contained the same restriction as does its current regulation (current 20 CFR 725.414(a); proposed § 725.414(a)(3)(i), limiting the ability of coal mine operators to compel miners to travel more than 100 miles to undergo an evaluation). The commenter argues that such a travel restriction on operators is not justified absent a comparable restriction on claimants. The Department does not believe that it would be appropriate to impose such a limitation on miners. The Department's proposed revision to § 725.406, however, allows a miner to select the physician or facility to perform the complete pulmonary evaluation guaranteed under section 413(b) of the Act, 30 U.S.C. 923(b), from among authorized physicians or facilities in the state of his residence or any contiguous state. The limitation in the current regulations and the Department's initial proposal was intended to ensure that a coal mine operator not be able to subject a miner to undue hardship in traveling to the site of a physical examination. Where the miner selects a facility or physician more than 100 miles from his residence, however, he has demonstrated his willingness to undertake additional travel. In such cases, absent a change in the miner's health, the designated responsible operator should be entitled to compel the miner to travel an equivalent distance. Where the miner selects a physician within a 100-mile radius of his residence, the original rule should remain in effect. In order to effectuate these changes, the Department proposes revising subsection (a)(3)(i).

(e) Several comments have asked the Department to alter the evidentiary limitations set forth in this section. One commenter urges the Department to exempt the report of a claimant's treating physician from the limitations while another feels that one examination per side is adequate. Another commenter suggests that the Department permit the responsible operator to submit only as much evidence as the claimant submits, thus allowing the claimant to determine the size of the evidentiary record. A fourth commenter suggests limiting responsible operators to no more than one medical report authored by a physician who examined the miner. The Department does not believe that any of these suggestions would be appropriate. The evidentiary limitations should not be skewed to allow one party to submit more evidence than another, or evidence of a different quality. Instead, each party must remain free to tailor the presentation of its case to the facts while functioning within the same evidentiary limitations applicable to other parties. The Department also notes that, to the extent these suggestions are based on a well-founded concern over requiring the miner to undergo up to five physical examinations within a short time, a specific concern of one commenter, the Department's proposal allowing parties to submit evidence to the OALJ will extend the period within which the parties may seek to have the miner examined.

(f) One commenter urges the Department to allow a physician who prepared a medical report to rely on the opinion of the miner's treating physician in the course of preparing his report. The Department's proposal permits physicians to consider other physicians' opinions only if the medical reports of those physicians are independently admitted into the record in accordance with the regulation's evidentiary limitations. In addition, physicians preparing medical reports may rely on any treatment or hospitalization record that is admitted into the record under subsection (a)(4). The Department does not believe, however, that the regulations need contain any special treatment of the opinion of a miner's treating physician other than is provided in § 718.104(d).

(g) The Department has revised subsection (c) in order to clarify its intent and prevent parties from exceeding the evidentiary limitations by designating additional physicians as hearing witnesses. As revised, subsection (c) will permit testimony, either at the formal hearing or by deposition, by physicians who prepared medical reports. Other physicians may testify only to the extent that the party offering their testimony has not reached the limitation imposed by the regulation on the number of admissible medical reports, or if the administrative law judge finds good cause for allowing a party to exceed that limitation. In effect, testimony by a physician who did not prepare a documentary report will be considered a medical report for purposes of the evidentiary limitations. Thus, if a party has submitted only one documentary medical report, it may offer the testimony of one additional physician. If a party has not submitted any documentary medical reports, it may offer the testimony of two physicians.

(h) Several commenters believe that each potentially liable operator should be entitled to obtain its own medical evidence. In its initial notice of proposed rulemaking, the Department explained that the limitation on the submission of medical evidence in cases involving more than one potentially liable operator is necessary to ensure that claimants are not subject to multiple examinations simply because they have an employment history that leaves the identity of the responsible operator in some doubt. 62 FR 3360–61 (Jan. 22, 1997). The comments offer no basis upon which to revise this provision. One comment supports the Department's proposal as in accord with the Federal Judicial Center's *Manual for Complex Litigation, 3d* (1995), § 20.22–20.222. Another comment states that district directors should never permit a potentially liable operator, other than the designated responsible operator, to submit evidence. The Department disagrees. Even in multiple operator cases, the proposed regulations allow all of the potentially liable operators to collectively submit no more evidence than that permitted the claimant. In the

event the designated responsible operator fails to develop the evidence, however, the district director must have the authority to permit the submission of medical evidence by another potentially liable party. Ultimately, of course, it will be the responsibility of the administrative law judge to ensure that the adjudication of the miner's entitlement is fair.

(i) Several commenters generally request the Department to clarify the admissibility of hospital records, and the results of autopsies and biopsies as proposed in § 725.414(a)(4). The Department believes that proposed subsection (a)(4) would require the admission of any medical record relating to the miner's respiratory or pulmonary condition without regard to the limitations set forth elsewhere in § 725.414. To be sufficient to establish an element of entitlement, however, a report of autopsy or biopsy must substantially comply with the applicable quality standards, § 718.106. *See* § 718.101(b). The Department has not included an independent provision governing rebuttal of this evidence. As a general rule, this evidence is not developed in connection with a party's affirmative case for or against entitlement, and therefore the Department does not believe that independent rebuttal provisions are appropriate. Any evidence that predates the miner's claim for benefits may be addressed in the two medical reports permitted each side by the regulation. If additional evidence is generated as the result of a hospitalization or treatment that takes place after the parties have completed their evidentiary submission, the ALJ has the discretion to permit the development of additional evidence under the ''good cause'' provision of § 725.456.

20 CFR 725.416

A number of commenters, including representatives of claimants, coal mine operators and their insurers, urge the Department to eliminate informal conferences altogether. They argue that informal conferences seldom accomplish any purpose, and thus waste considerable time and resources. The Department disagrees. In the explanation of § 725.416 that appeared in its initial notice of proposed rulemaking, 62 FR 3361 (Jan. 22, 1997), the Department explained that informal conferences serve a variety of useful purposes, including narrowing issues, achieving stipulations, and crystallizing positions. The comments received by the Department provide no reason to alter this view. In order to increase acceptance of the informal conference procedure, however, the Department believes that the district director should be able to articulate, in each case, why he believes that an informal conference would be helpful in the processing of the claim. Accordingly, the Department proposes to revise subsection (b) in order to require the district director to provide the parties with a statement articulating specific reasons why an informal conference would assist in the voluntary resolution of issues. The reasons must be tailored to the specific facts of that case. The district director's failure to include such a statement in his notification of conference will foreclose the use of sanctions set forth in paragraph (c). In addition, in order to reduce the parties' costs in participating in an informal conference, the Department proposes to formally recognize the district offices' current practice of allowing parties to participate by telephone in appropriate cases. Although the decision to allow telephone participation is committed to the discretion of the district director, the Department's regulations should explicitly acknowledge the availability of this option, and allow the parties to request its use by filing a request with the district director.

(b) One comment states that the proposed sanctions set forth in subsection (c) will lead to further litigation and/or refilings. The Department has previously addressed this comment. *See* discussion of § 725.409.

Subpart F

20 CFR 725.456

(a) The Department proposes to retain the current rules governing time periods for submitting documentary medical evidence into the record. A change has been made to paragraph (b)(1) to reflect this decision, and new paragraphs (b)(2)–(4) and (c) have been added to the proposal from the Department's current rules (20 CFR 725.456(b)(1)–(3), (c), (d)). These revisions are fully explained above.

(b) Paragraph (f) has been revised to take into account changes to section 725.406. Since the proposal would now require that the § 725.406 pulmonary evaluation be performed by a facility or physician selected from a list maintained by the Office, language in subsection (f) that contemplated examination and/or testing by a facility or physician not approved by the Office has been deleted. *See* discussion accompanying § 725.406.

(c) All of the comments related to the Department's proposed revision of § 725.456 are discussed under § 725.414.

20 CFR 725.457

(a) The Department has explained its proposal to retain the current rules governing the timely submission of medical evidence in connection with its explanation of changes to § 725.414. The § 725.414 revision requires a corresponding change in the rule governing the identification of witnesses in proceedings before the Office of Administrative Law Judges. The revised regulation allows the testimony of witnesses relevant to the liability of a potentially liable operator and/or the identification of the responsible operator only if the identity of that witness was disclosed to the district director or the administrative law judge finds extraordinary circumstances. A physician may testify only if he prepared a medical report admitted into the record by the district director or administrative law judge. Alternatively, a physician may testify if his testimony, when considered as a medical report, does not result in a violation of the limitations on the quantity of evidence permitted by § 725.414, or if the administrative law judge finds good cause for allowing the party offering the testimony to exceed those limitations.

(b) A number of commenters objected to the Department's proposal limiting the scope of a physician's testimony. They argued that physicians who testify must be allowed to address all of the medical evidence of record in order to explain their conclusions, and that cross-examination of those physicians will depend on reference to objective testing and medical conclusions contained in other reports. The Department agrees that the original proposal's limitation was inappropriate, and has revised paragraph (d) accordingly. As revised, the regulation will only prevent a physician from testifying with respect to medical evidence relevant to the miner's condition that is not admitted into the record.

20 CFR 725.459

One commenter suggests that the Black Lung Disability Trust Fund should be liable for witness fees incurred by an indigent claimant when cross-examining an adverse witness. Another commenter argues that the Department's original proposal, under which the party seeking to cross-examine a witness must pay the necessary fees to secure that witness, violates section 28 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 928, as incorporated by 30 U.S.C. 932(a). Section 28 generally requires that employers pay the reasonable costs

of successful claimants. In light of these comments, the Department has reconsidered its approach to the payment of expenses associated with cross-examination.

The Department now proposes that the costs of cross-examination be borne by the party relying on the affirmative testimony of that witness. For example, where an employer submits a report by a physician, and the claimant seeks to summon the physician to the hearing for cross-examination, the employer must bear the costs of reimbursing its own physician. Under the regulation, the employer may request that the administrative law judge authorize a less intrusive method of cross-examination, including a deposition, telephone deposition, or interrogatories, provided that the method authorized will produce a full and true disclosure of the facts.

The only exception to this general rule is in the case of an indigent claimant. The Department agrees that a claimant's medical evidence should not be excluded based on a claimant's financial inability to make a physician available for cross-examination. Accordingly, the Department proposes to revise paragraph (b) to allow an administrative law judge to apportion the costs of cross-examination where the claimant demonstrates his indigence. The Department does not agree, however, that the trust fund may be held liable for such fees in every case. Although the statutory provision governing the disbursement of monies from the fund, 26 U.S.C. 9501, permits the fund to pay administrative expenses associated with the black lung benefits program, the Department does not believe that the expenses of cross-examination should necessarily be included in this category. Rather, the responsible operator seeking to cross-examine claimant's witness should bear liability for such fees, an expense which the operator may easily control. The fund will be liable for such witness fees in cases in which there is no coal mine operator liable for the payment of benefits. *See, e.g., Republic Steel Corp.* v. *U.S. Department of Labor,* 590 F.2d 77 (3d Cir. 1978) (holding the fund liable for the payment of attorney's fees because the fund, the party liable for the payment of claimant's benefits, stood in the shoes of a responsible operator). Accordingly, in a case in which the claimant is indigent and a party seeks to cross-examine a witness of claimant's, the administrative law judge must apportion the costs among the claimant and the party opposing the claimant's entitlement. Where that party is an operator, the operator may be asked to bear all or part of the costs of cross-examination, as appropriate. Where that party is the fund, the fund is subject to the same apportionment rules. In addition, the fund will bear liability for the costs of cross-examining the doctor who administered the section 413(b) pulmonary evaluation. *See* § 725.406.

The Department's proposal has several advantages. First, it avoids potential due process problems associated with the Department's previous proposal because no financial burden is placed on parties who wish to exercise their right to cross-examination except in the case of a claimant who is unable to pay the associated costs. At the same time, requiring the parties to show the necessity of a specific means of cross-examination, and allowing the administrative law judge to exercise sound discretion in addressing requests for cross-examination, protects witnesses from undue burdens and parties from undue expense. Under this proposal, operators would be required to bear the cost of witness fees only for their own witnesses, indigent claimants' witnesses, and for claimants who are ultimately successful in establishing their entitlement to benefits.

20 CFR 725.465

Section 725.465 sets forth the conditions under which an administrative law judge may dismiss a claim, and also authorizes the administrative law judge to dismiss a party who is not a proper party to the claim under § 725.360. The regulation was not among the provisions the Department opened for comment in its previous notice of proposed rulemaking, 62 FR 3341 (Jan. 22, 1997), and the Department did not receive any comments directed to this section. The Department now proposes to revise this regulation, however, to ensure that all potentially liable operators remain parties to proceedings before the administrative law judge in the absence of the Director's agreement to their dismissal. In proposing new regulations governing the identification of responsible operators, the Department intends that all potentially liable operators named by the district director have the opportunity to participate in the adjudication of the claimant's entitlement both before the administrative law judge and on appeal. Thus, under this proposed change, even if an administrative law judge concludes that one of the potentially liable operators is the responsible operator as defined by Subpart G of Part 725, he may not dismiss the other potentially liable operators absent the Director's consent. In the event that his responsible operator finding is reversed or vacated by either the Benefits Review Board or a federal court of appeals, the dismissal of other potentially liable operators before or simultaneously with adjudication of the claimant's entitlement would adversely impact the financial interests of the Black Lung Disability Trust Fund. Given the absence of the correct potentially liable operator as a party to a case, liability might well be imposed on the fund, especially since the proposal prohibits the re-naming of potentially liable operators after a case is referred to the Office of Administrative Law Judges, § 725.407(d).

Subpart G

20 CFR 725.491

(a) One commenter objects to the Department's attempt to clarify the liability of independent contractors under the Black Lung Benefits Act. The commenter argues that in imposing liability on independent contractors who do not have a ''continuing presence'' at the mine, the Department is exceeding its statutory mandate. Specifically, the commenter objects to the Department's decision to codify the D.C. Circuit's decision in *Otis Elevator Co.* v. *Secretary of Labor,* 921 F.2d 1285 (D.C. Cir. 1990), instead of the Fourth Circuit's decision in *Old Dominion Power Co.* v. *Donovan,* 772 F.2d 92 (4th Cir. 1985). The Department has consistently advocated a broad interpretation of the statutory provision defining ''operator'' and its application to independent contractors, both in the context of litigation under subchapters 1 through 3 of the Federal Coal Mine Health and Safety Act and under the Black Lung Benefits Act. The D.C. Circuit accepted the Department's views in *Otis Elevator* while the Fourth Circuit rejected the Department's position in *Old Dominion Power.* In addition, while the Department was preparing its initial notice of proposed rulemaking, the Tenth Circuit announced its agreement with *Otis Elevator*: ''Although Congress may have been specially concerned with contractors who are engaged in the extraction process and who have a continuing presence at the mine, * * * section 3(d) by its terms is not limited to these contractors.'' *Joy Technologies* v. *Secretary of Labor,* 99 F.3d 991, 999 (10th Cir. 1996), *cert. denied,* 117 S. Ct. 1691 (1997).

The commenter cites the Third Circuit's decision in *National Industrial Sand Ass'n* v. *Marshall,* 601 F.2d 689 (3d Cir. 1979), in support of its position that the term ''operator'' should be narrowly construed. In *National*

Industrial Sand, however, the Third Circuit recognized that, as of the date of the court's opinion, the Department of Labor had not yet promulgated regulations under the Federal Mine Health and Safety Act defining the degree to which independent contractors were subject to that Act's health and safety provisions. The *dicta* cited by the commenter thus does not constitute a rejection of the Department's position on coverage. Given the adoption of its position by the D.C. and Tenth Circuits, and its rejection by only the Fourth Circuit, there appears to be no reason for the Department to adopt in its regulations a decision at odds with its consistent interpretation, and the commenter provides none.

The same commenter suggests that the Department's interpretation would result in the coverage of food and beverage workers who serve lunch to coal miners. The Act requires that those who contract pneumoconiosis as a result of work in the Nation's coal mines receive compensation for the totally disabling effects of that disease. Although it is difficult to imagine that food and beverage workers will be sufficiently exposed to coal mine dust to contract pneumoconiosis, those individuals who are totally disabled as a result of that exposure, and who meet the definition of ''miner'' (''* * * any individual who * * * has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal,'' 30 U.S.C. 902(d)), are no less entitled to compensation than are other miners. The employer of such individuals must assume liability for the payment of any benefits to which they are entitled, provided that the employer meets the criteria for a potentially liable operator set forth in § 725.494.

(b) One commenter argues that the Department's exclusion in § 725.491(f) of both state and federal governments from potential liability under the Act is inappropriate. The commenter suggests that the Department's proposal excluding the United States will cause federal employees to file claims under the Black Lung Benefits Act rather than the Federal Employees Compensation Act (FECA). The Department disagrees; the proposed regulation merely codifies the holding of the Fourth Circuit in *Eastern Associated Coal Corp.* v. *Director, OWCP*, 791 F.2d 1129 (4th Cir.1986). The court in that case held that the United States could not be considered a responsible operator based on the miner's most recent employment as a federal coal mine inspector. To the extent that such employees develop pneumoconiosis as a result of previous coal mine employment, they must be permitted to file claims under the Act. To the extent that they are injured during the course of their federal employment, FECA provides the appropriate remedy. The Department does not agree that its adoption of the Fourth Circuit's decision in *Eastern Associated Coal* will result in an increase in unwarranted claims under the Act.

The same commenter argues that the Department cannot relieve state governments of their liability under the Act, and that the Department's approach under the Black Lung Benefits Act is inconsistent with its approach under the Fair Labor Standards Act. The comment, however, fails to recognize a fundamental difference between the two statutes: the Black Lung Benefits Act contains no mention of states as employers subject to potential liability for black lung benefits, while the Fair Labor Standards Act explicitly lists state governments among the ''public agencies'' that may be considered employers for FLSA purposes. Supreme Court caselaw illustrates the importance of this distinction. In *Gregory* v. *Ashcroft*, 501 U.S. 452 (1991), the Court considered the applicability of the Age Discrimination in Employment Act to judges employed by the State of Missouri. The Court observed that, although the Tenth Amendment to the United States Constitution did not prohibit Congress from exercising the power derived from the Commerce Clause with respect to state governments, ''we must be absolutely certain that Congress intended such an exercise.'' 501 U.S. at 464. The Fair Labor Standards Act meets this test; Congress clearly intended that the FLSA apply to public agencies, including state governments. In the absence of similar language in the Black Lung Benefits Act, however, the Department cannot seek to hold states liable for the payment of black lung benefits.

(c) One comment states that the rebuttable presumption of exposure to ''coal dust'' set forth in subsection (d) is inconsistent with the presumption set forth in § 725.202 of this part. The Department agrees that the two provisions should be harmonized. Both the Third and Eleventh Circuits have agreed that the Department's use of the term ''coal mine dust'' in § 725.202 represents a permissible reading of the Black Lung Benefits Act. *Williamson Shaft Contracting Co.* v. *Phillips*, 794 F.2d 865, 870 (3d Cir. 1986); *William Brothers, Inc.* v. *Pate*, 833 F.2d 261, 264 (11th Cir. 1987). Congress intended that the Black Lung Benefits Act provide compensation for any ''chronic dust disease of the lung * * * arising out of coal mine employment.'' 30 U.S.C. 902(b). The Department has consistently interpreted this mandate broadly, by including diseases such as silicosis in the definition of the term ''pneumoconiosis,'' provided they arise out of coal mine employment. *See* 43 FR 36825 (Aug. 18, 1978). The Department accordingly proposes to revise subsection (d) to make it conform with § 725.202, and to revise subsection (a)(2)(i) to ensure the consistent use of the phrase ''coal mine dust.''

20 CFR 725.492

(a) One commenter suggests that the Department's proposed regulations would require the purchaser of a coal mine company's assets in a bankruptcy proceeding to assume the bankrupt company's black lung benefits liabilities, and that this provision would destroy the coal mining industry in Maryland. The Secretary's regulations merely repeat the language of the statute, which provides that successor operator liability may arise from ''corporate reorganizations'' and ''liquidations,'' among other listed transactions. 30 U.S.C. 932(i)(3)(A). The Department is not free to disregard Congress' explicit intent to cover a wide variety of transactions in which coal mine assets may be sold. The Act and regulations generally impose potential liability on a successor operator, however, only after the transfer of coal mine assets from a seller that has failed to secure its potential liability in violation of the statutory mandate at 30 U.S.C. 933(a); if the seller obtained black lung insurance, a purchaser of its coal mine assets will probably not face any black lung liabilities arising from the seller's previous operation of the mine.

(b) Another commenter observes that the Department's regulations would shift liability to a successor operator, notwithstanding the fact that a prior operator that had gone out of business had insurance to cover a given claim. The Department disagrees that the proposed regulations would produce this outcome. The Department's first notice of proposed rulemaking contained an example in an attempt to make the intent of the regulation clear. *See* 62 FR 3365 (Jan. 22, 1997). Indeed, the regulations specifically provide that a prior operator shall remain liable if it meets the requirements of § 725.494, § 725.492(d). *See also* § 725.493(b)(1). One of § 725.494's requirements is that the prior operator must remain financially capable of assuming liability for the payment of benefits. An operator is deemed capable of assuming liability

for a claim if it obtained insurance and the insurance company is not insolvent, § 725.494(e)(1). Section 725.495 assigns liability to the operator that most recently employed the miner. Thus, if a miner's most recent employer obtained insurance and subsequently sold its assets or dissolved into a parent corporation, section 725.495 would require the most recent employer's insurer to assume liability for any benefits payable to the claimant. Only if that insurer is no longer solvent will the Department seek to impose liability on a successor or parent corporation. Because the Department believes that the regulations are clear on this point, no changes have been made.

20 CFR 725.493

(a) The Department has made a technical change to the language of subsection (a)(2) to make the regulation easier to read.

(b) One comment objects to subsection (a)(1) as an attempt to redefine independent contractors and sole proprietors as employees, in order to force coal mine operators to assume liability for any benefits payable to those individuals. In administering the Black Lung Benefits Act for the past 25 years, the Department has seen coal mine companies use a variety of financial arrangements in an effort to avoid liability for black lung benefits. These have included the designation of all miners as partners, the use of 11-month employment contracts with an operator's subsidiaries, and the establishment of separate, underfunded companies to provide labor to a coal mine operator. Subsection (a)(1) is intended to foreclose those efforts by recognizing a broad range of employment relationships between coal mine companies and those individuals who actually mine coal. By proposing more specific language defining an ''employment relationship,'' the Department hopes to ensure that coal mine operators provide compensation to all their employees with totally disabling pneumoconiosis. It is not the Department's intent, however, to redefine ''independent contractor'' or ''sole proprietor'' simply to make coal mine operators liable for those individuals' benefits. The Department has added language to subsection (a)(1) to clarify its purpose, and invites comment on whether the proposed language accomplishes the Department's intent.

(c) One comment suggests that the ''control'' test of subsection (a)(2) is unconstitutional insofar as it creates federal common law. The comment contains no citation to specific precedent and no further explanation. The comment therefore provides the Department with an insufficient basis for altering the proposal.

20 CFR 725.494

(a) The Department has made several technical changes to the language of the proposed regulation to make the regulation easier to read.

(b) One comment suggests that the presumptions set forth in subsections (a) and (e) are illegal and violate the Supreme Court's decision in *Greenwich Collieries.* The Department's authority to create regulatory presumptions is discussed in detail elsewhere in this preamble. The Department notes that the presumption set forth in the proposed version of subsection (a) merely reflects the presumption currently contained in § 725.493(a)(6). Subsection (e) is not a presumption at all, but merely a recitation of the evidence that will support a finding that a coal mine operator is financially capable of assuming liability for the payment of benefits, one of the Secretary's prerequisites for naming a company a potentially liable operator.

(c) One miner comments that the only coal mining company he worked for after 1969 is now bankrupt, so that the § 725.494(d) requirement is not met in his case. He asks where that leaves miners like him. A miner's failure to meet this requirement has no impact on his potential entitlement to benefits. It merely means that if he is found entitled, his benefits will be paid by the Black Lung Disability Trust Fund rather than a coal miner operator or its insurer.

20 CFR 725.495

Several commenters argue that § 725.495 impermissibly shifts the burden of proof as to the identity of a responsible operator from the Department to employers. The commenters state that the proposed language does not codify current law, but rather the unsuccessful litigation position advanced by the Department in *Director, OWCP* v. *Trace Fork Coal Co.*, 67 F.3d 503 (4th Cir. 1995). In its explanation of the proposed revision of § 725.495, the Department acknowledged that its proposal addressed issues not resolved by the current regulations. 62 FR 3364–65 (Jan. 22, 1997). The commenters' implication that the proposal violates the Fourth Circuit's decision, however, is mistaken. In *Trace Fork*, the court explicitly observed that ''[t]he Black Lung Benefits Act and its accompanying regulations do not specifically address who has the burden of proving the responsible operator issue.'' 67 F.3d at 507. In the absence of specific guidance, the court concluded that the Secretary bore this burden. In proposing these regulations, the Department is not violating *Trace Fork*, but rather filling the void noted by the court. The Department's prior explanation in its original proposal, 62 FR 3363–65 (Jan. 22, 1997), contains a full explanation of the Department's proposed changes.

Subpart H

20 CFR 725.502

(a) Paragraph (b)(1), as originally proposed, made monthly benefits due on the ''first business day of the month following the month for which the benefits are payable.'' 62 FR 3412 (Jan. 22, 1997). Although no comments were received concerning this provision, the Department has determined that paragraph (b)(1) should be changed to make monthly benefits due on the fifteenth calendar day of the month. This change reflects current departmental practice with respect to the payment of benefits by the Trust Fund. The change will promote consistency on the part of the Trust Fund and operators by requiring the payment of monthly benefits on the same schedule. Thus, the change will allow uniform claimant expectation as to the regular date of payment, notwithstanding the identity of the payor.

The proposed change also affects the example of hypothetical due dates for the payment of benefits contained in the initial notice of proposed rulemaking, 62 FR 3366 (Jan. 22, 1997). In that example, an administrative law judge's order awarding benefits issues on August 15, 1996. Under paragraph (b)(1), as originally proposed, the operator must pay the monthly benefits due for August within ten days after the first business day of September (*i.e.*, September 10, 1996) to avoid a penalty; September is the ''month following the month for which the benefits are payable.'' Paragraph (b)(1), as reproposed, would require the operator to pay the monthly benefits for August within ten days after the fifteenth of September to avoid the late-payment penalty (*i.e.*, September 25, 1996). As discussed in the January 1997 preamble, retroactive benefits covering the period before the ALJ's August 15, 1996, award, will not be due until the district director completes the computation of these amounts and notifies the parties. Such notification will be completed within 30 days of August 15, 1996.

(b) Several comments state that imposition of the twenty percent penalty for failure to commence the

timely payment of benefits after entry of an effective award is unfair and punitive when the penalty applies to an award which is still in litigation. The Department disagrees. The Black Lung Benefits Act incorporates the twenty percent penalty provision of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 914(f), as incorporated by 30 U.S.C. 932(a). The purpose of the penalty is to ensure prompt compliance by an employer with its benefits obligations under the terms of an award, and without regard to further proceedings involving the claim. *See* 43 FR 36815 (Aug. 18, 1978), § 725.607, Discussion and changes (a). The existence of the Black Lung Disability Trust Fund does not change that purpose. As discussed in the first notice of proposed rulemaking, 62 FR 3365–66 (Jan. 22, 1997), only some responsible operators commence the payment of benefits upon entry of an award when further proceedings are pending; even fewer pay retroactive benefits. Noncompliance shifts the burden of paying interim monthly benefits to the Trust Fund to ensure the claimant receives benefits until compliance ensues, or the litigation terminates with affirmation of the award or its reversal. Operators therefore routinely use the Trust Fund as a surrogate to defer liabilities or reduce the risk of losing interim payments in the event an award is reversed, and the beneficiary cannot repay the interim benefits. The Department recognizes the fiscal reasoning behind this practice. Congress, however, imposed primary responsibility for paying benefits on the coal mining industry, and intended individual operators to assume liability to the maximum extent possible. *See generally Old Ben Coal Co.* v. *Luker*, 826 F.2d 688, 693 (7th Cir. 1987), *quoting* S. Rep. No. 209, 95th Cong., 1st Sess. 9 (1977). Congress created the Trust Fund to fulfill two limited roles: pay claims for which no individual operator could be held liable, and assume temporary liability if the responsible operator fails or refuses to pay. 26 U.S.C. 9501(d). With respect to the latter role, the Fund acts to protect the claimant by ensuring the continuous and timely receipt of benefits until the operator pays or the award is overturned. This objective does not extend to insulating the responsible operator from the economic risks of paying benefits on an award which might ultimately be reversed. Moreover, requiring payment of benefits on a non-final award does not infringe the operator's right to challenge the award. Section 725.502 simply shifts the economic risk that the initial award is incorrect from the Trust Fund to the operator. The operator receives adequate protection of its interests through its right to develop evidence and participate in the adjudication process. Such participation gives the operator a voice in the merits of the award and the opportunity to challenge an award if it disagrees with it. Consequently, the Department believes that the availability of penalties to foster *prompt* compliance with the terms of an award is warranted, even if the operator pursues an appeal. Section 725.502 implements the Congressional mandate that individual coal mine operators bear the burden of paying benefits whenever liability exists.

(c) One comment objects that Congress never intended to require a responsible operator to pay retroactive benefits before an award becomes final in claims filed after 1981. In general, the party liable for the payment of a claim must pay all benefits due under the terms of an award when that award becomes effective. Congress has permitted one exception. Under 26 U.S.C. 9501(d)(1)(A), the Trust Fund will pay benefits on a claim filed after January 1, 1982 ''only for benefits accruing after the date of such initial determination'' if the Fund is paying interim benefits on behalf of an operator who has not made a payment which is due. This statutory exception, by its language, applies only to the Fund, and only to interim benefits payments. In all other situations, the claimant is entitled to the full payment of benefits authorized by the award even if litigation continues. If payments are withheld by the operator until the award becomes final in a post-1981 claim, the operator must pay interest as well. 30 U.S.C. 932(d). Contrary to the commenter's view, Congress clearly intended responsible operators to pay retroactive benefits as well as monthly benefits immediately when a claimant's entitlement is established by an effective benefits award.

(d) One comment objects to the requirement in paragraph (b)(2) that an operator must pay retroactive benefits despite continuing litigation over the propriety of the award itself. The commenter argues that an operator has no realistic chance of recovering the benefits if the award is ultimately reversed, and suggests the Trust Fund should reimburse an operator who pays retroactive benefits. A right to benefits established by an award, however, cannot be conditioned on the likelihood the operator will recover the benefits if the claimant is ultimately found ineligible. If the claimant has a present right to receive benefits, then the operator must pay according to the terms of the award without regard to the possibility of a later reversal. The terms of the award include all benefits to which the miner is entitled, including retroactive benefits. The Department also rejects the suggestion that the Fund reimburse any operator who pays retroactive benefits but thereafter defeats the claim. The Fund is not authorized to reimburse operators except for those claims for which liability has transferred to the Fund pursuant to law. *See* 26 U.S.C. 9501(d)(6), (7).

(e) One comment suggests three additions to this section: (i) a requirement that the Trust Fund pay interim benefits if a responsible operator obtains a stay of payments pursuant to 33 U.S.C. 921(c), as incorporated by 30 U.S.C. 932(a), until the stay is dissolved; (ii) clarification that a responsible operator must pay benefits during the pendency of its modification petition until the petition is granted; and (iii) language stating that an administrative law judge's award becomes final despite any order leaving the computation of benefits to the district director. No changes are necessary in response to the commenter's suggestion. (i) The Department agrees that the Trust Fund must pay benefits on an interim basis if the operator obtains a stay of payments. This obligation derives from Section 9501 of the Internal Revenue Code, which defines the Fund's operation and payment obligations. 26 U.S.C. 9501. The expenditures which the Fund may undertake include the payment of benefits when the operator liable for benefits ''has not made a payment within 30 days after that payment is due[.]'' 26 U.S.C. 9501(d)(1)(A)(ii). If an operator obtains a stay and a benefit payment comes due during the pendency of the stay, the Trust Fund will make the payment. (ii) Clarification of an operator's benefits obligation during modification proceedings is unnecessary. Section 725.502(a)(1) is unambiguous: ''An effective order shall remain in effect unless it * * * is superseded by an *effective* order issued pursuant to § 725.310'' (regulation implementing modification). Once an effective order exists requiring an operator to pay benefits, the operator must pay until that order is overturned. Filing a modification petition does not supersede an otherwise effective award. The petition merely initiates the process to reopen the award. During the pendency of the modification proceedings and prior to entry of an effective decision on modification, the terms of the existing decision prevail,

and the operator must pay benefits in compliance with that decision. (iii) The commenter cites *Keen* v. *Exxon Corp.*, 35 F.3d 226 (5th Cir. 1994), as a potential loophole to the finality of administrative law judge decisions. In *Keen,* an administrative law judge approved a claim under the Longshore and Harbor Workers' Compensation Act, but ordered the district director to calculate the amount of compensation due. The employer paid the benefits within ten days of the district director's order rather than the administrative law judge's decision. The Court acknowledged that the employer possessed sufficient information to determine for itself the amount of benefits due, rather than wait for the district director's findings. The Court, however, stressed that the administrative law judge's decision was not ''final'' precisely because it required the district director to make the actual computation. No change in the regulations is necessary to account for the practice followed by the administrative law judge in *Keen.* Section 725.502(a)(2) states that an administrative law judge's order becomes ''effective'' when it is filed in the office of the district director. Once an administrative law judge's order is effective, benefits are due under § 725.502(a)(1) and ''shall be paid.'' In any event, orders akin to the one issued in *Keen* are rarely, if ever, used in the black lung program. Awards by administrative law judges ordinarily identify the number of beneficiaries and the onset date(s) for payment. The amount of the prospective benefits to be paid within these parameters is fixed by law; no independent computation by the district director is therefore needed. Moreover, the Department has already placed the burden of computing the retroactive benefits on the district director in § 725.502(b)(2), and made clear that those benefits are not due until the district director issues an order setting the amount. Since § 725.502(b)(1) is unambiguous that prospective benefits must commence by a date certain once an award is effective, the operator cannot use the corollary order for retroactive benefits as a pretext to avoid paying the prospective benefits.

20 CFR 725.503

Several comments take issue with the Department's treatment of the date from which benefits are payable in cases in which a factfinder grants modification on the ground of a change in conditions. One comment urges the Department to require that when the evidence does not establish the specific month in which the miner became totally disabled due to pneumoconiosis, benefits be made retroactive to the date of the adverse decision that was the subject of modification. Another comment states that the revised proposal permits the payment of benefits before the onset of the miner's totally disabling pneumoconiosis, in violation of incorporated provisions of the Longshore Act.

The Department's initial proposal could have led to considerable litigation as to the date from which benefits should be paid in change of condition cases. The Department now proposes a different method to determine this commencement date, one which will give preclusive effect to an earlier factfinder's denial, but will also be relatively easy to apply. In all other successful miners' claims, benefits are awarded as of the month of onset of the miner's totally disabling pneumoconiosis. If that month cannot be established, benefits are payable from the month in which the miner filed his application, based on the logical premise that the filing date would be relatively close to the date on which the miner believed that he was entitled to benefits. This method has worked well in the adjudication of black lung claims in general, and the Department is therefore proposing a similar method for determining the commencement date in change of condition cases. Although every effort will be made to determine the precise date on which the miner became totally disabled due to pneumoconiosis, the date on which the miner requested modification of a previous denial represents an equitable fallback in cases in which the evidence is insufficient to resolve the issue. In determining the commencement date, a factfinder may award benefits prior to the date of the modification request only where credible medical evidence demonstrates that the miner's pneumoconiosis became totally disabling prior to that date. In no event may such evidence be used to justify an award which predates the effective date of the most recent factfinder's denial of the claim. Conversely, a factfinder may not award benefits retroactive to the date of the request where more recent credible evidence demonstrates that the miner did not become totally disabled until a later date.

20 CFR 725.515

The Department did not propose revisions to § 725.515 in its initial notice of proposed rulemaking, 62 FR 3338 (Jan. 22, 1997). The Department has since determined that the regulation should be amended to conform it to applicable law. Section 16 of the Longshore and Harbor Workers' Compensation Act prohibits the garnishment of benefits, 33 U.S.C. 916; this provision is incorporated into the Black Lung Benefits Act. 30 U.S.C. 932(a). Section 725.515 implements section 16. 20 CFR 725.515. In 1975, Congress enacted section 459 of the Social Security Act, 42 U.S.C. 659, to permit the garnishment of federal pay and benefits for alimony and child support obligations. Congress thereafter amended the garnishment provisions in 1977 to clarify their applicability to benefits payments made by the federal government; black lung benefits were specifically excluded from coverage. Congress removed the exclusion, however, in 1996 legislation, which became effective on February 22, 1997. Pub. L. No. 104–193, § 362(d), 110 Stat. 2247. Thus, black lung benefits paid by the Black Lung Disability Trust Fund are subject to garnishment for child support and alimony. The Office of Personnel Management (OPM) is authorized to issue garnishment regulations for the Executive Branch implementing 42 U.S.C. 659. Exec. Order No. 12,105, 43 FR 59,465 (Dec. 19, 1978). OPM recently amended its regulations to conform to the 1996 amendments and permit garnishment of federal black lung benefits paid by the Trust Fund. 63 FR 14,756, 14,758 (March 26, 1998) (to be codified at 5 CFR 581.103(c)(6)). Because 42 U.S.C. 659 is a waiver of sovereign immunity, however, it does not alter any anti-alienation provision governing payments by private parties. *See generally Moyle* v. *Director, OWCP,* 147 F.3d 1116 (9th Cir. 1998), *pet. for cert. filed,* No. 98–927 (Dec. 3, 1998) (holding that 42 U.S.C. 659 authorizes garnishment of longshore benefits payable by the Special Fund to satisfy beneficiary's obligation to pay alimony despite 33 U.S.C. 916, which applies only to private employers or insurers). Consequently, 20 CFR 725.515 must be amended to reflect the limitations on the coverage of section 16: benefits payments by a responsible operator cannot be garnished to satisfy alimony or child support obligations, while payments which are the liability of the Trust Fund can be garnished.

20 CFR 725.533

Section 725.533 was not among the provisions which the Department opened for comment in its previous notice of proposed rulemaking, 62 FR 3341 (Jan. 22, 1997). In connection with the proposed deletion of section 725.403, however, which governs claims filed under section 415 of the Act, 30 U.S.C. 925, the Department proposes

corresponding deletions to paragraphs (b) and (c) of section 725.533. These paragraphs govern the payment of benefits in section 415 claims. Paragraphs (d)–(g) have been redesignated paragraphs (b)–(e). The Department does not intend to alter the rules applicable to any section 415 claim that may still be in litigation, and 20 CFR 725.533(b), (c) will remain applicable to any such claim. Parties interested in reviewing section 725.533 may consult earlier editions of the Code of Federal Regulations or the **Federal Register** in which the regulation was originally published. The Department invites comment on whether section 725.533 should be retained in the Code of Federal Regulations.

20 CFR 725.543

Section 725.543 was not among the provisions which the Department opened for comment in its previous notice of proposed rulemaking, 62 FR 3341 (Jan. 22, 1997), and the Department did not receive any comments specifically directed to this section. The Department did receive a number of general comments critical of the application of the criteria used to determine whether recoupment of an overpayment would defeat the purposes of title IV of the Federal Coal Mine Health and Safety Act or would be against equity and good conscience. Although the Black Lung Benefits Act incorporates these waiver criteria from the Social Security Act, 30 U.S.C. 923(b), 940, incorporating 42 U.S.C. 404(b), § 725.543 currently incorporates the regulations promulgated by the Social Security Administration under its administration of Part B of the Black Lung Benefits Act. Because virtually no new applications for benefits are filed under Part B, it is unlikely that the Part B regulations will be amended to reflect new interpretations of the statutory criteria by the Social Security Administration and the federal courts. In fact, the Part B regulations currently incorporated in § 725.543 which define ''fault,'' ''defeat the purpose of title IV,'' and ''against equity and good conscience,'' §§ 410.561b, 410.561c, and 410.561d, were last published in the **Federal Register** in 1972. By contrast, the regulations governing claims under Title II of the Social Security Act, contained in 20 CFR Part 404, have been amended to keep pace with current law. Accordingly, the Department proposes to amend section 725.543 to incorporate Social Security's more current standards for establishing waiver of recovery of an overpayment.

20 CFR 725.544

Section 725.544 was not among the regulations which the Department opened for comment in its previous notice of proposed rulemaking, 62 FR 3341 (Jan. 22, 1997). One comment pointed out, however, that current law allows agencies of the United States to compromise claims of the United States government of not more than $100,000. The Department proposes to amend the regulation to reflect this change, and to delete the reference to the Federal Claims Collection Act of 1966, which has been repealed. The relevant provision governing compromise of claims by the United States is now codified in the United States Code at 31 U.S.C. 3711.

20 CFR 725.547

(a) The original proposal extended the right to seek waiver of recovery of an overpayment to all claimants, without regard to whether recovery was sought by a responsible operator or the Black Lung Disability Trust Fund. Many commenters urge the Department to promulgate rules governing recovery of overpayments based on the incorporated provisions of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 914(j), 922, as incorporated by 30 U.S.C. 932(a). Pursuant to these provisions, overpaid amounts may be recovered only by withholding future benefit payments. Other commenters object to the proposal on the ground that it will make more difficult operator recovery of overpayments. The policy considerations governing this regulatory revision were fully discussed in the Department's original proposal, 62 FR at 3366–3367 (Jan. 22, 1997), and the comments suggest no new basis for further change.

(b) Several comments state that this rule would unconstitutionally deprive operators of property rights, while other comments argue that it would deprive operators of an effective right of appeal. The process used to adjudicate applications for black lung benefits provides coal mine operators with the right to notice and the opportunity for a hearing before the issuance of an effective award, the only award which mandates payment by a coal mine operator. Federal courts have considered similar allegations with respect to the entitlement adjudication scheme used under the Longshore Act, a scheme identical to that used to adjudicate claims for black lung benefits, and have unanimously concluded that the Longshore Act does not violate employers' constitutional rights. *Schmitt* v. *ITT Federal Electric Int'l.*, 986 F.2d 1103 (7th Cir. 1993); *Abbott* v. *Louisiana Insurance Guaranty Ass'n.*, 889 F.2d 626 (5th Cir. 1989), *cert. denied*, 494 U.S. 1082 (1990). Because the Longshore Act is even more restrictive regarding an employer's right to recover an overpayment than the Department's proposed black lung benefits regulations, *see* 62 FR 3366 (Jan. 22, 1997), the Department does not agree that the proposed scheme is unconstitutional. Similarly, there is no constitutionally recognized right of appeal. As under the Longshore and Harbor Workers' Compensation Act, operators may appeal in order to reduce their future benefit obligations, but success on appeal does not necessarily mandate the repayment of all previously paid benefits. Moreover, notwithstanding the proposal, coal mine operators may seek recoupment of any overpaid amounts. In fact, they are entitled to repayment provided the claimant is not entitled to waiver. These waiver provisions have been used by the Department throughout its administration of Part C of the Act to determine whether an overpaid claimant must repay amounts owed the Black Lung Disability Trust Fund. The Department's experience clearly demonstrates that application of these waiver criteria does not wholly foreclose the recoupment of overpaid amounts.

(c) One comment states that the Department's legal analysis of the overpayment issue neglected § 430 of the Black Lung Benefits Act, 30 U.S.C. 940. Section 430 provides that the provisions of the Black Lung Benefits Act of 1972, the Black Lung Benefits Reform Act of 1977, and the Black Lung Benefits Amendments of 1981 applicable to Part B of the Black Lung Benefits Act shall also apply, as appropriate, to Part C of the Act. None of these statutory enactments prohibits the Department from applying the same waiver criteria to the recoupment of overpaid amounts by both operators and the Black Lung Disability Trust Fund.

(d) Several comments address the test used to determine whether or not claimants are entitled to waiver of recoupment, §§ 725.542, 725.543. The Department also heard considerable testimony at both hearings on the overpayment issue. The Department does not contemplate changing the legal test for waiver since it is based on statutory language incorporated into the BLBA from the Social Security Act, 30 U.S.C. 923(b), 940, incorporating 42 U.S.C. 404(b). The Department has altered § 725.543 to make the Department's interpretation of these criteria consistent with the current

Social Security Administration standards.

20 CFR 725.548

In both its current version and the Department's proposed revision, section 725.547 is titled ''Applicability of overpayment and underpayment provisions to operator or carrier.'' Despite this title, the regulation contains two paragraphs, (c) and (d), that are intended to apply to overpayment and underpayment issues regardless of whether the Black Lung Disability Trust Fund or a responsible operator is liable for the payment of benefits. These paragraphs authorize the district director to enter appropriate orders to protect the rights of the parties with regard to overpayments or underpayments, and provide that disputes arising out of such orders are to be resolved using the same procedures used to resolve entitlement and liability issues. In reviewing its proposed revision to section 725.547, the Department realized that the title of the regulation might mislead parties into believing that paragraphs (c) and (d) are applicable only in cases involving responsible operator liability. Because the Department intends that the same procedures be used to adjudicate overpayment and underpayment issues regardless of the liable party, the Department proposes that paragraphs (c) and (d) be relocated in a separate regulation with a more general title. Consequently, the Department proposes the addition of section 725.548, titled ''Procedures applicable to overpayments and underpayments.''

Subpart I

20 CFR 725.606

(a) Paragraph (c), as originally proposed, contains a typographical error. In the first sentence, the second reference to paragraph (a) should be a reference to paragraph (b). Paragraph (b) describes the amount of negotiable securities which an employer must deposit with a Federal Reserve Bank to secure the payment of benefits.

(b) One comment disagrees generally with the requirement for post-award security by coal mine construction employers, and the imposition of personal benefits liability on certain corporate officers if the employer fails to obtain security. The objection to post-award security is unfounded because the Black Lung Benefits Act authorizes it. Any operator of a coal mine, as defined by 30 U.S.C. 802(d), is required to obtain insurance or qualify as a self-insurer to ensure its financial ability to meet its potential benefits liabilities. 30 U.S.C. 933(a). Section 422(b) excepts certain employers engaged in coal mine construction or transportation from these requirements, provided they are not also operators of coal mines. 30 U.S.C. 932(b). The exception effectively permits these employers to confront their liabilities as they occur on a claim-by-claim basis, rather than anticipate funding for their liabilities through insurance or self-insuring. Section 422(b), however, further states: ''Upon determination by the Secretary of the eligibility of the employee, the Secretary may require [a coal mine construction or transportation] employer to secure a bond or otherwise guarantee the payment of such benefits to the employee.'' 30 U.S.C. 932(b). Although these employers need not insure themselves against prospective liability, they may be required to secure benefits once a claim is awarded. If the employer fails or refuses to obtain security for an existing award after being ordered to do so, that employer is no different than a coal mine operator who does not fulfill its legal obligation to insure or self-insure its potential liability for future awards. While the statute provides several coercive remedies against such employers, section 423(d)(1) also authorizes the Department to impose liability, in the case of a corporation, on its president, secretary and treasurer for any benefits which accrue during the period of the corporation's dereliction. No reason exists to treat corporate officers of a construction or transportation firm differently from corporate officers of a coal mine operator. In either case, the employer is legally required (by the statute or Secretary's order) to secure its liability, and has failed to satisfy that requirement. Section 423(d)(1) simply provides the Department with one tool to enforce the liable employer's obligation.

The same commenter also states that proposed § 725.606 addresses a nonexistent problem because the construction industry already complies with its obligations. The commenter's observation does not provide a legal basis for excluding construction companies from the employer community subject to security requirements imposed by statute. The original notice of proposed rulemaking, 62 FR 3367–3368 (Jan. 22, 1997), describes the Department's objectives for improving and clarifying the operation of the security provisions. The possible absence of a significant problem does not relieve the Department of its responsibility to identify all parties' obligations under the Black Lung Benefits Act and to set forth more efficient procedures to enforce them.

(c) One comment supports requiring the posting of security for the payment of benefits by coal mine construction and transportation employers.

Subpart J

20 CFR 725.701

(a) A number of commenters objected to the Department's initial proposal governing the compensability of medical benefits, because it included a rebuttable presumption that if a miner receives treatment for a pulmonary disorder, that disorder is caused or aggravated by the miner's pneumoconiosis. 62 FR 3423 (Jan. 22, 1997). Several commenters argued that this presumption would impose significantly greater costs on responsible operators and result in the payment of medical bills related to smoking. Others argued that the Department had no authority to promulgate such a presumption and that the presumption was medically unsound. The Department disagrees and believes that the proposed presumption is both appropriate and necessary.

In its initial notice of proposed rulemaking, the Department cited the Fourth Circuit's decision in *Doris Coal Co.* v. *Director, OWCP,* 938 F.2d 492 (4th Cir. 1991), in support of its proposal to codify a rebuttable presumption that treatment that a miner receives for a pulmonary condition, as described in § 725.701, represents treatment for the miner's pneumoconiosis and therefore is compensable. As proposed, this presumption would be available only to miners who have established their total disability due to pneumoconiosis arising out of coal mine employment and are therefore already entitled to monthly cash benefits. The presumption would also apply only to treatment, enumerated in the regulation, for a pulmonary disorder. The presumption could be rebutted by evidence demonstrating that the condition for which the miner received treatment was unrelated to, and was not aggravated by, the miner's pneumoconiosis.

Since publication of the Department's initial notice of proposed rulemaking, the Sixth Circuit has also issued a decision addressing the compensability of medical expenses incurred as a result of treatment for totally disabling pneumoconiosis. In *Glen Coal Co.* v. *Seals,* 147 F.3d 502 (6th Cir. 1998), a majority of the panel (Judges Dowd and Boggs) held that the administrative law judge and the Benefits Review Board

had erred in applying the *Doris Coal* presumption to a miner whose coal mine employment took place within the jurisdiction of the Sixth Circuit. Although Judge Dowd's majority opinion would have invalidated the presumption on a number of grounds, including its inconsistency with Congressional intent underlying the BLBA, *see* 147 F.3d at 513, Judge Boggs's concurrence (necessary for the majority's holding) did not extend so far. Instead, Judge Boggs specifically noted that he would ''agree with the dissent (and disagree with Judge Dowd) that it would not necessarily contravene *Greenwich Collieries* for the Secretary to adopt a regulation shifting the burden of production in the manner of *Doris Coal*.'' *Id.* at 517. Finally, Judge Moore's concurring and dissenting opinion would have upheld the *Doris Coal* presumption on deference grounds.

Recently, the Fourth Circuit clarified the presumption it created in *Doris Coal.* In *Gulf & Western Indus.* v. *Ling,* __F.3d__, 1999 WL 149851 (4th Cir. Mar. 19, 1999), the court held that the *Doris Coal* presumption does not shift the burden of persuasion to the employer to prove that the miner's respiratory or pulmonary treatment was not related to black lung disease. Rather, the burden of proving that the medical expense is covered by the black lung benefits award remains always on the miner. The *Doris Coal* presumption simply eases the miner's initial burden by allowing the miner to present a bill for treatment of his respiratory or pulmonary disorder or related symptoms. If the employer then

> produces credible evidence that the treatment is rendered for a pulmonary disorder apart from those previously associated with the miner's disability, or is beyond that necessary to effectively treat a covered disorder, or is not for a pulmonary disorder at all, the mere existence of a medical bill, without more, shall not carry the day. The burden of persuading the factfinder of the validity of the claim remains at all times with the miner.

1999 WL 149851 at *5.

The Department believes that black lung benefit claims adjudication should vary as little as possible from circuit to circuit, and consequently has proposed a regulatory presumption that would apply nationwide. Like any agency, however, the Department may only promulgate a regulatory presumption when there exists a rational connection between the proven facts and the presumed facts. *Chemical Manufacturers Association* v. *Department of Transportation,* 105 F.3d 702, 705 (D.C. Cir. 1997); *NLRB* v. *Baptist Hosp., Inc.,* 442 U.S. 773, 787 (1979). The proposed § 725.701 presumption would arise only after the miner establishes that he suffers from totally disabling pneumoconiosis arising out of coal mine employment, a fact that must be considered conclusively proven absent a successful request for modification from the responsible operator or fund. In addition, before invocation of the presumption, the miner must show that he received medical treatment within the scope of § 725.701 for a respiratory or pulmonary condition. Thus, prior to invocation of this presumption, the miner has demonstrated by means of credible medical evidence that he suffers from a compensable total disability. In addition, the miner has established that he received treatment covered by the proposed regulation for a pulmonary disorder. The Department's proposal would presume only one fact: that the pulmonary treatment for which the miner seeks payment was for his already-established totally disabling pneumoconiosis.

The Department's proposed definition of pneumoconiosis demonstrates the rational connection between the facts the miner must prove and the resulting presumption. Pursuant to proposed § 718.201, which has been endorsed by the National Institute of Occupational Safety and Health, a miner who has established the existence of pneumoconiosis has necessarily established that he suffers from a ''chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.'' § 718.201(b); *see also* 20 CFR 718.201 (1998). Consequently, any treatment for the miner's compromised respiratory or pulmonary condition suggests, even if it does not conclusively demonstrate, that the miner's previous dust exposure has contributed to the need for that treatment. In addition, the miner's proof that he is totally disabled due to pneumoconiosis establishes that his pneumoconiosis is a substantially contributing cause of his total disability. § 718.204(c). This fact also suggests that the treatment of the miner's respiratory or pulmonary system is made necessary by his pneumoconiosis. Finally, the Department notes that it receives 12,000 to 15,000 medical bills per week, most of which are for relatively small amounts, $25.00 to $75.00. The Department must process these claims in a cost effective and prompt manner. The Department believes that it would be unreasonable to require miners to prove that each treatment expense is for pneumoconiosis when: (1) Each miner has already proven that he is totally disabled by pneumoconiosis arising out of coal mine employment; (2) the bills are for treatment of a pulmonary disorder, and (3) the bills are generally for relatively small amounts. In such circumstances, the Department believes it appropriate to presume that the miner's treatment for a pulmonary disorder is treatment for pneumoconiosis. The Department also believes it appropriate to require coal mine operators to produce credible evidence that the disorder being treated is neither related to nor aggravated by pneumoconiosis in order to escape liability. The Department does not agree, however, that the presumption will require operators to pay for medical treatment attributable to smoking alone. Operators remain free to rebut the presumption in such cases with appropriate medical evidence.

(b) The Department proposes to delete the reference in subsection (b) to ''ancillary pulmonary conditions.'' In light of the confusion reflected in Judge Dowd's majority opinion in *Seals,* and given the broad statutory and regulatory definition of the term ''pneumoconiosis,'' the Department does not believe that this language is necessary. The proposed revision is not intended to narrow the scope of medical benefits available under the Black Lung Benefits Act. Under subsections (b) and (c), a broad range of medical services and supplies will be considered necessary for the treatment of a miner's pneumoconiosis. The proposed presumption in subsection (e) will further ensure that miners who have been determined to be totally disabled due to pneumoconiosis are compensated for any medical service or supply necessary for the treatment of a pulmonary condition unless the responsible operator or fund can prove that the medical service or supply was not for a covered pulmonary disorder as defined in § 718.201. In order to further clarify the Department's intent, the Department proposes to revise the language in subsection (e) by replacing the word ''treatment'' with the phrase, ''medical service or supply.'' This change is intended to ensure that the subsection (e) presumption covers any medical supply or service that may be considered necessary under subsections (b) and (c).

The Department also proposes to amend the language in subsection (f) to clarify its intent. Evidence which is inconsistent with the established facts underlying the miner's entitlement to benefits cannot be used to show that the treatment is not compensable. An

attempt to use such evidence in this context would amount to impermissible relitigation of facts which have been finally determined. In determining whether the treatment is compensable, a treating physician's opinion may be entitled to controlling weight pursuant to § 718.104(d). In addition, a finding that a particular medical service or supply is not compensable shall not otherwise affect the miner's entitlement to benefits.

20 CFR Part 726—Black Lung Benefits; Requirements for Coal Mine Operators' Insurance

Subpart A—General

20 CFR 726.8

(a) In the initial notice of proposed rulemaking, the Department proposed new definitions of ''employ'' and ''employment'' which apply to both Part 725 and 726. *See* 62 FR 3410 (§ 725.493(a)(1)), 3426 (§ 726.8(d)) (Jan. 22, 1997). The definitions were identical. For the reasons set forth in the response to comments concerning § 725.493(a)(1), the Department has determined that more specific language defining ''employment'' is appropriate to clarify its purpose. The same change is incorporated into § 726.(8)(d) for the same reason.

(b) One comment contends that section 726.8(d) is ''illegally'' retroactive in operation and creates unfunded liabilities for insurance carriers by expanding coverage. For the reasons set forth in the response to comments concerning § 725.2, the Department does not believe that the retroactive application of regulatory changes is prohibited, or the instrument for the creation of additional liability.

The same commenter also states that the proposed regulatory definitions intrude on insurance functions reserved for the states. Because the commenter does not cite any legal authority or identify which state functions the proposed regulation affects, the Department is unable to determine the commenter's precise concerns. Moreover, the Seventh Circuit has held that the Black Lung Benefits Act ''specifically relates to the business of insurance and therefore does not implicate the McCarran-Ferguson Act,'' 15 U.S.C. 1012, which confers primacy on state law for the regulation of the insurance industry unless a conflicting federal statute specifically provides otherwise. *Lovilia Coal Co.* v. *Williams,* 143 F.3d 317, 325 (7th Cir. 1998). The commenter's objection therefore provides no basis for the further revision of this regulation.

(c) Two comments state that the proposed definitions are overbroad and make impossible the identification of which employees are covered by an insurance policy. The Department disagrees. The definition of ''employee'' must be read in context with the definition of ''miner'' in § 725.202. Only coal miners (and their survivors) are entitled to benefits under the Black Lung Benefits Act, and only those individuals are of concern to an insurance carrier writing a policy under the Act. In determining whether a particular employee is covered by the insurance policy, the insurer must determine whether the individual is a ''miner'' as defined by the Act and § 725.202. The insurer therefore must conduct a thorough investigation of the employer's business, the nature of the contacts with the coal mining industry, and the type of work each employee performs. This information will provide the basis for calculating the premium necessary for full coverage of the employer's potential liabilities. The burden of covering the responsible operator's liability and obtaining an appropriate premium rests on the insurer. *See Lovilia Coal Co.* v. *Williams,* 143 F.3d 317, 323 (7th Cir. 1998) (holding that insurance carrier must cover operator's entire liability under the Act and ''bears the burden of collecting proper premiums for all covered miners.''). Finally, the Department notes that the goal of broad insurance coverage for employees implements Congress' express intent to hold the coal mine operator community liable for individual claims to the maximum extent possible. *See* S. Rep. No. 95–209, *reprinted in* Comm. On Education and Labor, House of Representatives, 96th Cong., ''Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977'' (Comm. Print) at 612. Section 726.8(d) reflects the Department's policy to vigorously effectuate that intent. Because an insurance carrier assumes the responsibility for benefits ascribed to its insured operator, that responsibility must encompass every employee of the operator who qualifies as an eligible miner under the Act. *Williams,* 143 F.3d at 323; *see also National Mines Corp.* v. *Carroll,* 64 F.3d 135, 140 (3d Cir. 1995); *Tazco, Inc.* v. *Director, OWCP,* 895 F.2d 949, 951 (4th Cir. 1990).

Subpart C

20 CFR 726.3

Section 726.3 was not among the regulations which the Department opened for comment in its previous notice of proposed rulemaking. 62 FR 3350 (Jan. 22, 197). In reviewing the current proposal for publication, the Office of the Federal Register requested that the Department revise paragraph (b) in order to clarify how cases will be treated when the regulation in Part 726 appear to conflict with regulations incorporated from 725. This revision is not intended to make any substantive change in the regulation. In addition, the Department is removing references to Parts 715 and 720 from paragraph (a). Those parts were repealed in 1978, 43 FR 36772 (Aug. 18, 1978), and the regulations they contained should no longer be considered applicable to Part 726.

Subpart C

20 CFR 726.203

Section 726.203 was not among the regulations which the Department opened for comment in its previous notice of proposed rulemaking. 62 FR 3341 (Jan. 22, 1997). At the Washington, D.C. hearing, however, the Department heard testimony indicating that the insurance industry has used a different version of the endorsement contained in subsection (a) since 1984. An insurance industry representative testified that the change was ''acknowledged by the department as language acceptable for securing workers compensation under the federal Act.'' Transcript, *Hearing on Proposed Changes to the Black Lung Program Regulations,* July 22, 1997, p. 127 (testimony of Robert Dorsey). In its written comments, the insurance industry noted that after notification of changes in the insurance policy language, ''the Department agreed that the new endorsements were acceptable.'' The version provided by the insurance industry states as follows:

This endorsement applies only to work in a state shown in the Schedule and subject to the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 931–942). Part One (Workers Compensation Insurance) applies to that work as though that state were shown in item 3.A. of the Information Page.

The definition of workers compensation law includes the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. Sections 931–942) and any amendment to that law that is in effect during the policy period.

Part One (Workers Compensation Insurance), section A.2., How This Insurance Applies, is replaced by the following:

Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period or, when the last exposure occurred prior to July 1, 1973, a claim based on that disease must be

first filed against you during the policy period shown in item 2 of the Information Page.

Schedule
State

Following the hearing, the Department searched its records. Although those records reflect a meeting with a representative of the insurance industry in 1984, the Department was unable to find any document authorizing the use of the different endorsement. If the insurance industry has such a document in its files, the Department requests that it send it to James L. DeMarce at the address listed in this notice. In addition, to allow thorough evaluation of the endorsement the industry now suggests, the insurance industry should supply the Department with a copy of the insurance policy to which the endorsement is attached. Finally, although it is not currently proposing revision of § 726.203, the Department requests comment on the possible use of this endorsement. In preparing those comments, individuals should take note of the Department's requirement in § 726.205 that endorsements other than those provided by § 726.203 may be used provided they do not ''materially alter or attempt[] to alter an operator's liability for the payment of any benefits under the Act * * *'' 20 CFR 726.205.

Drafting Information, this document was prepared under the direction and supervision of Bernard Anderson, Assistant Secretary of Labor for Employment Standards.

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Executive Order 12866

The Office of Information and Regulatory Affairs of the Office of Management and Budget has determined that the Department's proposed rule represents a ''significant regulatory action'' under section 3(f)(4) of Executive Order 12866 and has reviewed the rule.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any federal mandate that may result in increased expenditures by State, local and tribal governments, or increased expenditures by the private sector of more than $100 million.

Paperwork Reduction Act

The proposed changes would establish no new record keeping requirements. Moreover, they seek to reduce the volume of medical examination and consultants' reports which are currently created solely for the purpose of litigation by limiting the amount of such medical evidence which will be admissible in black lung proceedings.

Regulatory Flexibility Act, as Amended

The Regulatory Flexibility Act (''RFA'') was enacted by Congress in 1980 ''to encourage administrative agencies to consider the potential impact of nascent federal regulations on small businesses.'' *Associated Fisheries of Maine, Inc.* v. *Daley*, 127 F.3d 104, 111 (1st Cir. 1997). Unless the agency is able to certify that the rule will not have ''a significant economic effect on a substantial number of small entities,'' 5 U.S.C. 605, each agency that publishes a notice of proposed rulemaking must prepare an ''initial regulatory flexibility analysis'' describing the impact of the proposed rule on small entities. 5 U.S.C. 603(a). That analysis, or a summary of the analysis, must be published in the **Federal Register** when the notice of proposed rulemaking is published, and a copy of the analysis must be sent to the Chief Counsel for Advocacy of the Small Business Administration.

In its initial notice of proposed rulemaking, the Department certified that the proposed revisions would not have a significant effect on a substantial number of small businesses. 62 FR 3371–73 (Jan. 22, 1997). The Department's certification was criticized by both the coal mining industry and the Small Business Administration's Office of Advocacy. Industry argued that the Department had grossly underestimated the effect of the proposed rule. The Office of Advocacy observed that the Department had not used the size standards established by the Small Business Administration, and that the Department did not provide a factual basis for its certification. In particular, the Office of Advocacy took issue with the Department's interpretation of the term ''significant economic effect.''

In light of the concerns raised by the commenters, the Department has determined that an initial regulatory flexibility analysis is appropriate. The RFA mandates that each analysis contain certain components: (1) a statement of the reasons for issuing the proposed rule; (2) a statement of the objectives of, and legal basis for, the proposed rule; (3) a description and, where feasible, an estimate of the number of small businesses to which the rule will apply; (4) a description of projected reporting, recordkeeping, and other compliance requirements of the proposed rule; and (5) an identification of any rules that overlap, duplicate, or conflict with the proposed rule. 5 U.S.C. 603(a). Finally, the analysis must contain a description of significant alternatives to the rule that accomplish the stated objectives and minimize the significant economic impact on small businesses, including the establishment of different compliance requirements or exemptions for small businesses. 5 U.S.C. 603(b). In determining the effects of a proposed rule, or alternatives to the proposed rule, ''an agency may provide either a quantifiable or numerical description of the effects * * * or more general descriptive statements if quantification is not practicable or reliable.'' 5 U.S.C. 607. Once the analysis has been published in the **Federal Register**, either in full or in summary form, the RFA also requires administrative agencies to assure that small businesses have a full opportunity to participate in the rulemaking by providing them with additional notification. 5 U.S.C. 609.

Reasons for, and Objectives of, the Proposed Rule

The Department's proposal is intended to update the regulations that implement that Black Lung Benefits Act. The Act provides both monetary and medical benefits to miners who are totally disabled by pneumoconiosis arising out of coal mine employment, and monthly monetary benefits to the survivors of miners who die as a result of the disease. These regulations establish: (1) the procedures used to process and adjudicate benefit applications (Part 725); (2) the criteria used to determine whether applicants are eligible for benefits (Parts 718 and 727); (3) the requirements for coal mine operators who must secure the payment of benefits (Part 726); and (4) the standards for approving state workers' compensation programs (Part 722). The Department has proposed revising these regulations in order to accomplish several goals:

(1) A substantial number of the proposed rules would simply codify decisions by the courts of appeals and the Benefits Review Board. In many cases, these decisions were issued by courts with jurisdiction over the states

in which most of the country's coal mining takes place, and thus already govern the adjudication of a majority of claims. In order to make sure all interested parties are aware of these decisions, and in particular to ensure that claimants who are not represented by counsel are not disadvantaged by being unaware of these decisions, the Department is proposing to codify these decisions in its implementing regulations. Codification of court decisions in rules of nationwide applicability will ensure uniform treatment of the parties. The Department's proposed revisions also codify changes to statutes other than the Black Lung Benefits Act which affect the Department's administration of the Act, including changes to the Social Security Act governing garnishment, and the statute governing the collection of debts owed the federal government.

(2) In addition, the Department is proposing these revisions to make the adjudication of claims a more equitable process, and to ensure that the affected public perceives the process as fair. For example, the Department has proposed limiting the amount of documentary medical evidence parties to a claim may submit in order to encourage the parties to focus on the quality of the medical evidence they develop instead of its quantity. The Department has also proposed requiring that the factfinder recognize certain factors that may make the opinion of the miner's treating physician worthy of more weight. Similarly, the proposal would ensure that claimants who receive overpayments are treated equally regardless of whether the overpayment was made by the Black Lung Disability Trust Fund or a coal mine operator. Finally, the Department has proposed revisions to the rules governing attorneys' fees in an effort to make attorneys more willing to represent black lung claimants.

(3) Several of the proposed revisions are designed to simplify the regulatory language and clarify the Department's original intent when the regulations were first promulgated. These proposals include ensuring the uniform application of the quality standards to medical evidence developed in connection with a black lung benefits claim and refining the definitions of key terms such as ''miner'' and ''one year.'' The Department has also proposed revisions to the regulations governing the eligibility of dependents and survivors in order to clarify the statute and insure implementation of Congressional intent.

(4) The Department has proposed several measures designed to protect the Black Lung Disability Trust Fund, which pays claimants benefits when no coal mine operator or insurer may be held liable. Specifically, the Department proposes to revise the regulations governing the imposition of civil money penalties on coal mine operators that fail to secure the payment of benefits as required by the Act, either by purchasing commercial insurance or by qualifying as a self-insurer. The Department has also proposed revisions to the process used to identify the party responsible for the payment of benefits, including changes to regulations governing the submission of evidence relevant to operator liability and the substantive criteria used to determine such liability. Finally, the Department has proposed revising the process by which uninsured coal mine operators, including coal mine construction and transportation companies, may be compelled to post security once they have been found liable for the payment of an individual claim.

(5) A number of the regulatory proposals are designed to improve the services the Department provides to parties to black lung benefits claims. These proposals include revisions that streamline the adjudication of claims, for example, by defining the parties' obligation to attend an informal conference. They also include revisions intended to ensure that beneficiaries receive all of the benefits to which they are entitled in a timely manner. The Department has proposed eliminating or replacing outdated regulations, such as those governing the Department's certification of state workers' compensation programs.

(6) Finally, the Department is proposing revisions that take into account changes that have occurred over the past 20 years in the diagnosis and treatment of pneumoconiosis. For example, the Department has proposed revising the definition of pneumoconiosis to recognize the progressive nature of the disease and the possibility that a miner's coal mine dust exposure may have contributed to the development of either obstructive or restrictive lung disease. The Department has also proposed revisions in the standards for administering pulmonary function tests and in the adjudication of the compensability of medical expenses.

Legal Basis for the Proposed Rule

The Black Lung Benefits Act grants the Secretary broad authority to issue regulations. Section 422(a) of the Act provides that ''[i]n administering this part [Part C of the Act], the Secretary is authorized to prescribe in the **Federal Register** such additional provisions * * * as [s]he deems necessary to provide for the payment of benefits by such operator to persons entitled thereto as provided in this part and thereafter those provisions shall be applicable to such operator.'' 30 U.S.C. 932(a). Section 426(a) of the Act similarly authorizes the Secretary to ''issue such regulations as [she] deems appropriate to carry out the provisions of this title.'' 30 U.S.C. 936(a). The Act also authorizes the Secretary to promulgate regulations on specific subjects, such as criteria for medical tests, 30 U.S.C. 902(f)(1)(D), standards for assigning liability to coal mine operators, 30 U.S.C. 932(h), and regulations governing insurance contracts, 30 U.S.C. 933(b)(3). In addition, the Department, like any other administrative agency, possesses the inherent authority to promulgate regulations in order to fill gaps in the legislation that it is responsible for administering. *Chevron* v. *Natural Resources Defense Council,* 467 U.S. 837, 843–44 (1984); *Pauley* v. *Bethenergy Mines, Inc.,* 501 U.S. 680, 696 (1991).

Small Businesses to which the Rule will Apply

The Regulatory Flexibility Act requires an administrative agency to describe and, where feasible, estimate the number of small entities to which a proposed rule will apply. 5 U.S.C. 603(b)(5). Small entities include small businesses, small organizations, and small governmental jurisdictions. 5 U.S.C. 601(6). The Black Lung Benefits Act, however, does not seek to regulate small organizations or small governmental jurisdictions. Accordingly, this analysis is limited to the effect of the proposed rule on small businesses. By its terms, the Black Lung Benefits Act imposes obligations on coal mine operators. 30 U.S.C. 932(b) (''each such operator shall be liable for and shall secure the payment of benefits * * *.''). An operator is defined, for purposes of the black lung benefits program, as ''any owner, lessee, or other person who operates, controls, or supervises a coal mine, or any independent contractor performing services or construction at such mine.'' § 725.491(a)(1); 30 U.S.C. 802(d).

In assessing the impact of the proposed rule on operators that may be considered small businesses, the RFA requires an agency to use the definitions of the term ''small business'' used by the Small Business Administration unless the agency, after consultation with SBA's Office of Advocacy and opportunity for public comment, establishes its own definition. 5 U.S.C. 601(3). SBA's definitions, set forth in 13

CFR 121.201, are grouped according to Standard Industrial Codes (SICs) used by the Bureau of the Census. For purposes of identifying the small businesses to which the Black Lung Benefits Act and its implementing regulations apply, two categories are applicable: Coal Mining (SIC Codes 1220, 1221, 1222, 1230, and 1231) and Coal Mining Services (SIC Codes 1240 and 1241). SBA defines a small business in the coal mining industry as one with fewer than 500 employees, and a small business in the coal mining services industry as one with less than $5 million annually in receipts.

The Department has prepared an extensive economic analysis of the effect of the proposed rule on small businesses in the coal mining industry. A copy of that analysis is available on request from James L. DeMarce, Director, Division of Coal Mine Workers' Compensation, Room C–3520, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, DC 20210. In the analysis, the Department specifically requests comments on a number of the assumptions underlying its conclusion. These include the relationship between increases in the claims approval rate and increases in insurance premiums; the relationship between increased medical costs and increases in insurance premiums; and the extent to which promulgation of these revisions will result in an increase in the number of claims filed.

The Department's analysis, using data maintained by the Mine Safety and Health Administration, indicates that, in 1995, 2,811 of 2,822 establishments, consisting of mines and preparation plants, employed less than 500 people (Exhibit C, total of all establishments employing less than 500 people). Of these establishments, 1,581 were associated with mining bituminous coal at a surface mine, 1009 mined bituminous coal underground, and 221 mined anthracite coal. When individual establishments are aggregated into parent companies, the Department found that 898 of 933 companies employed less than 500 people, and thus meet SBA's definition of a small business (Exhibit D).

It is not feasible to estimate precisely the number of independent contractors engaged in coal-mine related activities that meet SBA's definition, for example, those involved in coal mine construction and coal transportation. Data provided the Department by SBA (also available at http://www.sba.gov/ADVO/) with respect to firms in the coal mining services industry does not permit the direct identification of specific firms with less than $5 million annually in receipts. The data lists firms in categories according to the number of employees (*e.g.,* 1–4, 5–9), and provides the total estimated annual receipts for all of the firms in each category. Thus, at best, the data allows only an estimate of the average annual receipts of each firm within a given category. In the case of firms engaged in coal mining services, SBA data suggests that firms with 20 or more employees have average annual receipts that exceed the SBA cutoff. For example, 9 firms with between 20 and 24 employees had total annual estimated receipts in 1994 of $48,240,000. Thus, the average annual receipts of each firm in this category exceeds $5 million. Because 209 of the 275 firms engaged in coal mining services have fewer than 20 employees, the Department estimates that no more than 209 coal mining services firms will be affected by the proposed rule. The Department notes that this estimate may not include all coal mine construction and coal transportation companies. Because coal mine construction or coal transportation may not be the primary source of income for these companies, they may not appear in the SBA's data under the SIC Code covering coal mining services. The Department cannot estimate the number of firms that are excluded from SBA's data.

Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

The revisions proposed by the Department to its black lung regulations will not impose any additional reporting or recordkeeping requirements on small businesses. The analysis of additional costs that follows is derived from the Department's extensive economic analysis of the effect of the proposed rule on small businesses in the coal mining industry. References are to exhibits that accompany that report. The costs associated with the proposed rule involve possible increases in benefit payments, including monetary disability benefits and medical benefits, and increases in transaction costs incurred in the defense of claims under the Act. These costs will be imposed on coal mine operators either directly, in the case of coal mine operators that self-insure their obligations under the Act, or indirectly, in the case of coal mine operators that purchase commercial insurance. The latter group will absorb the increased costs through increases in insurance premiums. Because self-insurers are required to have a net worth of more than $10 million, and are able to take advantage of economies of scale in absorbing these costs, the Department's economic analysis focused on companies with commercial insurance. Increased costs on commercially insured operators will be higher than those imposed on self-insurers (which would have purchased commercial insurance if it were less expensive) and thus will overstate the costs to the coal mining industry as a whole.

The Department has concluded that insurance rates, typically between $.56 (for bituminous coal operators in Pennsylvania) and $5.38 (for anthracite coal operators in Pennsylvania) per $100 of payroll (Exhibit F), may be expected to rise by a total of 41.7 percent in the first two years and 39.3 percent in the long term. The Department has calculated the percentage increase in price that operators in a representative sample of states will need to charge in order to cover increased cost of the Department's proposed revisions. That cost ranges from .35 % (for West Virginia operators with 50 to 100 employees) to 3.3 % (for anthracite operators) (Exhibit O). The Department concludes that these price increases will fall most heavily on coal mine operators with less than 20 employees. The increases will clearly be significant, and although a number of small mine operators will be able to recoup their costs, less well-positioned bituminous operators and contract mine operators will face the greatest difficulty in doing so. As a result, some operators in those groups may be forced to suspend operations.

In addition, the proposed rule requires several specific actions on the part of coal mine operators. Operators that do not purchase commercial insurance to secure their liability for black lung benefits, including both operators that are authorized to self-insure and operators that are not required to obtain insurance, will be required to respond more promptly to notice from the Department that a claim has been filed by one of their former employees. *See* § 725.407. Specifically, they will have 90 days from receipt of notice to supply the Department with information relevant to their employment of the miner. Operators that have not secured their liability will also be required to post security in the event that they are held liable for the payment of benefits on an individual claim. *See* § 725.606. Operators that have been authorized to self-insure their liability under the Act will be required to maintain security for their claims even after they leave the coal mining business. *See* § 726.114. Finally, the Department's revisions are intended to enhance its ability to enforce civil

money penalties against operators that fail to comply with the Act's security requirements, and thus may impose additional costs on operators that are not currently in compliance with the Act's requirements. *See* Part 726, Subpart D. The remaining revisions do not impose on operators any additional compliance requirements beyond those in the Department's current regulations.

Rules that Overlap, Duplicate, or Conflict with the Proposed Rule

There are no other rules of which the Department is aware that overlap, duplicate, or conflict with the Department's proposed rule.

Significant Alternatives to the Rule

The Regulatory Flexibility Act requires the Department to consider alternatives to the rule that would minimize any significant economic impact on small businesses without sacrificing the stated objectives of the rule. 5 U.S.C. 603(b). The Black Lung Benefits Act places severe constraints on the Department's ability to target its proposed rule in order to minimize its impact on small business. The use of SBA's size standard would require the Department to seek ways of protecting more than 96 percent of the companies in the coal mining industry (898 of the 933 companies). Even using a 20-employee size standard, and thus focusing attention on the operators most likely to face significant additional costs, the Department's ability to reduce the economic impact of the proposal is limited.

Most of the revisions proposed by the Department affect the criteria used to determine a claimant's entitlement to benefits. The Black Lung Benefits Act requires that benefits be paid to each miner who is totally disabled as a result of pneumoconiosis arising out of coal mine employment, 30 U.S.C. 922(a)(1), and each dependent survivor of a miner who died due to pneumoconiosis or, if the claim was filed before January 1, 1982, was totally disabled at the time of death by the disease. 30 U.S.C. 922(a)(2), (3), (5). As an initial matter, then, the Act simply does not permit the Department to adjust its entitlement regulations based on the size of the miner's former employer. In effect, the Department cannot deny a claim because the miner was employed by a small business.

The Department has proposed revisions to the regulations governing the identity of the party liable for the payment of benefits. Like the current regulations, the Department's proposal would impose liability on the coal mine operator that most recently employed the miner for a period of not less than one year, provided that the operator meets other specified criteria. Among these criteria is the operator's financial ability to assume responsibility for the payment of benefits. *See* § 725.494(e). Because coal mine operators are required to secure their liability under the Act by purchasing commercial insurance or by self-insuring, however, this condition typically affects only two classes of operators: those that have failed to comply with the Act's security requirement, and those construction and transportation employers that are not subject to the security requirement. Such a company may avoid liability for a particular claim by demonstrating that it is financially incapable of assuming the payment of monthly and retroactive benefits.

Although the use of a financial capability standard might be considered a benefit to small businesses, using either SBA's definition or the 20-employee cutoff, the Department does not believe that it can provide any other similar benefit. In theory, of course, the Department could specifically limit liability under the Act in cases involving operators below a certain size. To do so, however, the Department would have to increase the obligations borne by larger coal mine operators (who may be the miner's second or third most recent employer) or the Black Lung Disability Trust Fund. Such a result, however, would violate Congress's clear intent: ''It is further the intention of this section, with respect to claims related to which the miner worked on or after January 1, 1970, to ensure that individual coal operators rather than the trust fund bear the liability for claims arising out of such operator's mines, to the maximum extent feasible.'' S. Rep. 209, 95th Cong., 1st Sess. 9 (1977), reprinted in House Comm. On Educ. And Labor, 96th Cong., Black Lung Benefits Reform Act and Black Lung Benefits Revenue Act of 1977, 612 (Comm. Print 1979).

One area in which the Department may appropriately impose lesser costs on small businesses is the assessment of civil money penalties for failure to secure the payment of benefits. The Act merely provides that operators that fail to secure their liability are subject to a civil money penalty of up to $1,000 a day. The current regulations authorize the imposition of the ''maximum penalty allowed'' in the absence of mitigating circumstances. 20 CFR 725.495(d). By contrast, the Department's proposed regulations recognize that smaller companies may cause less harm by failing to secure the payment of benefits. The Department's proposal therefore establishes different base penalty amounts for operators who fail to insure, depending on the number of their employees. Thus, where the Act permits the Department to exercise flexibility with regard to small business, the Department has done so.

The Department invites comment from interested parties, particularly coal mine operators that are considered small businesses, as to other possible means of reducing the financial impact of the proposed rules on the small business community. Commenters should bear in mind that the fundamental purpose of the Black Lung Benefits Act is to provide benefits to disabled miners and their survivors, and that all applicants and beneficiaries must be treated fairly.

List of Subjects in 20 CFR Parts 718, 722, 725, 726, 727.

Black lung benefits, Lung disease, Miners, Mines, Workers' compensation, X-rays.

Signed at Washington, D.C., this 15th day of September, 1999.

Bernard Anderson,

Assistant Secretary for Employment Standards.

For the reasons set forth in the preamble, 20 CFR Chapter VI is proposed to be amended as follows:

1. The authority citation for part 718 continues to read as follows:

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 934, 936, 945; 33 U.S.C. 901 et seq., 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

2. Part 718 is proposed to be amended by removing subpart E, revising subparts A through D, revising Appendices A and C, and revising the text of Appendix B (the tables, B1 through B6, in Appendix B remain unchanged):

PART 718—STANDARDS FOR DETERMINING COAL MINERS' TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

Subpart A—General

Sec.
718.1 Statutory provisions.
718.2 Applicability of this part.
718.3 Scope and intent of this part.
718.4 Definitions and use of terms.

Subpart B—Criteria for the Development of Medical Evidence

718.101 General.
718.102 Chest roentgenograms (X-rays).
718.103 Pulmonary function tests.
718.104 Report of physical examinations.
718.105 Arterial blood-gas studies.
718.106 Autopsy; biopsy.

718.107 Other medical evidence.

Subpart C—Determining Entitlement to Benefits

718.201 Definition of pneumoconiosis.
718.202 Determining the existence of pneumoconiosis.
718.203 Establishing relationship of pneumoconiosis to coal mine employment.
718.204 Total disability and disability causation defined; criteria for determining total disability and total disability due to pneumoconiosis.
718.205 Death due to pneumoconiosis.
718.206 Effect of findings by persons or agencies.

Subpart D—Presumptions Applicable to Eligibility Determinations

718.301 Establishing length of employment as a miner.
718.302 Relationship of pneumoconiosis to coal mine employment.
718.303 Death from a respirable disease.
718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.
718.305 Presumption of pneumoconiosis.
718.306 Presumption of entitlement applicable to certain death claims.
Appendix A to Part 718—Standards for Administration and Interpretation of Chest Roentgenograms (X-rays)
Appendix B to Part 718—Standards for Administration and Interpretation of Pulmonary Function Tests. Tables B1, B2, B3, B4, B5, B6
Appendix C to Part 718—Blood Gas Tables

Subpart A—General

§ 718.1 Statutory provisions.

(a) Under title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended by the Black Lung Benefits Act of 1972, the Federal Mine Safety and Health Amendments Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Amendments of 1981, and the Black Lung Benefits Revenue Act of 1981, benefits are provided to miners who are totally disabled due to pneumoconiosis and to certain survivors of a miner who died due to or while totally or partially disabled by pneumoconiosis. However, unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on or after January 1, 1982, only when the miner's death was due to pneumoconiosis, except where the survivor's entitlement is established pursuant to § 718.306 on a claim filed prior to June 30, 1982. Before the enactment of the Black Lung Benefits Reform Act of 1977, the authority for establishing standards of eligibility for miners and their survivors was placed with the Secretary of Health, Education, and Welfare. These standards were set forth by the Secretary of Health, Education, and Welfare in subpart D of part 410 of this title, and adopted by the Secretary of Labor for application to all claims filed with the Secretary of Labor (see 20 CFR 718.2, contained in the 20 CFR, part 500 to end, edition revised as of April 1, 1979). Amendments made to section 402(f) of the Act by the Black Lung Benefits Reform Act of 1977 authorize the Secretary of Labor to establish criteria for determining total or partial disability or death due to pneumoconiosis to be applied in the processing and adjudication of claims filed under part C of title IV of the Act. Section 402(f) of the Act further authorizes the Secretary of Labor, in consultation with the National Institute for Occupational Safety and Health, to establish criteria for all appropriate medical tests administered in connection with a claim for benefits. Section 413(b) of the Act authorizes the Secretary of Labor to establish criteria for the techniques to be used to take chest roentgenograms (X-rays) in connection with a claim for benefits under the Act.

(b) The Black Lung Benefits Reform Act of 1977 provided that with respect to a claim filed prior to April 1, 1980, or reviewed under section 435 of the Act, the standards to be applied in the adjudication of such claim shall not be more restrictive than the criteria applicable to a claim filed on June 30, 1973, with the Social Security Administration, whether or not the final disposition of the claim occurs after March 31, 1980. All such claims shall be reviewed under the criteria set forth in part 727 of this title (see 20 CFR 725.4(d)).

§ 718.2 Applicability of this part.

This part is applicable to the adjudication of all claims filed after March 31, 1980, and considered by the Secretary of Labor under section 422 of the Act and part 725 of this subchapter. If a claim subject to the provisions of section 435 of the Act and subpart C of part 727 of this subchapter (see 20 CFR 725.4(d)) cannot be approved under that subpart, such claim may be approved, if appropriate, under the provisions contained in this part. The provisions of this part shall, to the extent appropriate, be construed together in the adjudication of all claims.

§ 718.3 Scope and intent of this part.

(a) This part sets forth the standards to be applied in determining whether a coal miner is or was totally, or in the case of a claim subject to § 718.306 partially, disabled due to pneumoconiosis or died due to pneumoconiosis. It also specifies the procedures and requirements to be followed in conducting medical examinations and in administering various tests relevant to such determinations.

(b) This part is designed to interpret the presumptions contained in section 411(c) of the Act, evidentiary standards and criteria contained in section 413(b) of the Act and definitional requirements and standards contained in section 402(f) of the Act within a coherent framework for the adjudication of claims. It is intended that these enumerated provisions of the Act be construed as provided in this part.

§ 718.4 Definitions and use of terms.

Except as is otherwise provided by this part, the definitions and usages of terms contained in § 725.101 of subpart A of part 725 of this title shall be applicable to this part.

Subpart B—Criteria for the Development of Medical Evidence

§ 718.101 General.

(a) The Office of Workers' Compensation Programs (hereinafter OWCP or the Office) shall develop the medical evidence necessary for a determination with respect to each claimant's entitlement to benefits. Each miner who files a claim for benefits under the Act shall be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation including, but not limited to, a chest roentgenogram (X-ray), physical examination, pulmonary function tests and a blood-gas study.

(b) The standards for the administration of clinical tests and examinations contained in this subpart shall apply to all evidence developed by any party after [the effective date of the final rule] in connection with a claim governed by this part (see §§ 725.406(b), 725.414(a), 725.456(d)). These standards shall also apply to claims governed by part 727 (see 20 CFR 725.4(d)), but only for clinical tests or examinations conducted after [the effective date of the final rule]. Any clinical test or examination subject to these standards shall be in substantial compliance with the applicable standard in order to constitute evidence of the fact for which it is proffered. Unless otherwise provided, any evidence which is not in substantial compliance with the applicable standard is insufficient to establish the fact for which it is proffered.

§ 718.102 Chest roentgenograms (X-rays).

(a) A chest roentgenogram (X-ray) shall be of suitable quality for proper classification of pneumoconiosis and shall conform to the standards for administration and interpretation of chest X-rays as described in Appendix A to this part.

(b) A chest X-ray to establish the existence of pneumoconiosis shall be classified as Category 1, 2, 3, A, B, or C, according to the International Labour Organization Union Internationale Contra Cancer/Cincinnati (1971) International Classification of Radiographs of the Pneumoconioses (ILO–U/C 1971), or subsequent revisions thereof. A chest X-ray classified as Category Z under the ILO Classification (1958) or Short Form (1968) shall be reclassified as Category O or Category 1 as appropriate, and only the latter accepted as evidence of pneumoconiosis. A chest X-ray classified under any of the foregoing classifications as Category O, including sub-categories 0—, 0/0, or 0/1 under the UICC/Cincinnati (1968) Classification or the ILO–U/C 1971 Classification does not constitute evidence of pneumoconiosis.

(c) A description and interpretation of the findings in terms of the classifications described in paragraph (b) of this section shall be submitted by the examining physician along with the film. The report shall specify the name and qualifications of the person who took the film and the name and qualifications of the physician interpreting the film. If the physician interpreting the film is a Board-certified or Board-eligible radiologist or a certified ''B'' reader (see § 718.202), he or she shall so indicate. The report shall further specify that the film was interpreted in compliance with this paragraph.

(d) The original film on which the X-ray report is based shall be supplied to the Office, unless prohibited by law, in which event the report shall be considered as evidence only if the original film is otherwise available to the Office and other parties. Where the chest X-ray of a deceased miner has been lost, destroyed or is otherwise unavailable, a report of a chest X-ray submitted by any party shall be considered in connection with the claim.

(e) No chest X-ray shall constitute evidence of the presence or absence of pneumoconiosis unless it is conducted and reported in accordance with the requirements of this section and Appendix A. In the absence of evidence to the contrary, compliance with the requirements of Appendix A shall be presumed. In the case of a deceased miner where the only available X-ray does not substantially comply with this subpart, such X-ray shall be considered and shall be accorded appropriate weight in light of all relevant evidence if it is of sufficient quality for determining the presence or absence of pneumoconiosis and such X-ray was interpreted by a Board-certified or Board-eligible radiologist or a certified ''B'' reader (see § 718.202).

§ 718.103 Pulmonary function tests.

(a) Any report of pulmonary function tests submitted in connection with a claim for benefits shall record the results of flow versus volume (flow-volume loop). The instrument shall simultaneously provide records of volume versus time (spirometric tracing). The report shall provide the results of the forced expiratory volume in one second (FEV1) and the forced vital capacity (FVC). The report shall also provide the FEV1/FVC ratio, expressed as a percentage. If the maximum voluntary ventilation (MVV) is reported, the results of such test shall be obtained independently rather than calculated from the results of the FEV1.

(b) All pulmonary function test results submitted in connection with a claim for benefits shall be accompanied by three tracings of the flow versus volume and the electronically derived volume versus time tracings. If the MVV is reported, two tracings of the MVV whose values are within 10% of each other shall be sufficient. Pulmonary function test results submitted in connection with a claim for benefits shall also include a statement signed by the physician or technician conducting the test setting forth the following:

(1) Date and time of test;

(2) Name, DOL claim number, age, height, and weight of claimant at the time of the test;

(3) Name of technician;

(4) Name and signature of physician supervising the test;

(5) Claimant's ability to understand the instructions, ability to follow directions and degree of cooperation in performing the tests. If the claimant is unable to complete the test, the person executing the report shall set forth the reasons for such failure;

(6) Paper speed of the instrument used;

(7) Name of the instrument used;

(8) Whether a bronchodilator was administered. If a bronchodilator is administered, the physician's report must detail values obtained both before and after administration of the bronchodilator and explain the significance of the results obtained; and

(9) That the requirements of paragraphs (b) and (c) of this section have been complied with.

(c) No results of a pulmonary function study shall constitute evidence of the presence or absence of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with the requirements of this section and Appendix B to this part. In the absence of evidence to the contrary, compliance with the requirements of Appendix B shall be presumed. In the case of a deceased miner, special consideration shall be given to noncomplying tests if, in the opinion of the adjudication officer, the only available tests demonstrate technically valid results obtained with good cooperation of the miner.

§ 718.104 Report of physical examinations.

(a) A report of any physical examination conducted in connection with a claim shall be prepared on a medical report form supplied by the Office or in a manner containing substantially the same information. Any such report shall include the following information and test results:

(1) The miner's medical and employment history;

(2) All manifestations of chronic respiratory disease;

(3) Any pertinent findings not specifically listed on the form;

(4) If heart disease secondary to lung disease is found, all symptoms and significant findings;

(5) The results of a chest X-ray conducted and interpreted as required by § 718.102; and

(6) The results of a pulmonary function test conducted and reported as required by § 718.103. If the miner is physically unable to perform a pulmonary function test or if the test is medically contraindicated, in the absence of evidence establishing total disability pursuant to § 718.304, the report must be based on other medically acceptable clinical and laboratory diagnostic techniques, such as a blood gas study.

(b) In addition to the requirements of paragraph (a) of this section, a report of physical examination may be based on any other procedures such as electrocardiogram, blood-gas studies conducted and reported as required by § 718.105, and other blood analyses which, in the physician's opinion, aid in his or her evaluation of the miner.

(c) In the case of a deceased miner, a report prepared by a physician who is unavailable, which fails to meet the criteria of paragraph (a), may be given appropriate consideration and weight by the adjudicator in light of all relevant

evidence provided no report which does comply with this section is available.

(d) *Treating physician.* The adjudication officer may give the medical opinion of the miner's treating physician controlling weight in weighing the medical evidence of record relevant to whether the miner suffers, or suffered, from pneumoconiosis, whether the pneumoconiosis arose out of coal mine employment, and whether the miner is, or was, totally disabled by pneumoconiosis or died due to pneumoconiosis. The adjudication officer shall take into consideration the following factors in weighing the opinion of a treating physician:

(1) *Nature of relationship.* The opinion of a physician who has treated the miner for respiratory or pulmonary conditions is entitled to more weight than a physician who has treated the miner for non-respiratory conditions;

(2) *Duration of relationship.* The length of the treatment relationship demonstrates whether the physician has observed the miner long enough to obtain a superior understanding of his or her condition;

(3) *Frequency of treatment.* The frequency of physician-patient visits demonstrates whether the physician has observed the miner often enough to obtain a superior understanding of his or her condition; and

(4) *Extent of treatment.* The types of testing and examinations conducted during the treatment relationship demonstrate whether the physician has obtained superior and relevant information concerning the miner's condition.

(5) In the absence of contrary probative evidence, the adjudication officer shall accept the statement of a physician with regard to the factors listed in paragraphs (d)(1) through (4) of this section. Whether controlling weight is given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.

§ 718.105 Arterial blood-gas studies.

(a) Blood-gas studies are performed to detect an impairment in the process of alveolar gas exchange. This defect will manifest itself primarily as a fall in arterial oxygen tension either at rest or during exercise. No blood-gas study shall be performed if medically contraindicated.

(b) A blood-gas study shall initially be administered at rest and in a sitting position. If the results of the blood-gas test at rest do not satisfy the requirements of Appendix C to this part, an exercise blood-gas test shall be offered to the miner unless medically contraindicated. If an exercise blood-gas test is administered, blood shall be drawn during exercise.

(c) Any report of a blood-gas study submitted in connection with a claim shall specify:

(1) Date and time of test;

(2) Altitude and barometric pressure at which the test was conducted;

(3) Name and DOL claim number of the claimant;

(4) Name of technician;

(5) Name and signature of physician supervising the study;

(6) The recorded values for PCO2, PO2, and PH, which have been collected simultaneously (specify values at rest and, if performed, during exercise);

(7) Duration and type of exercise;

(8) Pulse rate at the time the blood sample was drawn;

(9) Time between drawing of sample and analysis of sample; and

(10) Whether equipment was calibrated before and after each test.

(d) If one or more blood-gas studies producing results which meet the appropriate table in Appendix C is administered during a hospitalization which ends in the miner's death, then any such study must be accompanied by a physician's report establishing that the test results were produced by a chronic respiratory or pulmonary condition. Failure to produce such a report will prevent reliance on the blood-gas study as evidence that the miner was totally disabled at death.

§ 718.106 Autopsy; biopsy.

(a) A report of an autopsy or biopsy submitted in connection with a claim shall include a detailed gross macroscopic and microscopic description of the lungs or visualized portion of a lung. If a surgical procedure has been performed to obtain a portion of a lung, the evidence shall include a copy of the surgical note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, a complete copy of the autopsy report shall be submitted to the Office.

(b) In the case of a miner who died prior to March 31, 1980, an autopsy or biopsy report shall be considered even when the report does not substantially comply with the requirements of this section. A noncomplying report concerning a miner who died prior to March 31, 1980, shall be accorded the appropriate weight in light of all relevant evidence.

(c) A negative biopsy is not conclusive evidence that the miner does not have pneumoconiosis. However, where positive findings are obtained on biopsy, the results will constitute evidence of the presence of pneumoconiosis.

§ 718.107 Other medical evidence.

(a) The results of any medically acceptable test or procedure reported by a physician and not addressed in this subpart, which tends to demonstrate the presence or absence of pneumoconiosis, the sequelae of pneumoconiosis or a respiratory or pulmonary impairment, may be submitted in connection with a claim and shall be given appropriate consideration.

(b) The party submitting the test or procedure pursuant to this section bears the burden to demonstrate that the test or procedure is medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits.

Subpart C—Determining Entitlement to Benefits

§ 718.201 Definition of pneumoconiosis.

(a) For the purpose of the Act, ''pneumoconiosis'' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. This definition includes both medical, or ''clinical'', pneumoconiosis and statutory, or ''legal'', pneumoconiosis.

(1) *Clinical pneumoconiosis.* ''Clinical pneumoconiosis'' consists of those diseases, recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

(2) *Legal pneumoconiosis.* ''Legal pneumoconiosis'' includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.

(b) For purposes of this section, a disease ''arising out of coal mine employment'' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated

by, dust exposure in coal mine employment.

(c) For purposes of this definition, ''pneumoconiosis'' is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure.

§ 718.202 Determining the existence of pneumoconiosis.

(a) A finding of the existence of pneumoconiosis may be made as follows:

(1) A chest X-ray conducted and classified in accordance with § 718.102 may form the basis for a finding of the existence of pneumoconiosis. Except as otherwise provided in this section, where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration shall be given to the radiological qualifications of the physicians interpreting such X-rays.

(i) In all claims filed before January 1, 1982, where there is other evidence of pulmonary or respiratory impairment, a Board-certified or Board-eligible radiologist's interpretation of a chest X-ray shall be accepted by the Office if the X-ray is in compliance with the requirements of § 718.102 and if such X-ray has been taken by a radiologist or qualified radiologic technologist or technician and there is no evidence that the claim has been fraudulently represented. However, these limitations shall not apply to any claim filed on or after January 1, 1982.

(ii) The following definitions shall apply when making a finding in accordance with this paragraph.

(A) The term *other evidence* means medical tests such as blood-gas studies, pulmonary function studies or physical examinations or medical histories which establish the presence of a chronic pulmonary, respiratory or cardio-pulmonary condition, and in the case of a deceased miner, in the absence of medical evidence to the contrary, affidavits of persons with knowledge of the miner's physical condition.

(B) *Pulmonary or respiratory impairment* means inability of the human respiratory apparatus to perform in a normal manner one or more of the three components of respiration, namely, ventilation, perfusion and diffusion.

(C) *Board-certified* means certification in radiology or diagnostic roentgenology by the American Board of Radiology, Inc. or the American Osteopathic Association.

(D) *Board-eligible* means the successful completion of a formal accredited residency program in radiology or diagnostic roentgenology.

(E) *Certified 'B' reader* or *'B' reader* means a physician who has demonstrated proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO–U/C classification for interpreting chest roentgenograms for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of or by the Appalachian Laboratory for Occupational Safety and Health. See 42 CFR 37.51(b)(2).

(F) *Qualified radiologic technologist or technician* means an individual who is either certified as a registered technologist by the American Registry of Radiologic Technologists or licensed as a radiologic technologist by a state licensing board.

(2) A biopsy or autopsy conducted and reported in compliance with § 718.106 may be the basis for a finding of the existence of pneumoconiosis. A finding in an autopsy or biopsy of anthracotic pigmentation, however, shall not be sufficient, by itself, to establish the existence of pneumoconiosis. A report of autopsy shall be accepted unless there is evidence that the report is not accurate or that the claim has been fraudulently represented.

(3) If the presumptions described in §§ 718.304, 718.305 or § 718.306 are applicable, it shall be presumed that the miner is or was suffering from pneumoconiosis.

(4) A determination of the existence of pneumoconiosis may also be made if a physician, exercising sound medical judgment, notwithstanding a negative X-ray, finds that the miner suffers or suffered from pneumoconiosis as defined in § 718.201. Any such finding shall be based on objective medical evidence such as blood-gas studies, electrocardiograms, pulmonary function studies, physical performance tests, physical examination, and medical and work histories. Such a finding shall be supported by a reasoned medical opinion.

(b) No claim for benefits shall be denied solely on the basis of a negative chest X-ray.

(c) A determination of the existence of pneumoconiosis shall not be made solely on the basis of a living miner's statements or testimony. Nor shall such a determination be made upon a claim involving a deceased miner filed on or after January 1, 1982, solely based upon the affidavit(s) (or equivalent sworn testimony) of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

§ 718.203 Establishing relationship of pneumoconiosis to coal mine employment.

(a) In order for a claimant to be found eligible for benefits under the Act, it must be determined that the miner's pneumoconiosis arose at least in part out of coal mine employment. The provisions in this section set forth the criteria to be applied in making such a determination.

(b) If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment.

(c) If a miner who is suffering or suffered from pneumoconiosis was employed less than ten years in the nation's coal mines, it shall be determined that such pneumoconiosis arose out of that employment only if competent evidence establishes such a relationship.

§ 718.204 Total disability and disability causation defined; criteria for determining total disability and total disability due to pneumoconiosis.

(a) *General.* Benefits are provided under the Act for or on behalf of miners who are totally disabled due to pneumoconiosis, or who were totally disabled due to pneumoconiosis at the time of death. For purposes of this section, any nonpulmonary or nonrespiratory condition or disease, which causes an independent disability unrelated to the miner's pulmonary or respiratory disability, shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis. If, however, a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis.

(b)(1) *Total disability defined.* A miner shall be considered totally disabled if the irrebuttable presumption described in § 718.304 applies. If that presumption does not apply, a miner shall be considered totally disabled if the miner has a pulmonary or respiratory impairment which, standing alone, prevents or prevented the miner:

(i) From performing his or her usual coal mine work; and

(ii) From engaging in gainful employment in the immediate area of his or her residence requiring the skills or abilities comparable to those of any employment in a mine or mines in which he or she previously engaged

with some regularity over a substantial period of time.

(2) *Medical criteria.* In the absence of contrary probative evidence, evidence which meets the standards of either paragraphs (b)(2)(i), (ii), (iii), or (iv) of this section shall establish a miner's total disability:

(i) Pulmonary function tests showing values equal to or less than those listed in Table B1 (Males) or Table B2 (Females) in Appendix B to this part for an individual of the miner's age, sex, and height for the FEV1 test; if, in addition, such tests also reveal the values specified in either paragraph (b)(2)(i)(A) or (B) or (C) of this section:

(A) Values equal to or less than those listed in Table B3 (Males) or Table B4 (Females) in Appendix B of this part, for an individual of the miner's age, sex, and height for the FVC test, or

(B) Values equal to or less than those listed in Table B5 (Males) or Table B6 (Females) in Appendix B to this part, for an individual of the miner's age, sex, and height for the MVV test, or

(C) A percentage of 55 or less when the results of the FEV1 test are divided by the results of the FVC test (FEV1/FVC equal to or less than 55%), or

(ii) Arterial blood-gas tests show the values listed in Appendix C to this part, or

(iii) The miner has pneumoconiosis and has been shown by the medical evidence to be suffering from cor pulmonale with right-sided congestive heart failure, or

(iv) Where total disability cannot be shown under paragraphs (b)(2)(i), (ii), or (iii) of this section, or where pulmonary function tests and/or blood gas studies are medically contraindicated, total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in employment as described in paragraph (b)(1) of this section.

(c)(1) *Total disability due to pneumoconiosis defined.* A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in § 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a ''substantially contributing cause'' of the miner's disability if it:

(i) Has an adverse effect on the miner's respiratory or pulmonary condition; or

(ii) Worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

(2) Except as provided in § 718.305 and paragraph (b)(2)(iii) of this section, proof that the miner suffers or suffered from a totally disabling respiratory or pulmonary impairment as defined in paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iv) and (d) of this section shall not, by itself, be sufficient to establish that the miner's impairment is or was due to pneumoconiosis. Except as provided in paragraph (d), the cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical report.

(d) *Lay evidence.* In establishing total disability, lay evidence may be used in the following cases:

(1) In a case involving a deceased miner in which the claim was filed prior to January 1, 1982, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total (or under § 718.306 partial) disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition.

(2) In a case involving a survivor's claim filed on or after January 1, 1982, but prior to June 30, 1982, which is subject to § 718.306, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total or partial disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition; however, such a determination shall not be based solely upon the affidavits or testimony of the claimant and/or his or her dependents who would be eligible for augmentation of the claimant's benefits if the claim were approved.

(3) In a case involving a deceased miner whose claim was filed on or after January 1, 1982, affidavits (or equivalent sworn testimony) from persons knowledgeable of the miner's physical condition shall be sufficient to establish total disability due to pneumoconiosis if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition; however, such a determination shall not be based solely upon the affidavits or testimony of any person who would be eligible for benefits (including augmented benefits) if the claim were approved.

(4) Statements made before death by a deceased miner about his or her physical condition are relevant and shall be considered in making a determination as to whether the miner was totally disabled at the time of death.

(5) In the case of a living miner's claim, a finding of total disability due to pneumoconiosis shall not be made solely on the miner's statements or testimony.

(e) In determining total disability to perform usual coal mine work, the following shall apply in evaluating the miner's employment activities:

(1) In the case of a deceased miner, employment in a mine at the time of death shall not be conclusive evidence that the miner was not totally disabled. To disprove total disability, it must be shown that at the time the miner died, there were no changed circumstances of employment indicative of his or her reduced ability to perform his or her usual coal mine work.

(2) In the case of a living miner, proof of current employment in a coal mine shall not be conclusive evidence that the miner is not totally disabled unless it can be shown that there are no changed circumstances of employment indicative of his or her reduced ability to perform his or her usual coal mine work.

(3) Changed circumstances of employment indicative of a miner's reduced ability to perform his or her usual coal mine work may include but are not limited to:

(i) The miner's reduced ability to perform his or her customary duties without help; or

(ii) The miner's reduced ability to perform his or her customary duties at his or her usual levels of rapidity, continuity or efficiency; or

(iii) The miner's transfer by request or assignment to less vigorous duties or to duties in a less dusty part of the mine.

§ 718.205 Death due to pneumoconiosis.

(a) Benefits are provided to eligible survivors of a miner whose death was due to pneumoconiosis. In order to receive benefits, the claimant must prove that:

(1) The miner had pneumoconiosis (see § 718.202);

(2) The miner's pneumoconiosis arose out of coal mine employment (see § 718.203); and

(3) The miner's death was due to pneumoconiosis as provided by this section.

(b) For the purpose of adjudicating survivors' claims filed prior to January 1, 1982, death will be considered due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence established that the miner's death was due to pneumoconiosis, or

(2) Where death was due to multiple causes including pneumoconiosis and it is not medically feasible to distinguish which disease caused death or the extent to which pneumoconiosis contributed to the cause of death, or

(3) Where the presumption set forth at § 718.304 is applicable, or

(4) Where either of the presumptions set forth at § 718.303 or § 718.305 is applicable and has not been rebutted.

(5) Where the cause of death is significantly related to or aggravated by pneumoconiosis.

(c) For the purpose of adjudicating survivors' claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at § 718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(5) Pneumoconiosis is a ''substantially contributing cause'' of a miner's death if it hastens the miner's death.

(d) To minimize the hardships to potentially entitled survivors due to the disruption of benefits upon the miner's death, survivors' claims filed on or after January 1, 1982, shall be adjudicated on an expedited basis in accordance with the following procedures. The initial burden is upon the claimant, with the assistance of the district director, to develop evidence which meets the requirements of paragraph (c) of this section. Where the initial medical evidence appears to establish that death was due to pneumoconiosis, the survivor will receive benefits unless the weight of the evidence as subsequently developed by the Department or the responsible operator establishes that the miner's death was not due to pneumoconiosis as defined in paragraph (c). However, no such benefits shall be found payable before the party responsible for the payment of such benefits shall have had a reasonable opportunity for the development of rebuttal evidence. See § 725.414 concerning the operator's opportunity to develop evidence prior to an initial determination.

§ 718.206 Effect of findings by persons or agencies.

Decisions, statements, reports, opinions, or the like, of agencies, organizations, physicians or other individuals, about the existence, cause, and extent of a miner's disability, or the cause of a miner's death, are admissible. If properly submitted, such evidence shall be considered and given the weight to which it is entitled as evidence under all the facts before the adjudication officer in the claim.

Subpart D—Presumptions Applicable to Eligibility Determinations

§ 718.301 Establishing length of employment as a miner.

The presumptions set forth in §§ 718.302, 718.303, 718.305 and 718.306 apply only if a miner worked in one or more coal mines for the number of years required to invoke the presumption. The length of the miner's coal mine work history must be computed as provided by 20 CFR 725.101(a)(32).

§ 718.302 Relationship of pneumoconiosis to coal mine employment.

If a miner who is suffering or suffered from pneumoconiosis was employed for ten years or more in one or more coal mines, there shall be a rebuttable presumption that the pneumoconiosis arose out of such employment. (See § 718.203.)

§ 718.303 Death from a respirable disease.

(a)(1) If a deceased miner was employed for ten or more years in one or more coal mines and died from a respirable disease, there shall be a rebuttable presumption that his or her death was due to pneumoconiosis.

(2) Under this presumption, death shall be found due to a respirable disease in any case in which the evidence establishes that death was due to multiple causes, including a respirable disease, and it is not medically feasible to distinguish which disease caused death or the extent to which the respirable disease contributed to the cause of death.

(b) The presumption of paragraph (a) of this section may be rebutted by a showing that the deceased miner did not have pneumoconiosis, that his or her death was not due to pneumoconiosis or that pneumoconiosis did not contribute to his or her death.

(c) This section is not applicable to any claim filed on or after January 1, 1982.

§ 718.304 Irrebuttable presumption of total disability or death due to pneumoconiosis.

There is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis, that a miner's death was due to pneumoconiosis or that a miner was totally disabled due to pneumoconiosis at the time of death, if such miner is suffering or suffered from a chronic dust disease of the lung which:

(a) When diagnosed by chest X-ray (see § 718.202 concerning the standards for X-rays and the effect of interpretations of X-rays by physicians) yields one or more large opacities (greater than 1 centimeter in diameter) and would be classified in Category A, B, or C in:

(1) The ILO–U/C International Classification of Radiographs of the Pneumoconioses, 1971, or subsequent revisions thereto; or

(2) The International Classification of the Radiographs of the Pneumoconioses of the International Labour Office, Extended Classification (1968) (which may be referred to as the ''ILO Classification (1968)''); or

(3) The Classification of the Pneumoconioses of the Union Internationale Contra Cancer/Cincinnati (1968) (which may be referred to as the ''UICC/Cincinnati (1968) Classification''); or

(b) When diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) When diagnosed by means other than those specified in paragraphs (a) and (b) of this section, would be a condition which could reasonably be expected to yield the results described in paragraph (a) or (b) of this section had diagnosis been made as therein described: *Provided, however,* That any diagnosis made under this paragraph shall accord with acceptable medical procedures.

§ 718.305 Presumption of pneumoconiosis.

(a) If a miner was employed for fifteen years or more in one or more underground coal mines, and if there is a chest X-ray submitted in connection with such miner's or his or her survivor's claim and it is interpreted as negative with respect to the requirements of § 718.304, and if other evidence demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then there shall be a rebuttable presumption that such miner is totally disabled due to pneumoconiosis, that such miner's death was due to pneumoconiosis, or that at the time of death such miner was totally disabled by pneumoconiosis. In

the case of a living miner's claim, a spouse's affidavit or testimony may not be used by itself to establish the applicability of the presumption. The Secretary shall not apply all or a portion of the requirement of this paragraph that the miner work in an underground mine where it is determined that conditions of the miner's employment in a coal mine were substantially similar to conditions in an underground mine. The presumption may be rebutted only by establishing that the miner does not, or did not, have pneumoconiosis, or that his or her respiratory or pulmonary impairment did not arise out of, or in connection with, employment in a coal mine.

(b) In the case of a deceased miner, where there is no medical or other relevant evidence, affidavits of persons having knowledge of the miner's condition shall be considered to be sufficient to establish the existence of a totally disabling respiratory or pulmonary impairment for purposes of this section.

(c) The determination of the existence of a totally disabling respiratory or pulmonary impairment, for purposes of applying the presumption described in this section, shall be made in accordance with § 718.204.

(d) Where the cause of death or total disability did not arise in whole or in part out of dust exposure in the miner's coal mine employment or the evidence establishes that the miner does not or did not have pneumoconiosis, the presumption will be considered rebutted. However, in no case shall the presumption be considered rebutted on the basis of evidence demonstrating the existence of a totally disabling obstructive respiratory or pulmonary disease of unknown origin.

(e) This section is not applicable to any claim filed on or after January 1, 1982.

§ 718.306 Presumption of entitlement applicable to certain death claims.

(a) In the case of a miner who died on or before March 1, 1978, who was employed for 25 or more years in one or more coal mines prior to June 30, 1971, the eligible survivors of such miner whose claims have been filed prior to June 30, 1982, shall be entitled to the payment of benefits, unless it is established that at the time of death such miner was not partially or totally disabled due to pneumoconiosis. Eligible survivors shall, upon request, furnish such evidence as is available with respect to the health of the miner at the time of death, and the nature and duration of the miner's coal mine employment.

(b) For the purpose of this section, a miner will be considered to have been ''partially disabled'' if he or she had reduced ability to engage in work as defined in § 718.204(b).

(c) In order to rebut this presumption the evidence must demonstrate that the miner's ability to perform work as defined in § 718.204(b) was not reduced at the time of his or her death or that the miner did not have pneumoconiosis.

(d) None of the following items, by itself, shall be sufficient to rebut the presumption:

(1) Evidence that a deceased miner was employed in a coal mine at the time of death;

(2) Evidence pertaining to a deceased miner's level of earnings prior to death;

(3) A chest X-ray interpreted as negative for the existence of pneumoconiosis;

(4) A death certificate which makes no mention of pneumoconiosis.

Appendix A to Part 718—Standards for Administration and Interpretation of Chest Roentgenograms (X-rays)

The following standards are established in accordance with sections 402(f)(1)(D) and 413(b) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health. These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting X-rays and that the best available medical evidence will be submitted in connection with a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be assigned to the physician's report of an X-ray.

(1) Every chest roentgenogram shall be a single postero-anterior projection at full inspiration on a 14 by 17 inch film. Additional chest films or views shall be obtained if they are necessary for clarification and classification. The film and cassette shall be capable of being positioned both vertically and horizontally so that the chest roentgenogram will include both apices and costophrenic angles. If a miner is too large to permit the above requirements, then a projection with minimum loss of costophrenic angle shall be made.

(2) Miners shall be disrobed from the waist up at the time the roentgenogram is given. The facility shall provide a dressing area and, for those miners who wish to use one, the facility shall provide a clean gown. Facilities shall be heated to a comfortable temperature.

(3) Roentgenograms shall be made only with a diagnostic X-ray machine having a rotating anode tube with a maximum of a 2 mm source (focal spot).

(4) Except as provided in paragraph (5), roentgenograms shall be made with units having generators which comply with the following: (a) the generators of existing roentgenographic units acquired by the examining facility prior to July 27, 1973, shall have a minimum rating of 200 mA at 100 kVp; (b) generators of units acquired subsequent to that date shall have a minimum rating of 300 mA at 125 kVp.

Note: A generator with a rating of 150 kVp is recommended.

(5) Roentgenograms made with battery-powered mobile or portable equipment shall be made with units having a minimum rating of 100 mA at 110 kVp at 500 Hz, or 200 mA at 110 kVp at 60 Hz.

(6) Capacitor discharge, and field emission units may be used.

(7) Roentgenograms shall be given only with equipment having a beam-limiting device which does not cause large unexposed boundaries. The use of such a device shall be discernible from an examination of the roentgenogram.

(8) To insure high quality chest roentgenograms:

(i) The maximum exposure time shall not exceed 1/20 of a second except that with single phase units with a rating less than 300 mA at 125 kVp and subjects with chest over 28 cm postero-anterior, the exposure may be increased to not more than 1/10 of a second;

(ii) The source or focal spot to film distance shall be at least 6 feet;

(iii) Only medium-speed film and medium-speed intensifying screens shall be used;

(iv) Film-screen contact shall be maintained and verified at 6-month or shorter intervals;

(v) Intensifying screens shall be inspected at least once a month and cleaned when necessary by the method recommended by the manufacturer;

(vi) All intensifying screens in a cassette shall be of the same type and made by the same manufacturer;

(vii) When using over 90 kV, a suitable grid or other means of reducing scattered radiation shall be used;

(viii) The geometry of the radiographic system shall insure that the central axis (ray) of the primary beam is perpendicular to the plane of the film surface and impinges on the center of the film.

(9) Radiographic processing:

(i) Either automatic or manual film processing is acceptable. A constant time-temperature technique shall be meticulously employed for manual processing.

(ii) If mineral or other impurities in the processing water introduce difficulty in obtaining a high-quality roentgenogram, a suitable filter or purification system shall be used.

(10) Before the miner is advised that the examination is concluded, the roentgenogram shall be processed and inspected and accepted for quality by the physician, or if the physician is not available, acceptance may be made by the radiologic technologist. In a case of a substandard roentgenogram, another shall be made immediately.

(11) An electric power supply shall be used which complies with the voltage, current, and regulation specified by the manufacturer of the machine.

(12) A densitometric test object may be required on each roentgenogram for an objective evaluation of film quality at the discretion of the Department of Labor.

(13) Each roentgenogram made under this Appendix shall be permanently and legibly

marked with the name and address of the facility at which it is made, the miner's DOL claim number, the date of the roentgenogram, and left and right side of film. No other identifying markings shall be recorded on the roentgenogram.

Appendix B to Part 718—Standards for Administration and Interpretation of Pulmonary Function Tests—Tables B1, B2, B3, B4, B5, B6

The following standards are established in accordance with section 402(f)(1)(D) of the Act. They were developed in consultation with the National Institute for Occupational Safety and Health (NIOSH). These standards are promulgated for the guidance of physicians and medical technicians to insure that uniform procedures are used in administering and interpreting ventilatory function tests and that the best available medical evidence will be submitted in support of a claim for black lung benefits. If it is established that one or more standards have not been met, the claims adjudicator may consider such fact in determining the evidentiary weight to be given to the results of the ventilatory function tests.

(1) Instruments to be used for the administration of pulmonary function tests shall be approved by NIOSH and shall conform to the following criteria:

(i) The instrument shall be accurate within +/−50 ml or within +/−3 percent of reading, whichever is greater.

(ii) The instrument shall be capable of measuring vital capacity from 0 to 7 liters BTPS.

(iii) The instrument shall have a low inertia and offer low resistance to airflow such that the resistance to airflow at 12 liters per second must be less than 1.5 cm H_2O/liter/sec.

(iv) The instrument or user of the instrument must have a means of correcting volumes to body temperature saturated with water vapor (BTPS) under conditions of varying ambient spirometer temperatures and barometric pressures.

(v) The instrument used shall provide a tracing of flow versus volume (flow-volume loop) which displays the entire maximum inspiration and the entire maximum forced expiration. The instrument shall, in addition, provide tracings of the volume versus time tracing (spirogram) derived electronically from the flow-volume loop. Tracings are necessary to determine whether maximum inspiratory and expiratory efforts have been obtained during the FVC maneuver. If maximum voluntary ventilation is measured, the tracing shall record the individual breaths volumes versus time.

(vi) The instrument shall be capable of accumulating volume for a minimum of 10 seconds after the onset of exhalation.

(vii) The instrument must be capable of being calibrated in the field with respect to the FEV1. The volume calibration shall be accomplished with a 3 L calibrating syringe and should agree to within 1 percent of a 3 L calibrating volume. The linearity of the instrument must be documented by a record of volume calibrations at three different flow rates of approximately 3 L/6 sec, 3 L/3 sec, and 3 L/sec.

(viii) For measuring maximum voluntary ventilation (MVV) the instrument shall have a response which is flat within +/−10 percent up to 4 Hz at flow rates up to 12 liters per second over the volume range.

(ix) The spirogram shall be recorded at a speed of at least 20 mm/sec and a volume excursion of at least 10mm/L. Calculation of the FEV1 from the flow-volume loop is not acceptable. Original tracings shall be submitted.

(2) The administration of pulmonary function tests shall conform to the following criteria:

(i) Tests shall not be performed during or soon after an acute respiratory illness.

(ii) For the FEV1 and FVC, use of a nose clip is required. The procedures shall be explained in simple terms to the patient who shall be instructed to loosen any tight clothing and stand in front of the apparatus. The subject may sit, or stand, but care should be taken on repeat testing that the same position be used. Particular attention shall be given to insure that the chin is slightly elevated with the neck slightly extended. The subject shall be instructed to expire completely, momentarily hold his breath, place the mouthpiece in his mouth and close the mouth firmly about the mouthpiece to ensure no air leak. The subject will then make a maximum inspiration from the instrument and when maximum inspiration has been attained, without interruption, blow as hard, fast and completely as possible for at least 7 seconds or until a plateau has been attained in the volume-time curve with no detectable change in the expired volume during the last 2 seconds of maximal expiratory effort. A minimum of three flow-volume loops and derived spirometric tracings shall be carried out. The patient shall be observed throughout the study for compliance with instructions. Inspiration and expiration shall be checked visually for reproducibility. The effort shall be judged unacceptable when the patient:

(A) Has not reached full inspiration preceding the forced expiration; or

(B) Has not used maximal effort during the entire forced expiration; or

(C) Has not continued the expiration for at least 7 sec. or until an obvious plateau for at least 2 sec. in the volume-time curve has occurred; or

(D) Has coughed or closed his glottis; or

(E) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(F) Has an unsatisfactory start of expiration, one characterized by excessive hesitation (or false starts). Peak flow should be attained at the start of expiration and the volume-time tracing (spirogram) should have a smooth contour revealing gradually decreasing flow throughout expiration; or

(G) Has an excessive variability between the three acceptable curves. The variation between the two largest FEV1's of the three acceptable tracings should not exceed 5 percent of the largest FEV1 or 100 ml, whichever is greater.

(iii) For the MVV, the subject shall be instructed before beginning the test that he or she will be asked to breathe as deeply and as rapidly as possible for approximately 15 seconds. The test shall be performed with the subject in the standing position, if possible. Care shall be taken on repeat testing that the same position be used. The subject shall breathe normally into the mouthpiece of the apparatus for 10 to 15 seconds to become accustomed to the system. The subject shall then be instructed to breathe as deeply and as rapidly as possible, and shall be continually encouraged during the remainder of the maneuver. Subject shall continue the maneuver for 15 seconds. At least 5 minutes of rest shall be allowed between maneuvers. At least three MVV's shall be carried out. (But see § 718.103(b).) During the maneuvers the patient shall be observed for compliance with instructions. The effort shall be judged unacceptable when the patient:

(A) Has not maintained consistent effort for at least 12 to 15 seconds; or

(B) Has coughed or closed his glottis; or

(C) Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.); or

(D) Has an excessive variability between the three acceptable curves. The variation between the two largest MVV's of the three satisfactory tracings shall not exceed 10 percent.

(iv) A calibration check shall be performed on the instrument each day before use, using a volume source of at least three liters, accurate to within +/−1 percent of full scale. The volume calibration shall be performed in accordance with the method described in paragraph (1)(vii) of this Appendix. Accuracy of the time measurement used in determining the FEV1 shall be checked using the manufacturer's stated procedure and shall be within +/−3 percent of actual. The procedure described in the Appendix shall be performed as well as any other procedures suggested by the manufacturer of the spirometer being used.

(v)(A) The first step in evaluating a spirogram for the FVC and FEV1 shall be to determine whether or not the patient has performed the test properly or as described in paragraph (2)(ii) of this Appendix. The largest recorded FVC and FEV1, corrected to BTPS, shall be used in the analysis.

(B) Only MVV maneuvers which demonstrate consistent effort for at least 12 seconds shall be considered acceptable. The largest accumulated volume for a 12 second period corrected to BTPS and multiplied by five or the largest accumulated volume for a 15 second period corrected to BTPS and multiplied by four is to be reported as the MVV.

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Appendix C to Part 718—Blood-Gas Tables

The following tables set forth the values to be applied in determining whether total disability may be established in accordance with §§ 718.204(b)(2)(ii) and 718.305(a) and (c). The values contained in the tables are indicative of impairment only. They do not establish a degree of disability except as provided in §§ 718.204(b)(2)(ii) and 718.305

(a) and (c), nor do they establish standards for determining normal alveolar gas exchange values for any particular individual. Tests shall not be performed during or soon after an acute respiratory or cardiac illness.

A miner who meets the following medical specifications shall be found to be totally disabled, in the absence of rebutting evidence, if the values specified in one of the following tables are met:

(1) For arterial blood-gas studies performed at test sites up to 2,999 feet above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	75
26	74
27	73
28	72
29	71
30	70
31	69
32	68
33	67
34	66
35	65
36	64
37	63
38	62
39	61
40–49	60
Above 50	[1]

[1] Any value.

(2) For arterial blood-gas studies performed at test sites 3,000 to 5,999 feet above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	70
26	69
27	68
28	67
29	66
30	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40–49	55
Above 50	[2]

[2] Any value.

(3) For arterial blood-gas studies performed at test sites 6,000 feet or more above sea level:

Arterial pCO2 (mm Hg)	Arterial pO2 equal to or less than (mm Hg)
25 or below	65
26	64
27	63
28	62
29	61
30	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40–49	50
Above 50	[3]

[3] Any value.

3. Part 722 is proposed to be revised as follows.

PART 722—CRITERIA FOR DETERMINING WHETHER STATE WORKERS' COMPENSATION LAWS PROVIDE ADEQUATE COVERAGE FOR PNEUMOCONIOSIS AND LISTING OF APPROVED STATE LAWS

722.1 Purpose.
722.2 Definitions.
722.3 General criteria; inclusion in and removal from the Secretary's list.
722.4 The Secretary's list.

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 921, 932, 936; 33 U.S.C. 901 et seq., Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

§ 722.1 Purpose.

Section 421 of the Black Lung Benefits Act provides that a claim for benefits based on the total disability or death of a coal miner due to pneumoconiosis must be filed under a State workers' compensation law where such law provides adequate coverage for pneumoconiosis. A State workers' compensation law may be deemed to provide adequate coverage only when it is included on a list of such laws maintained by the Secretary. The purpose of this part is to set forth the procedures and criteria for inclusion on that list, and to provide that list.

§ 722.2 Definitions.

(a) The definitions and use of terms contained in subpart A of part 725 of this title shall be applicable to this part.

(b) For purposes of this part, the following definitions apply:

(1) *State agency* means, with respect to any State, the agency, department or officer designated by the workers' compensation law of the State to administer such law. In any case in which more than one agency participates in the administration of a State workers' compensation law, the Governor of the State may designate which of the agencies shall be the State agency for purposes of this part.

(2) *The Secretary's list* means the list published by the Secretary of Labor in the **Federal Register** (see § 722.4) containing the names of those States which have in effect a workers' compensation law which provides adequate coverage for death or total disability due to pneumoconiosis.

§ 722.3 General criteria; inclusion in and removal from the Secretary's list.

(a) The Governor of any State or any duly authorized State agency may, at any time, request that the Secretary include such State's workers' compensation law on his list of those State workers' compensation laws providing adequate coverage for total disability or death due to pneumoconiosis. Each such request shall include a copy of the State workers' compensation law and any other pertinent State laws, a copy of any regulations, either proposed or promulgated, implementing such laws; and a copy of any administrative or court decision interpreting such laws or regulations, or, if such decisions are published in a readily available report, a citation to such decision.

(b) Upon receipt of a request that a State be included on the Secretary's list, the Secretary shall include the State on the list if he finds that the State's workers' compensation law guarantees the payment of monthly and medical benefits to all persons who would be entitled to such benefits under the Black Lung Benefits Act at the time of the request, at a rate no less than that provided by the Black Lung Benefits Act. The criteria used by the Secretary in making such determination shall include, but shall not be limited to, the criteria set forth in section 421(b)(2) of the Act.

(c) The Secretary may require each State included on the list to submit reports detailing the extent to which the State's workers' compensation laws, as reflected by statute, regulation, or administrative or court decision, continues to meet the requirements of paragraph (b) of this section. If the Secretary concludes that the State's workers' compensation law does not provide adequate coverage at any time, either because of changes to the State workers' compensation law or the Black Lung Benefits Act, he shall remove the State from the Secretary's list after providing the State with notice of such removal and an opportunity to be heard.

§ 722.4 The Secretary's list.

(a) The Secretary has determined that publication of the Secretary's list in the Code of Federal Regulations is appropriate. Accordingly, in addition to its publication in the **Federal Register** as required by section 421 of the Black Lung Benefits Act, the list shall also appear in paragraph (b) of this section.

(b) Upon review of all requests filed with the Secretary under section 421 of the Black Lung Benefits Act and this part, and examination of the workers' compensation laws of the States making such requests, the Secretary has determined that the workers' compensation law of each of the following listed States, for the period from the date shown in the list until such date as the Secretary may make a contrary determination, provides adequate coverage for pneumoconiosis.

State Period commencing

None

4. Part 725 is proposed to be revised as follows:

PART 725—CLAIMS FOR BENEFITS UNDER PART C OF TITLE IV OF THE FEDERAL MINE SAFETY AND HEALTH ACT, AS AMENDED

Subpart A—General

Sec.

725.1 Statutory provisions.
725.2 Purpose and applicability of this part.
725.3 Contents of this part.
725.4 Applicability of other parts in this title.
725.101 Definitions and use of terms.
725.102 Disclosure of program information.
725.103 Burden of proof.

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

725.201 Who is entitled to benefits; contents of this subpart.

Conditions and Duration of Entitlement: Miner

725.202 Miner defined; conditions of entitlement, miner.
725.203 Duration and cessation of entitlement, miner.

Conditions and Duration of Entitlement: Miner's Dependents (Augmented Benefits)

725.204 Determination of relationship; spouse.
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Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 921, 932, 936; 33 U.S.C. 901 et seq., 42 U.S.C. 405, Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

Subpart A—General

§ 725.1 Statutory provisions.

(a) *General.* Title IV of the Federal Mine Safety and Health Act of 1977, as amended by the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981 and the Black Lung Benefits Amendments of 1981, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of a miner who dies due to pneumoconiosis. For claims filed prior to January 1, 1982, certain survivors could receive benefits if the miner was totally (or for claims filed prior to June 30, 1982, in accordance with section 411(c)(5) of the Act, partially) disabled due to pneumoconiosis, or if the miner died due to pneumoconiosis.

(b) *Part B.* Part B of title IV of the Act provided that all claims filed between December 30, 1969, and June 30, 1973, are to be filed with, processed, and paid by the Secretary of Health, Education, and Welfare through the Social Security Administration; claims filed by the survivor of a miner before January 1, 1974, or within 6 months of the miner's death if death occurred before January 1, 1974, and claims filed by the survivor of a miner who was receiving benefits under part B of title IV of the Act at the time of death, if filed within 6 months of the miner's death, are also adjudicated and paid by the Social Security Administration.

(c) *Section 415.* Claims filed by a miner between July 1 and December 31, 1973, are adjudicated and paid under section 415. Section 415 provides that a claim filed between the appropriate dates shall be filed with and adjudicated by the Secretary of Labor under certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.). A claim approved under section 415 is paid under part B of title IV of the Act for periods of eligibility occurring between July 1 and December 31, 1973, by the Secretary of Labor and for periods of eligibility thereafter, is paid by a coal mine operator which is determined liable for the claim or the Black Lung Disability Trust Fund if no operator is identified or if the miner's last coal mine employment terminated prior to January 1, 1970. An operator which may be found liable for a section 415 claim is notified of the claim and allowed to participate fully in the adjudication of such claim. A claim filed under section 415 is for all purposes considered as if it were a part C claim (see paragraph (d) of this section) and the provisions of part C of title IV of the Act are fully applicable to a section 415 claim except as is otherwise provided in section 415.

(d) *Part C.* Claims filed by a miner or survivor on or after January 1, 1974, are filed, adjudicated, and paid under the provisions of part C of title IV of the Act. Part C requires that a claim filed on or after January 1, 1974, shall be filed under an applicable approved State workers' compensation law, or if no such law has been approved by the Secretary of Labor, the claim may be filed with the Secretary of Labor under section 422 of the Act. Claims filed with the Secretary of Labor under part C are

processed and adjudicated by the Secretary and paid by a coal mine operator. If the miner's last coal mine employment terminated before January 1, 1970, or if no responsible operator can be identified, benefits are paid by the Black Lung Disability Trust Fund. Claims adjudicated under part C are subject to certain incorporated provisions of the Longshoremen's and Harbor Workers' Compensation Act.

(e) *Section 435.* Section 435 of the Act affords each person who filed a claim for benefits under part B, section 415, or part C, and whose claim had been denied or was still pending as of March 1, 1978, the effective date of the Black Lung Benefits Reform Act of 1977, the right to have his or her claim reviewed on the basis of the 1977 amendments to the Act, and under certain circumstances to submit new evidence in support of the claim.

(f) *Changes made by the Black Lung Benefits Reform Act of 1977.* In addition to those changes which are reflected in paragraphs (a) through (e) of this section, the Black Lung Benefits Reform Act of 1977 contains a number of significant amendments to the Act's standards for determining eligibility for benefits. Among these are:

(1) A provision which clarifies the definition of ''pneumoconiosis'' to include any ''chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment'';

(2) A provision which defines ''miner'' to include any person who works or has worked in or around a coal mine or coal preparation facility, and in coal mine construction or coal transportation under certain circumstances;

(3) A provision which limits the denial of a claim solely on the basis of employment in a coal mine;

(4) A provision which authorizes the Secretary of Labor to establish standards and develop criteria for determining total disability or death due to pneumoconiosis with respect to a part C claim;

(5) A new presumption which requires the payment of benefits to the survivors of a miner who was employed for 25 or more years in the mines under certain conditions;

(6) Provisions relating to the treatment to be accorded a survivor's affidavit, certain X-ray interpretations, and certain autopsy reports in the development of a claim; and

(7) Other clarifying, procedural, and technical amendments.

(g) *Changes made by the Black Lung Benefits Revenue Act of 1977.* The Black Lung Benefits Revenue Act of 1977 established the Black Lung Disability Trust Fund which is financed by a specified tax imposed upon each ton of coal (except lignite) produced and sold or used in the United States after March 31, 1978. The Secretary of the Treasury is the managing trustee of the fund and benefits are paid from the fund upon the direction of the Secretary of Labor. The fund was made liable for the payment of all claims approved under section 415, part C and section 435 of the Act for all periods of eligibility occurring on or after January 1, 1974, with respect to claims where the miner's last coal mine employment terminated before January 1, 1970, or where individual liability can not be assessed against a coal mine operator due to bankruptcy, insolvency, or the like. The fund was also authorized to pay certain claims which a responsible operator has refused to pay within a reasonable time, and to seek reimbursement from such operator. The purpose of the fund and the Black Lung Benefits Revenue Act of 1977 was to insure that coal mine operators, or the coal industry, will fully bear the cost of black lung disease for the present time and in the future. The Black Lung Benefits Revenue Act of 1977 also contained other provisions relating to the fund and authorized a coal mine operator to establish its own trust fund for the payment of certain claims.

(h) *Changes made by the Black Lung Benefits Amendments of 1981.* In addition to the change reflected in paragraph (a) of this section, the Black Lung Benefits Amendments of 1981 made a number of significant changes in the Act's standards for determining eligibility for benefits and concerning the payment of such benefits. The following changes are all applicable to claims filed on or after January 1, 1982:

(1) The Secretary of Labor may re-read any X-ray submitted in support of a claim and may rely upon a second opinion concerning such an X-ray as a means of auditing the validity of the claim;

(2) The rebuttable presumption that the death of a miner with ten or more years employment in the coal mines, who died of a respirable disease, was due to pneumoconiosis is no longer applicable;

(3) The rebuttable presumption that the total disability of a miner with fifteen or more years employment in the coal mines, who has demonstrated a totally disabling respiratory or pulmonary impairment, is due to pneumoconiosis is no longer applicable;

(4) In the case of deceased miners, where no medical or other relevant evidence is available, only affidavits from persons not eligible to receive benefits as a result of the adjudication of the claim will be considered sufficient to establish entitlement to benefits;

(5) Unless the miner was found entitled to benefits as a result of a claim filed prior to January 1, 1982, benefits are payable on survivors' claims filed on and after January 1, 1982, only when the miner's death was due to pneumoconiosis;

(6) Benefits payable under this part are subject to an offset on account of excess earnings by the miner; and

(7) Other technical amendments.

(i) *Changes made by the Black Lung Benefits Revenue Act of 1981.* The Black Lung Benefits Revenue Act of 1981 temporarily doubles the amount of the tax upon coal until the fund shall have repaid all advances received from the United States Treasury and the interest on all such advances. The fund is also made liable for the payment of certain claims previously denied under the 1972 version of the Act and subsequently approved under section 435 and for the reimbursement of operators and insurers for benefits previously paid by them on such claims. With respect to claims filed on or after January 1, 1982, the fund's authorization for the payment of interim benefits is limited to the payment of prospective benefits only. These changes also define the rates of interest to be paid to and by the fund.

(j) *Longshoremen's Act provisions.* The adjudication of claims filed under sections 415, 422 and 435 of the Act is governed by various procedural and other provisions contained in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA), as amended from time to time, which are incorporated within the Act by sections 415 and 422. The incorporated LHWCA provisions are applicable under the Act except as is otherwise provided by the Act or as provided by regulations of the Secretary. Although occupational disease benefits are also payable under the LHWCA, the primary focus of the procedures set forth in that Act is upon a time definite of traumatic injury or death. Because of this and other significant differences between a black lung and longshore claim, it is determined, in accordance with the authority set forth in section 422 of the Act, that certain of the incorporated procedures prescribed by the LHWCA must be altered to fit the circumstances ordinarily confronted in the adjudication of a black lung claim. The changes made are based upon the Department's experience in processing black lung claims since July 1, 1973,

and all such changes are specified in this part or part 727 of this subchapter (see § 725.4(d)). No other departure from the incorporated provisions of the LHWCA is intended.

(k) *Social Security Act provisions.* Section 402 of the Act incorporates certain definitional provisions from the Social Security Act, 42 U.S.C. 301 et seq. Section 430 provides that the 1972, 1977 and 1981 amendments to part B of the Act shall also apply to part C ''to the extent appropriate.'' Sections 412 and 413 incorporate various provisions of the Social Security Act into part B of the Act. To the extent appropriate, these provisions also apply to part C. In certain cases, the Department has varied the terms of the Social Security Act provisions to accommodate the unique needs of the black lung benefits program. Parts of the Longshore and Harbor Workers' Compensation Act are also incorporated into part C. Where the incorporated provisions of the two acts are inconsistent, the Department has exercised its broad regulatory powers to choose the extent to which incorporation is appropriate.

§ 725.2 Purpose and applicability of this part.

(a) This part sets forth the procedures to be followed and standards to be applied in filing, processing, adjudicating, and paying claims filed under part C of title IV of the Act.

(b) This part applies to all claims filed under part C of title IV of the Act on or after August 18, 1978 and shall also apply to claims that were pending on August 18, 1978.

(c) The provisions of this part reflect revisions that became effective on [the effective date of the final rule]. This part applies to all claims filed, and all benefits payments made, after [the effective date of the final rule]. With the exception of the following sections, this part shall also apply to the adjudication of claims that were pending on [the effective date of the final rule]: §§ 725.309, 725.310, 725.351, 725.360, 725.406, 725.407, 725.408, 725.410, 725.411, 725.412, 725.413, 725.414, 725.415, 725.417, 725.418, 725.423, 725.454, 725.456, 725.457, 725.459, 725.491, 725.492, 725.493, 725.494, 725.495, 725.547. The version of those sections set forth in 20 CFR, parts 500 to end, edition revised as of April 1, 1996, apply to the adjudications of claims that were pending on [the effective date of the final rule]. For purposes of construing the provisions of this section, a claim shall be considered pending on [the effective date of the final rule] if it was not finally denied more than one year prior to that date.

§ 725.3 Contents of this part.

(a) This subpart describes the statutory provisions which relate to claims considered under this part, the purpose and scope of this part, definitions and usages of terms applicable to this part, and matters relating to the availability of information collected by the Department of Labor in connection with the processing of claims.

(b) Subpart B contains criteria for determining who may be found entitled to benefits under this part and other provisions relating to the conditions and duration of eligibility of a particular individual.

(c) Subpart C describes the procedures to be followed and action to be taken in connection with the filing of a claim under this part.

(d) Subpart D sets forth the duties and powers of the persons designated by the Secretary of Labor to adjudicate claims and provisions relating to the rights of parties and representatives of parties.

(e) Subpart E contains the procedures for developing evidence and adjudicating entitlement and liability issues by the district director.

(f) Subpart F describes the procedures to be followed if a hearing before the Office of Administrative Law Judges is required.

(g) Subpart G contains provisions governing the identification of a coal mine operator which may be liable for the payment of a claim.

(h) Subpart H contains provisions governing the payment of benefits with respect to an approved claim.

(i) Subpart I describes the statutory mechanisms provided for the enforcement of a coal mine operator's liability, sets forth the penalties which may be applied in the case of a defaulting coal mine operator, and describes the obligation of coal operators and their insurance carriers to file certain reports.

(j) Subpart J describes the right of certain beneficiaries to receive medical treatment benefits and vocational rehabilitation under the Act.

§ 725.4 Applicability of other parts in this title.

(a) *Part 718.* Part 718 of this subchapter, which contains the criteria and standards to be applied in determining whether a miner is or was totally disabled due to pneumoconiosis, or whether a miner died due to pneumoconiosis, shall be applicable to the determination of claims under this part. Claims filed after March 31, 1980, are subject to part 718 as promulgated by the Secretary in accordance with section 402(f)(1) of the Act on February 29, 1980 (see § 725.2(c)). The criteria contained in subpart C of part 727 of this subchapter are applicable in determining claims filed prior to April 1, 1980, under this part, and such criteria shall be applicable at all times with respect to claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977.

(b) *Parts 715, 717, and 720.* Pertinent and significant provisions of Parts 715, 717, and 720 of this subchapter (contained in 20 CFR, parts 500 to end, edition revised as of April 1, 1978), which established the procedures for the filing, processing, and payment of claims filed under section 415 of the Act, are included within this part as appropriate.

(c) *Part 726.* Part 726 of this subchapter, which sets forth the obligations imposed upon a coal operator to insure or self-insure its liability for the payment of benefits to certain eligible claimants, is applicable to this part as appropriate.

(d) *Part 727.* Part 727 of this subchapter, which governs the review, adjudication and payment of pending and denied claims under section 435 of the Act, is applicable with respect to such claims. The criteria contained in subpart C of part 727 for determining a claimant's eligibility for benefits are applicable under this part with respect to all claims filed before April 1, 1980, and to all claims filed under this part and under section 11 of the Black Lung Benefits Reform Act of 1977. Because the part 727 regulations affect an increasingly smaller number of claims, however, the Department has discontinued publication of the criteria in the Code of Federal Regulations. The part 727 criteria may be found at 43 FR 36818, Aug. 18, 1978 or 20 CFR, parts 500 to end, edition revised as of April 1, 1996.

(e) *Part 410.* Part 410 of this title, which sets forth provisions relating to a claim for black lung benefits under part B of title IV of the Act, is inapplicable to this part except as is provided in this part, or in part 718 of this subchapter.

§ 725.101 Definitions and use of terms.

(a) *Definitions.* For purposes of this subchapter, except where the content clearly indicates otherwise, the following definitions apply:

(1) The *Act* means the Federal Coal Mine Health and Safety Act, Public Law 91–173, 83 Stat. 742, 30 U.S.C. 801–960, as amended by the Black Lung Benefits Act of 1972, the Mine Safety and Health Act of 1977, the Black Lung Benefits Reform Act of 1977, the Black Lung Benefits Revenue Act of 1977, the Black Lung Benefits Revenue Act of 1981, and

the Black Lung Benefits Amendments of 1981.

(2) The *Longshoremen's Act* or *LHWCA* means the Longshoremen's and Harbor Workers' Compensation Act of March 4, 1927, c. 509, 44 Stat. 1424, 33 U.S.C. 901–950, as amended from time to time.

(3) The *Social Security Act* means the Social Security Act, Act of August 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C. 301–431, as amended from time to time.

(4) *Administrative law judge* means a person qualified under 5 U.S.C. 3105 to conduct hearings and adjudicate claims for benefits filed pursuant to section 415 and part C of the Act. Until March 1, 1979, it shall also mean an individual appointed to conduct such hearings and adjudicate such claims under Public Law 94–504.

(5) *Beneficiary* means a miner or any surviving spouse, divorced spouse, child, parent, brother or sister, who is entitled to benefits under either section 415 or part C of title IV of the Act.

(6) *Benefits* means all money or other benefits paid or payable under section 415 or part C of title IV of the Act on account of disability or death due to pneumoconiosis, including augmented benefits (see § 725.520(c)). The term also includes any expenses related to the medical examination and testing authorized by the district director pursuant to § 725.406.

(7) *Benefits Review Board* or *Board* means the Benefits Review Board, U.S. Department of Labor, an appellate tribunal appointed by the Secretary of Labor pursuant to the provisions of section 21(b)(1) of the LHWCA. See parts 801 and 802 of this title.

(8) *Black Lung Disability Trust Fund* or the *fund* means the Black Lung Disability Trust Fund established by the Black Lung Benefits Revenue Act of 1977, as amended by the Black Lung Benefits Revenue Act of 1981, for the payment of certain claims adjudicated under this part (see subpart G of this part).

(9) *Chief Administrative Law Judge* means the Chief Administrative Law Judge of the Office of Administrative Law Judges, U.S. Department of Labor, 800 K Street, NW., suite 400, Washington, DC 20001–8002.

(10) *Claim* means a written assertion of entitlement to benefits under section 415 or part C of title IV of the Act, submitted in a form and manner authorized by the provisions of this subchapter.

(11) *Claimant* means an individual who files a claim for benefits under this part.

(12) *Coal mine* means an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, placed upon, under or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite or anthracite from its natural deposits in the earth by any means or method, and in the work of preparing the coal so extracted, and includes custom coal preparation facilities.

(13) *Coal preparation* means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine. For purposes of this definition, the term does not include coal preparation performed by coke oven workers.

(14) *Department* means the United States Department of Labor.

(15) *Director* means the Director, OWCP, or his or her designee.

(16) *District Director* means a person appointed as provided in sections 39 and 40 of the LHWCA, or his or her designee, who is authorized to develop and adjudicate claims as provided in this subchapter (see § 725.350). The term District Director applies instead of the term Deputy Commissioner wherever that term appears in this subchapter. This application is for administrative purposes only and in no way affects the power or authority of the position as established in the statute. Any action taken by a person under the authority of a district director will be considered the action of a deputy commissioner.

(17) *Division* or *DCMWC* means the Division of Coal Mine Workers' Compensation in the OWCP, Employment Standards Administration, United States Department of Labor.

(18) *Insurer* or *carrier* means any private company, corporation, mutual association, reciprocal or interinsurance exchange, or any other person or fund, including any State fund, authorized under the laws of a State to insure employers' liability under workers' compensation laws. The term also includes the Secretary of Labor in the exercise of his or her authority under section 433 of the Act.

(19) *Miner* or *coal miner* means any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal. The term also includes an individual who works or has worked in coal mine construction or transportation in or around a coal mine, to the extent such individual was exposed to coal dust as a result of such employment (see § 725.202). For purposes of this definition, the term does not include coke oven workers whose activities involve the preparation or use of coal for the coke manufacturing process.

(20) *The Nation's coal mines* means all coal mines located in any State.

(21) *Office* or *OWCP* means the Office of Workers' Compensation Programs, United States Department of Labor.

(22) *Office of Administrative Law Judges* means the Office of Administrative Law Judges, U.S. Department of Labor.

(23) *Operator* means any owner, lessee, or other person who operates, controls or supervises a coal mine, including a prior or successor operator as defined in section 422 of the Act and certain transportation and construction employers (see subpart G of this part).

(24) *Person* means an individual, partnership, association, corporation, firm, subsidiary or parent of a corporation, or other organization or business entity.

(25) *Pneumoconiosis* means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment (see part 718 of this subchapter).

(26) *Responsible operator* means an operator which has been determined to be liable for the payment of benefits to a claimant for periods of eligibility after December 31, 1973, with respect to a claim filed under section 415 or part C of title IV of the Act or reviewed under section 435 of the Act.

(27) *Secretary* means the Secretary of Labor, United States Department of Labor, or a person, authorized by him or her to perform his or her functions under title IV of the Act.

(28) *State* includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and prior to January 3, 1959, and August 21, 1959, respectively, the territories of Alaska and Hawaii.

(29) *Total disability* and *partial disability*, for purposes of this part, have the meaning given them as provided in part 718 of this subchapter.

(30) *Underground coal mine* means a coal mine in which the earth and other materials which lie above and around the natural deposit of coal (i.e., overburden) are not removed in mining; including all land, structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, appurtenant thereto.

(31) A *workers' compensation law* means a law providing for payment of benefits to employees, and their dependents and survivors, for disability on account of injury, including occupational disease, or death, suffered in connection with their employment. A payment funded wholly out of general revenues shall not be considered a payment under a workers' compensation law.

(32) *Year* means a period of one calendar year (365 days, or 366 days if one of the days is February 29), or partial periods totalling one year, during which the miner worked in or around a coal mine or mines. A ''working day'' means any day or part of a day for which a miner received pay for work as a miner, including any day for which the miner received pay while on an approved absence, such as vacation or sick leave.

(i) If the evidence establishes that the miner worked in or around coal mines at least 125 working days during a calendar year or partial periods totalling one year, then the miner has worked one year in coal mine employment for all purposes under the Act. If a miner worked fewer than 125 working days in a year, he or she has worked a fractional year based on the ratio of the actual number of days worked to 125. Proof that the miner worked more than 125 working days in a calendar year or partial periods totalling a year, shall not establish more than one year.

(ii) To the extent the evidence permits, the beginning and ending dates of all periods of coal mine employment shall be ascertained. The dates and length of employment may be established by any credible evidence including (but not limited to) company records, pension records, earnings statements, coworker affidavits, and sworn testimony. If the evidence establishes that the miner's employment lasted for a calendar year, it shall be presumed, in the absence of evidence to the contrary, that the miner spent at least 125 working days in such employment.

(iii) If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS). A copy of the BLS table shall be made a part of the record if the adjudication officer uses this method to establish the length of the miner's work history.

(iv) No periods of coal mine employment occurring outside the United States shall be considered in computing the miner's work history.

(b) *Statutory terms.* The definitions contained in this section shall not be construed in derogation of terms of the Act.

(c) *Dependents and survivors.* Dependents and survivors are those persons described in subpart B of this part.

§ 725.102 Disclosure of program information.

(a) All reports, records, or other documents filed with the OWCP with respect to claims are the records of the OWCP. The Director or his or her designee shall be the official custodian of those records maintained by the OWCP at its national office. The District Director shall be the official custodian of those records maintained at a district office.

(b) The official custodian of any record sought to be inspected shall permit or deny inspection in accordance with the Department of Labor's regulations pertaining thereto (see 29 CFR part 70). The original record in any such case shall not be removed from the Office of the custodian for such inspection. The custodian may, in his or her discretion, deny inspection of any record or part thereof which is of a character specified in 5 U.S.C. 552(b) if in his or her opinion such inspection may result in damage, harm, or harassment to the beneficiary or to any other person. For special provisions concerning release of information regarding injured employees undergoing vocational rehabilitation, see § 702.508 of this chapter.

(c) Any person may request copies of records he or she has been permitted to inspect. Such requests shall be addressed to the official custodian of the records sought to be copied. The official custodian shall provide the requested copies under the terms and conditions specified in the Department of Labor's regulations relating thereto (see 29 CFR part 70).

(d) Any party to a claim (§ 725.360) or his or her duly authorized representative shall be permitted upon request to inspect the file which has been compiled in connection with such claim. Any party to a claim or representative of such party shall upon request be provided with a copy of any or all material contained in such claim file. A request for information by a party or representative made under this paragraph shall be answered within a reasonable time after receipt by the Office. Internal documents prepared by the district director which do not constitute evidence of a fact which must be established in connection with a claim shall not be routinely provided or presented for inspection in accordance with a request made under this paragraph.

§ 725.103 Burden of proof.

Except as otherwise provided in this part and part 718 of this subchapter, the burden of proving a fact alleged in connection with any provision shall rest with the party making such allegation.

Subpart B—Persons Entitled to Benefits, Conditions, and Duration of Entitlement

§ 725.201 Who is entitled to benefits; contents of this subpart.

(a) Section 415 and part C of the Act provide for the payment of periodic benefits in accordance with this part to:

(1) A miner (see § 725.202) who is determined to be totally disabled due to pneumoconiosis; or

(2) The surviving spouse or surviving divorced spouse or, where neither exists, the child of a deceased miner, where the deceased miner:

(i) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of this subchapter on a survivor's claim filed prior to June 30, 1982, or;

(3) The child of a miner's surviving spouse who was receiving benefits under section 415 or part C of title IV of the Act at the time of such spouse's death; or

(4) The surviving dependent parents, where there is no surviving spouse or child, or the surviving dependent brothers or sisters, where there is no surviving spouse, child, or parent, of a miner, where the deceased miner;

(i) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to

pneumoconiosis at the time of death, or to have died due to pneumoconiosis. Survivors of miners whose claims are filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish their entitlement to benefits, except where entitlement is established under § 718.306 of this subchapter on a survivor's claim filed prior to June 30, 1982.

(b) Section 411(c)(5) of the Act provides for the payment of benefits to the eligible survivors of a miner employed for 25 or more years in the mines prior to June 30, 1971, if the miner's death occurred on or before March 1, 1978, and if the claim was filed prior to June 30, 1982, unless it is established that at the time of death, the miner was not totally or partially disabled due to pneumoconiosis. For the purposes of this part the term ''total disability'' shall mean partial disability with respect to a claim for which eligibility is established under section 411(c)(5) of the Act. See § 718.306 of this subchapter which implements this provision of the Act.

(c) The provisions contained in this subpart describe the conditions of entitlement to benefits applicable to a miner, or a surviving spouse, child, parent, brother, or sister, and the events which establish or terminate entitlement to benefits.

(d) In order for an entitled miner or surviving spouse to qualify for augmented benefits because of one or more dependents, such dependents must meet relationship and dependency requirements with respect to such beneficiary prescribed by or pursuant to the Act. Such requirements are also set forth in this subpart.

Conditions and Duration of Entitlement: Miner

§ 725.202 Miner defined; condition of entitlement, miner.

(a) *Miner defined.* A ''miner'' for the purposes of this part is any person who works or has worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who works or has worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. There shall be a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner. This presumption may be rebutted by proof that:

(1) The person was not engaged in the extraction, preparation or transportation of coal while working at the mine site, or in maintenance or construction of the mine site; or

(2) The individual was not regularly employed in or around a coal mine or coal preparation facility.

(b) *Coal mine construction and transportation workers; special provisions.* A coal mine construction or transportation worker shall be considered a miner to the extent such individual is or was exposed to coal mine dust as a result of employment in or around a coal mine or coal preparation facility. A transportation worker shall be considered a miner to the extent that his or her work is integral to the extraction or preparation of coal. A construction worker shall be considered a miner to the extent that his or her work is integral to the building of a coal or underground mine (see § 725.101(a)(12) and (30)).

(1) There shall be a rebuttable presumption that such individual was exposed to coal mine dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of:

(i) Determining whether such individual is or was a miner;

(ii) Establishing the applicability of any of the presumptions described in section 411(c) of the Act and part 718 of this subchapter; and

(iii) Determining the identity of a coal mine operator liable for the payment of benefits in accordance with § 725.495.

(2) The presumption may be rebutted by evidence which demonstrates that:

(i) The individual was not regularly exposed to coal mine dust during his or her work in or around a coal mine or coal preparation facility; or

(ii) The individual did not work regularly in or around a coal mine or coal preparation facility.

(c) A person who is or was a self-employed miner or independent contractor, and who otherwise meets the requirements of this paragraph, shall be considered a miner for the purposes of this part.

(d) *Conditions of entitlement; miner.* An individual is eligible for benefits under this subchapter if the individual:

(1) Is a miner as defined in this section; and

(2) Has met the requirements for entitlement to benefits by establishing that he or she:

(i) Has pneumoconiosis (see § 718.202), and

(ii) The pneumoconiosis arose out of coal mine employment (see § 718.203), and

(iii) Is totally disabled (see § 718.204(c)), and

(iv) The pneumoconiosis contributes to the total disability (see § 718.204(c)); and

(3) Has filed a claim for benefits in accordance with the provisions of this part.

§ 725.203 Duration and cessation of entitlement; miner.

(a) An individual is entitled to benefits as a miner for each month beginning with the first month on or after January 1, 1974, in which the miner is totally disabled due to pneumoconiosis arising out of coal mine employment.

(b) The last month for which such individual is entitled to benefits is the month before the month during which either of the following events first occurs:

(1) The miner dies; or

(2) The miner's total disability ceases (see § 725.504).

(c) An individual who has been finally adjudged to be totally disabled due to pneumoconiosis and is receiving benefits under the Act shall promptly notify the Office and the responsible coal mine operator, if any, if he or she engages in his or her usual coal mine work or comparable and gainful work.

(d) Upon reasonable notice, an individual who has been finally adjudged entitled to benefits shall submit to any additional tests or examinations the Office deems appropriate if an issue arises pertaining to the validity of the original award.

Conditions and Duration of Entitlement: Miner's Dependents (Augmented Benefits)

§ 725.204 Determination of relationship; spouse.

(a) For the purpose of augmenting benefits, an individual will be considered to be the spouse of a miner if:

(1) The courts of the State in which the miner is domiciled would find that such individual and the miner validly married; or

(2) The courts of the State in which the miner is domiciled would find, under the law they would apply in determining the devolution of the miner's intestate personal property, that the individual is the miner's spouse; or

(3) Under State law, such individual would have the right of a spouse to share in the miner's intestate personal property; or

(4) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which, but for a legal impediment, would have been a valid marriage, unless the individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the

miner were not living in the same household in the month in which a request is filed that the miner's benefits be augmented because such individual qualifies as the miner's spouse.

(b) The qualification of an individual for augmentation purposes under this section shall end with the month before the month in which:

(1) The individual dies, or

(2) The individual who previously qualified as a spouse for purposes of § 725.520(c), entered into a valid marriage without regard to this section, with a person other than the miner.

§ 725.205 Determination of dependency; spouse.

For the purposes of augmenting benefits, an individual who is the miner's spouse (see § 725.204) will be determined to be dependent upon the miner if:

(a) The individual is a member of the same household as the miner (see § 725.232); or

(b) The individual is receiving regular contributions from the miner for support (see § 725.233(c)); or

(c) The miner has been ordered by a court to contribute to such individual's support (see § 725.233(e)); or

(d) The individual is the natural parent of the son or daughter of the miner; or

(e) The individual was married to the miner (see § 725.204) for a period of not less than 1 year.

§ 725.206 Determination of relationship; divorced spouse.

For the purposes of augmenting benefits with respect to any claim considered or reviewed under this part or part 727 of this subchapter (see § 725.4(d)), an individual will be considered to be the divorced spouse of a miner if the individual's marriage to the miner has been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to the miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final.

§ 725.207 Determination of dependency; divorced spouse.

For the purpose of augmenting benefits, an individual who is the miner's divorced spouse (§ 725.206) will be determined to be dependent upon the miner if:

(a) The individual is receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual is receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233(c) and (f)); or

(c) A court order requires the miner to furnish substantial contributions to the individual's support (see § 725.233(c) and (e)).

§ 725.208 Determination of relationship; child.

As used in this section, the term ''beneficiary'' means only a surviving spouse entitled to benefits at the time of death (see § 725.212), or a miner. An individual will be considered to be the child of a beneficiary if:

(a) The courts of the State in which the beneficiary is domiciled (see § 725.231) would find, under the law they would apply, that the individual is the beneficiary's child; or

(b) The individual is the legally adopted child of such beneficiary; or

(c) The individual is the stepchild of such beneficiary by reason of a valid marriage of the individual's parent or adopting parent to such beneficiary; or

(d) The individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section if the beneficiary and the mother or the father, as the case may be, of the individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) The individual is the natural son or daughter of a beneficiary but is not a child under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of the beneficiary if:

(1) The beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the parent of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(e)) because the individual is his or her son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time the beneficiary became entitled to benefits.

§ 725.209 Determination of dependency; child.

(a) For purposes of augmenting the benefits of a miner or surviving spouse, the term ''beneficiary'' as used in this section means only a miner or surviving spouse entitled to benefits (see § 725.202 and § 725.212). An individual who is the beneficiary's child (§ 725.208) will be determined to be, or to have been, dependent on the beneficiary, if the child:

(1) Is unmarried; and

(2)(i) Is under 18 years of age; or

(ii) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d); or

(iii) Is 18 years of age or older and is a student.

(b)(1) The term ''student'' means a ''full-time student'' as defined in section 202(d)(7) of the Social Security Act, 42 U.S.C. 402(d)(7) (see §§ 404.367 through 404.369 of this title), or an individual under 23 years of age who has not completed 4 years of education beyond the high school level and who is regularly pursuing a full-time course of study or training at an institution which is:

(i) A school, college, or university operated or directly supported by the United States, or by a State or local government or political subdivision thereof; or

(ii) A school, college, or university which has been accredited by a State or by a State-recognized or nationally-recognized accrediting agency or body; or

(iii) A school, college, or university not so accredited but whose credits are accepted, on transfer, by at least three institutions which are so accredited; or

(iv) A technical, trade, vocational, business, or professional school accredited or licensed by the Federal or a state government or any political subdivision thereof, providing courses of not less than 3 months' duration that prepare the student for a livelihood in a trade, industry, vocation, or profession.

(2) A student will be considered to be ''pursuing a full-time course of study or training at an institution'' if the student is enrolled in a noncorrespondence course of at least 13 weeks duration and is carrying a subject load which is considered full-time for day students under the institution's standards and practices. A student beginning or ending a full-time course of study or training in part of any month will be considered to

be pursuing such course for the entire month.

(3) A child is considered not to have ceased to be a student:

(i) During any interim between school years, if the interim does not exceed 4 months and the child shows to the satisfaction of the Office that he or she has a bona fide intention of continuing to pursue a full-time course of study or training; or

(ii) During periods of reasonable duration in which, in the judgment of the Office, the child is prevented by factors beyond the child's control from pursuing his or her education.

(4) A student whose 23rd birthday occurs during a semester or the enrollment period in which such student is pursuing a full-time course of study or training shall continue to be considered a student until the end of such period, unless eligibility is otherwise terminated.

§ 725.210 Duration of augmented benefits.

Augmented benefits payable on behalf of a spouse or divorced spouse, or a child, shall begin with the first month in which the dependent satisfies the conditions of relationship and dependency set forth in this subpart. Augmentation of benefits on account of a dependent continues through the month before the month in which the dependent ceases to satisfy these conditions, except in the case of a child who qualifies as a dependent because such child is a student. In the latter case, benefits continue to be augmented through the month before the first month during no part of which such child qualifies as a student.

§ 725.211 Time of determination of relationship and dependency of spouse or child for purposes of augmentation of benefits.

With respect to the spouse or child of a miner entitled to benefits, and with respect to the child of a surviving spouse entitled to benefits, the determination as to whether an individual purporting to be a spouse or child is related to or dependent upon such miner or surviving spouse shall be based on the facts and circumstances present in each case, at the appropriate time.

Conditions and Duration of Entitlement: Miner's Survivors

§ 725.212 Condition of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual who is the surviving spouse or surviving divorced spouse of a miner is eligible for benefits if such individual:

(1) Is not married;

(2) Was dependent on the miner at the pertinent time; and

(3) The deceased miner either:

(i) Was receiving benefits under section 415 or part C of title IV of the Act at the time of death as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving spouse or surviving divorced spouse of a miner whose claim is filed on or after January 1, 1982, must establish that the deceased miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of this subchapter on a claim filed prior to June 30, 1982.

(b) If more than one spouse meets the conditions of entitlement prescribed in paragraph (a) of this section, then each spouse will be considered a beneficiary for purposes of section 412(a)(2) of the Act without regard to the existence of any other entitled spouse or spouses.

§ 725.213 Duration of entitlement; surviving spouse or surviving divorced spouse.

(a) An individual is entitled to benefits as a surviving spouse, or as a surviving divorced spouse, for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.212 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which either of the following events first occurs:

(1) The surviving spouse or surviving divorced spouse marries; or

(2) The surviving spouse or surviving divorced spouse dies.

(c) A surviving spouse or surviving divorced spouse whose entitlement to benefits has been terminated pursuant to § 725.213(b)(1) may thereafter again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after the marriage ends and such individual meets the requirements of § 725.212. The individual shall not be required to reestablish the miner's entitlement to benefits (§ 725.212(a)(3)(i)) or the miner's death due to pneumoconiosis (§ 725.212(a)(3)(ii)).

§ 725.214 Determination of relationship; surviving spouse.

An individual shall be considered to be the surviving spouse of a miner if:

(a) The courts of the State in which the miner was domiciled (see § 725.231) at the time of his or her death would find that the individual and the miner were validly married; or

(b) The courts of the State in which the miner was domiciled (see § 725.231) at the time of the miner's death would find that the individual was the miner's surviving spouse; or

(c) Under State law, such individual would have the right of the spouse to share in the miner's interstate personal property; or

(d) Such individual went through a marriage ceremony with the miner resulting in a purported marriage between them and which but for a legal impediment (see § 725.230) would have been a valid marriage, unless such individual entered into the purported marriage with knowledge that it was not a valid marriage, or if such individual and the miner were not living in the same household at the time of the miner's death.

§ 725.215 Determination of dependency; surviving spouse.

An individual who is the miner's surviving spouse (see § 725.214) shall be determined to have been dependent on the miner if, at the time of the miner's death:

(a) The individual was living with the miner (see § 725.232); or

(b) The individual was dependent upon the miner for support or the miner has been ordered by a court to contribute to such individual's support (see § 725.233); or

(c) The individual was living apart from the miner because of the miner's desertion or other reasonable cause; or

(d) The individual is the natural parent of the miner's son or daughter;

(e) The individual had legally adopted the miner's son or daughter while the individual was married to the miner and while such son or daughter was under the age of 18; or

(f) The individual was married to the miner at the time both of them legally adopted a child under the age of 18; or

(g) (1) The individual was married to the miner for a period of not less than 9 months immediately before the day on which the miner died, unless the miner's death:

(i) Is accidental (as defined in paragraph (g)(2) of this section), or

(ii) Occurs in line of duty while the miner is a member of a uniformed service serving on active duty (as defined in § 404.1019 of this title), and the surviving spouse was married to the miner for a period of not less than 3 months immediately prior to the day on which such miner died.

(2) For purposes of paragraph (g)(l)(i) of this section, the death of a miner is accidental if such individual received bodily injuries solely through violent, external, and accidental means, and as a direct result of the bodily injuries and independently of all other causes, dies not later than 3 months after the day on which such miner receives such bodily injuries. The term ''accident'' means an event that was unpremeditated and unforeseen from the standpoint of the deceased individual. To determine whether the death of an individual did, in fact, result from an accident the adjudication officer will consider all the circumstances surrounding the casualty. An intentional and voluntary suicide will not be considered to be death by accident; however, suicide by an individual who is so incompetent as to be incapable of acting intentionally and voluntarily will be considered to be a death by accident. In no event will the death of an individual resulting from violent and external causes be considered a suicide unless there is direct proof that the fatal injury was self-inflicted.

(3) The provisions of this paragraph (g) shall not apply if the adjudication officer determines that at the time of the marriage involved, the miner would not reasonably have been expected to live for 9 months.

§ 725.216 Determination of relationship; surviving divorced spouse.

An individual will be considered to be the surviving divorced spouse of a deceased miner in a claim considered under this part or reviewed under part 727 of this subchapter (see § 725.4(d)), if such individual's marriage to the miner had been terminated by a final divorce on or after the 10th anniversary of the marriage unless, if such individual was married to and divorced from the miner more than once, such individual was married to such miner in each calendar year of the period beginning 10 years immediately before the date on which any divorce became final and ending with the year in which the divorce became final.

§ 725.217 Determination of dependency; surviving divorced spouse.

An individual who is the miner's surviving divorced spouse (see § 725.216) shall be determined to have been dependent on the miner if, for the month before the month in which the miner died:

(a) The individual was receiving at least one-half of his or her support from the miner (see § 725.233(g)); or

(b) The individual was receiving substantial contributions from the miner pursuant to a written agreement (see § 725.233(c) and (f)); or

(c) A court order required the miner to furnish substantial contributions to the individual's support (see § 725.233(c) and (e)).

§ 725.218 Conditions of entitlement; child.

(a) An individual is entitled to benefits where he or she meets the required standards of relationship and dependency under this subpart (see § 725.220 and § 725.221) and is the child of a deceased miner who:

(1) Was receiving benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982, or

(2) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death, or to have died due to pneumoconiosis. A surviving dependent child of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of this subchapter on a claim filed prior to June 30, 1982.

(b) A child is not entitled to benefits for any month for which a miner, or the surviving spouse or surviving divorced spouse of a miner, establishes entitlement to benefits.

§ 725.219 Duration of entitlement; child.

(a) An individual is entitled to benefits as a child for each month beginning with the first month in which all of the conditions of entitlement prescribed in § 725.218 are satisfied.

(b) The last month for which such individual is entitled to such benefits is the month before the month in which any one of the following events first occurs:

(1) The child dies;

(2) The child marries;

(3) The child attains age 18; and

(i) Is not a student (as defined in § 725.209(b)) during any part of the month in which the child attains age 18; and

(ii) Is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(4) If the child's entitlement beyond age 18 is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the child is a student; or

(ii) The month in which the child attains age 23 and is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(5) If the child's entitlement beyond age 18 is based on disability, the first month in no part of which such individual is under a disability.

(c) A child whose entitlement to benefits terminated with the month before the month in which the child attained age 18, or later, may thereafter (provided such individual is not married) again become entitled to such benefits upon filing application for such reentitlement, beginning with the first month after termination of benefits in which such individual is a student and has not attained the age of 23.

§ 725.220 Determination of relationship; child.

For purposes of determining whether an individual may qualify for benefits as the child of a deceased miner, the provisions of § 725.208 shall be applicable. As used in this section, the term ''beneficiary'' means only a surviving spouse entitled to benefits at the time of such surviving spouse's death (see § 725.212), or a miner. For purposes of a survivor's claim, an individual will be considered to be a child of a beneficiary if:

(a) The courts of the State in which such beneficiary is domiciled (see § 725.231) would find, under the law they would apply in determining the devolution of the beneficiary's intestate personal property, that the individual is the beneficiary's child; or

(b) Such individual is the legally adopted child of such beneficiary; or

(c) Such individual is the stepchild of such beneficiary by reason of a valid marriage of such individual's parent or adopting parent to such beneficiary; or

(d) Such individual does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, but would, under State law, have the same right as a child to share in the beneficiary's intestate personal property; or

(e) Such individual is the natural son or daughter of a beneficiary but does not bear the relationship of child to such beneficiary under paragraph (a), (b), or (c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if the beneficiary and the mother or father, as the case may be, of such individual went through a marriage ceremony resulting in a purported marriage between them which but for a legal impediment (see § 725.230) would have been a valid marriage; or

(f) Such individual is the natural son or daughter of a beneficiary but does not have the relationship of child to such beneficiary under paragraph (a), (b), or

(c) of this section, and is not considered to be the child of the beneficiary under paragraph (d) or (e) of this section, such individual shall nevertheless be considered to be the child of such beneficiary if:

(1) Such beneficiary, prior to his or her entitlement to benefits, has acknowledged in writing that the individual is his or her son or daughter, or has been decreed by a court to be the father or mother of the individual, or has been ordered by a court to contribute to the support of the individual (see § 725.233(a)) because the individual is a son or daughter; or

(2) Such beneficiary is shown by satisfactory evidence to be the father or mother of the individual and was living with or contributing to the support of the individual at the time such beneficiary became entitled to benefits.

§ 725.221 Determination of dependency; child.

For the purposes of determining whether a child was dependent upon a deceased miner, the provisions of § 725.209 shall be applicable, except that for purposes of determining the eligibility of a child who is under a disability as defined in section 223(d) of the Social Security Act, such disability must have begun before the child attained age 22, or in the case of a student, before the child ceased to be a student.

§ 725.222 Conditions of entitlement; parent, brother, or sister.

(a) An individual is eligible for benefits as a surviving parent, brother or sister if all of the following requirements are met:

(1) The individual is the parent, brother, or sister of a deceased miner;

(2) The individual was dependent on the miner at the pertinent time;

(3) Proof of support is filed within 2 years after the miner's death, unless the time is extended for good cause (§ 725.226);

(4) In the case of a brother or sister, such individual also:

(i) Is under 18 years of age; or

(ii) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), which began before such individual attained age 22, or in the case of a student, before the student ceased to be a student; or

(iii) Is a student (see § 725.209(b)); or

(iv) Is under a disability as defined in section 223(d) of the Social Security Act, 42 U.S.C. 423(d), at the time of the miner's death;

(5) The deceased miner:

(i) Was entitled to benefits under section 415 or part C of title IV of the Act as a result of a claim filed prior to January 1, 1982; or

(ii) Is determined as a result of a claim filed prior to January 1, 1982, to have been totally disabled due to pneumoconiosis at the time of death or to have died due to pneumoconiosis. A surviving dependent parent, brother or sister of a miner whose claim is filed on or after January 1, 1982, must establish that the miner's death was due to pneumoconiosis in order to establish entitlement to benefits, except where entitlement is established under § 718.306 of this subchapter on a claim filed prior to June 30, 1982.

(b)(1) A parent is not entitled to benefits if the deceased miner was survived by a spouse or child at the time of such miner's death.

(2) A brother or sister is not entitled to benefits if the deceased miner was survived by a spouse, child, or parent at the time of such miner's death.

§ 725.223 Duration of entitlement; parent, brother, or sister.

(a) A parent, sister, or brother is entitled to benefits beginning with the month all the conditions of entitlement described § 725.222 are met.

(b) The last month for which such parent is entitled to benefits is the month in which the parent dies.

(c) The last month for which such brother or sister is entitled to benefits is the month before the month in which any of the following events first occurs:

(1) The individual dies;

(2)(i) The individual marries or remarries; or

(ii) If already married, the individual received support in any amount from his or her spouse;

(3) The individual attains age 18; and

(i) Is not a student (as defined in § 725.209(b)) during any part of the month in which the individual attains age 18; and

(ii) is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(4) If the individual's entitlement beyond age 18 is based on his or her status as a student, the earlier of:

(i) The first month during no part of which the individual is a student; or

(ii) The month in which the individual attains age 23 and is not under a disability (as defined in § 725.209(a)(2)(ii)) at that time;

(5) If the individual's entitlement beyond age 18 is based on disability, the first month in no part of which such individual is under a disability.

§ 725.224 Determination of relationship; parent, brother, or sister.

(a) An individual will be considered to be the parent, brother, or sister of a miner if the courts of the State in which the miner was domiciled (see § 225.231) at the time of death would find, under the law they would apply, that the individual is the miner's parent, brother, or sister.

(b) Where, under State law, the individual is not the miner's parent, brother, or sister, but would, under State law, have the same status (i.e., right to share in the miner's intestate personal property) as a parent, brother, or sister, the individual will be considered to be the parent, brother, or sister as appropriate.

§ 725.225 Determination of dependency; parent, brother, or sister.

An individual who is the miner's parent, brother, or sister will be determined to have been dependent on the miner if, during the 1-year period immediately prior to the miner's death:

(a) The individual and the miner were living in the same household (see § 725.232); and

(b) The individual was totally dependent on the miner for support (see § 725.233(h)).

§ 725.226 ''Good cause'' for delayed filing of proof of support.

(a) *What constitutes ''good cause.''* ''Good cause'' may be found for failure to file timely proof of support where the parent, brother, or sister establishes to the satisfaction of the Office that such failure to file was due to:

(1) Circumstances beyond the individual's control, such as extended illness, mental, or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished the individual by the Office; or

(3) Efforts by the individual to secure supporting evidence without a realization that such evidence could be submitted after filing proof of support.

(b) *What does not constitute ''good cause.''* ''Good cause'' for failure to file timely proof of support (see § 725.222(a)(3)) does not exist when there is evidence of record in the Office that the individual was informed that he or she should file within the prescribed period and he or she failed to do so deliberately or through negligence.

§ 725.227 Time of determination of relationship and dependency of survivors.

The determination as to whether an individual purporting to be an entitled survivor of a miner or beneficiary was related to, or dependent upon, the miner is made after such individual files a claim for benefits as a survivor. Such determination is based on the facts and circumstances with respect to a reasonable period of time ending with

the miner's death. A prior determination that such individual was, or was not, a dependent for the purposes of augmenting the miner's benefits for a certain period, is not determinative of the issue of whether the individual is a dependent survivor of such miner.

§ 725.228 Effect of conviction of felonious and intentional homicide on entitlement to benefits.

An individual who has been convicted of the felonious and intentional homicide of a miner or other beneficiary shall not be entitled to receive any benefits payable because of the death of such miner or other beneficiary, and such person shall be considered nonexistent in determining the entitlement to benefits of other individuals.

Terms Used in this Subpart

§ 725.229 Intestate personal property.

References in this subpart to the ''same right to share in the intestate personal property'' of a deceased miner (or surviving spouse) refer to the right of an individual to share in such distribution in the individual's own right and not the right of representation.

§ 725.230 Legal impediment.

For purposes of this subpart, ''legal impediment'' means an impediment resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution or resulting from a defect in the procedure followed in connection with the purported marriage ceremony—for example, the solemnization of a marriage only through a religious ceremony in a country which requires a civil ceremony for a valid marriage.

§ 725.231 Domicile.

(a) For purposes of this subpart, the term ''domicile'' means the place of an individual's true, fixed, and permanent home.

(b) The domicile of a deceased miner or surviving spouse is determined as of the time of death.

(c) If an individual was not domiciled in any State at the pertinent time, the law of the District of Columbia is applied.

§ 725.232 Member of the same household—''living with,'' ''living in the same household,'' and ''living in the miner's household,'' defined.

(a) *Defined.* (1) The term ''member of the same household'' as used in section 402(a)(2) of the Act (with respect to a spouse); the term ''living with'' as used in section 402(e) of the Act (with respect to a surviving spouse); and the term ''living in the same household'' as used in this subpart, means that a husband and wife were customarily living together as husband and wife in the same place.

(2) The term ''living in the miner's household'' as used in section 412(a)(5) of the Act (with respect to a parent, brother, or sister) means that the miner and such parent, brother, or sister were sharing the same residence.

(b) *Temporary absence.* The temporary absence from the same residence of either the miner, or the miner's spouse, parent, brother, or sister (as the case may be), does not preclude a finding that one was ''living with'' the other, or that they were ''members of the same household.'' The absence of one such individual from the residence in which both had customarily lived shall, in the absence of evidence to the contrary, be considered temporary:

(1) If such absence was due to service in the Armed Forces of the United States; or

(2) If the period of absence from his or her residence did not exceed 6 months and the absence was due to business or employment reasons, or because of confinement in a penal institution or in a hospital, nursing home, or other curative institution; or

(3) In any other case, if the evidence establishes that despite such absence they nevertheless reasonably expected to resume physically living together.

(c) *Relevant period of time.* (1) The determination as to whether a surviving spouse had been ''living with'' the miner shall be based upon the facts and circumstances as of the time of the death of the miner.

(2) The determination as to whether a spouse is a ''member of the same household'' as the miner shall be based upon the facts and circumstances with respect to the period or periods of time as to which the issue of membership in the same household is material.

(3) The determination as to whether a parent, brother, or sister was ''living in the miner's household'' shall take account of the 1-year period immediately prior to the miner's death.

§ 725.233 Support and contributions.

(a) *Support* defined. The term ''support'' includes food, shelter, clothing, ordinary medical expenses, and other ordinary and customary items for the maintenance of the person supported.

(b) *Contributions* defined. The term ''contributions'' refers to contributions actually provided by the contributor from such individual's property, or the use thereof, or by the use of such individual's own credit.

(c) *Regular contributions* and *substantial contributions* defined. The terms ''regular contributions'' and ''substantial contributions'' mean contributions that are customary and sufficient to constitute a material factor in the cost of the individual's support.

(d) *Contributions and community property.* When a spouse receives and uses for his or her support income from services or property, and such income, under applicable State law, is the community property of the wife and her husband, no part of such income is a ''contribution'' by one spouse to the other's support regardless of the legal interest of the donor. However, when a spouse receives and uses for support, income from the services and the property of the other spouse and, under applicable State law, such income is community property, all of such income is considered to be a contribution by the donor to the spouse's support.

(e) *Court order for support* defined. References to a support order in this subpart means any court order, judgment, or decree of a court of competent jurisdiction which requires regular contributions that are a material factor in the cost of the individual's support and which is in effect at the applicable time. If such contributions are required by a court order, this condition is met whether or not the contributions were actually made.

(f) *Written agreement* defined. The term ''written agreement'' in the phrase ''substantial contributions pursuant to a written agreement'', as used in this subpart means an agreement signed by the miner providing for substantial contributions by the miner for the individual's support. It must be in effect at the applicable time but it need not be legally enforceable.

(g) *One-half support* defined. The term ''one-half support'' means that the miner made regular contributions, in cash or in kind, to the support of a divorced spouse at the specified time or for the specified period, and that the amount of such contributions equalled or exceeded one-half the total cost of such individual's support at such time or during such period.

(h) *Totally dependent for support* defined. The term ''totally dependent for support'' as used in § 725.225(b) means that the miner made regular contributions to the support of the miner's parents, brother, or sister, as the case may be, and that the amount of such contributions at least equalled the total cost of such individual's support.

Subpart C—Filing of Claims

§ 725.301 Who may file a claim.

(a) Any person who believes he or she may be entitled to benefits under the Act may file a claim in accordance with this subpart.

(b) A claimant who has attained the age of 18, is mentally competent and physically able, may file a claim on his or her own behalf.

(c) If a claimant is unable to file a claim on his or her behalf because of a legal or physical impairment, the following rules shall apply:

(1) A claimant between the ages of 16 and 18 years who is mentally competent and not under the legal custody or care of another person, or a committee or institution, may upon filing a statement to the effect, file a claim on his or her own behalf. In any other case where the claimant is under 18 years of age, only a person, or the manager or principal officer of an institution having legal custody or care of the claimant may file a claim on his or her behalf.

(2) If a claimant over 18 years of age has a legally appointed guardian or committee, only the guardian or committee may file a claim on his or her behalf.

(3) If a claimant over 18 years of age is mentally incompetent or physically unable to file a claim and is under the care of another person, or an institution, only the person, or the manager or principal officer of the institution responsible for the care of the claimant, may file a claim on his or her behalf.

(4) For good cause shown, the Office may accept a claim executed by a person other than one described in paragraphs (c)(2) or (3) of this section.

(d) Except as provided in § 725.305, in order for a claim to be considered, the claimant must be alive at the time the claim is filed.

§ 725.302 Evidence of authority to file a claim on behalf of another.

A person filing a claim on behalf of a claimant shall submit evidence of his or her authority to so act at the time of filing or at a reasonable time thereafter in accordance with the following:

(a) A legally appointed guardian or committee shall provide the Office with certification of appointment by a proper official of the court.

(b) Any other person shall provide a statement describing his or her relationship to the claimant, the extent to which he or she has care of the claimant, or his or her position as an officer of the institution of which the claimant is an inmate. The Office may, at any time, require additional evidence to establish the authority of any such person.

§ 725.303 Date and place of filing of claims.

(a)(1) Claims for benefits shall be delivered, mailed to, or presented at, any of the various district offices of the Social Security Administration, or any of the various offices of the Department of Labor authorized to accept claims, or, in the case of a claim filed by or on behalf of a claimant residing outside the United States, mailed or presented to any office maintained by the Foreign Service of the United States. A claim shall be considered filed on the day it is received by the office in which it is first filed.

(2) A claim submitted to a Foreign Service Office or any other agency or subdivision of the U.S. Government shall be forwarded to the Office and considered filed as of the date it was received at the Foreign Service Office or other governmental agency or unit.

(b) A claim submitted by mail shall be considered filed as of the date of delivery unless a loss or impairment of benefit rights would result, in which case a claim shall be considered filed as of the date of its postmark. In the absence of a legible postmark, other evidence may be used to establish the mailing date.

§ 725.304 Forms and initial processing.

(a) Claims shall be filed on forms prescribed and approved by the Office. The district office at which the claim is filed will assist claimants in completing their forms.

(b) If the place at which a claim is filed is an office of the Social Security Administration, such office shall forward the completed claim form to an office of the DCMWC, which is authorized to process the claim.

§ 725.305 When a written statement is considered a claim.

(a) The filing of a statement signed by an individual indicating an intention to claim benefits shall be considered to be the filing of a claim for the purposes of this part under the following circumstances:

(1) The claimant or a proper person on his or her behalf (see § 725.301) executes and files a prescribed claim form with the Office during the claimant's lifetime within the period specified in paragraph (b) of this section.

(2) Where the claimant dies within the period specified in paragraph (b) of this section without filing a prescribed claim form, and a person acting on behalf of the deceased claimant's estate executes and files a prescribed claim form within the period specified in paragraph (c) of this section.

(b) Upon receipt of a written statement indicating an intention to claim benefits, the Office shall notify the signer in writing that to be considered the claim must be executed by the claimant or a proper party on his or her behalf on the prescribed form and filed with the Office within six months from the date of mailing of the notice.

(c) If before the notice specified in paragraph (b) of this section is sent, or within six months after such notice is sent, the claimant dies without having executed and filed a prescribed form, or without having had one executed and filed in his or her behalf, the Office shall upon receipt of notice of the claimant's death advise his or her estate, or those living at his or her last known address, in writing that for the claim to be considered, a prescribed claim form must be executed and filed by a person authorized to do so on behalf of the claimant's estate within six months of the date of the later notice.

(d) Claims based upon written statements indicating an intention to claim benefits not perfected in accordance with this section shall not be processed.

§ 725.306 Withdrawal of a claim.

(a) A claimant or an individual authorized to execute a claim on a claimant's behalf or on behalf of claimant's estate under § 725.305, may withdraw a previously filed claim provided that:

(1) He or she files a written request with the appropriate adjudication officer indicating the reasons for seeking withdrawal of the claim;

(2) The appropriate adjudication officer approves the request for withdrawal on the grounds that it is in the best interests of the claimant or his or her estate, and;

(3) Any payments made to the claimant in accordance with § 725.522 are reimbursed.

(b) When a claim has been withdrawn under paragraph (a) of this section, the claim will be considered not to have been filed.

§ 725.307 Cancellation of a request for withdrawal.

At any time prior to approval, a request for withdrawal may be canceled by a written request of the claimant or a person authorized to act on the claimant's behalf or on behalf of the claimant's estate.

§ 725.308 Time limits for filing claims.

(a) A claim for benefits filed under this part by, or on behalf of, a miner shall be filed within three years after a medical determination of total disability

due to pneumoconiosis which has been communicated to the miner or a person responsible for the care of the miner, or within three years after the date of enactment of the Black Lung Benefits Reform Act of 1977, whichever is later. There is no time limit on the filing of a claim by the survivor of a miner.

(b) A miner who is receiving benefits under part B of title IV of the Act and who is notified by HEW of the right to seek medical benefits may file a claim for medical benefits under part C of title IV of the Act and this part. The Secretary of Health, Education, and Welfare is required to notify each miner receiving benefits under part B of this right. Notwithstanding the provisions of paragraph (a) of this section, a miner notified of his or her rights under this paragraph may file a claim under this part on or before December 31, 1980. Any claim filed after that date shall be untimely unless the time for filing has been enlarged for good cause shown.

(c) There shall be a rebuttable presumption that every claim for benefits is timely filed. However, except as provided in paragraph (b) of this section, the time limits in this section are mandatory and may not be waived or tolled except upon a showing of extraordinary circumstances.

§ 725.309 Additional claims; effect of a prior denial of benefits.

(a) A claimant whose claim for benefits was previously approved under part B of title IV of the Act may file a claim for benefits under this part as provided in §§ 725.308(b) and 725.702.

(b) If a claimant files a claim under this part while another claim filed by the claimant under this part is still pending, the later claim shall be merged with the earlier claim for all purposes. For purposes of this section, a claim shall be considered pending if it has not yet been finally denied.

(c) If a claimant files a claim under this part within one year after the effective date of a final order denying a claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim shall be considered a request for modification of the prior denial and shall be processed and adjudicated under § 725.310.

(d) If a claimant files a claim under this part more than one year after the effective date of a final order denying a claim previously filed by the claimant under this part (see § 725.502(a)(2)), the later claim shall be considered a subsequent claim for benefits. A subsequent claim shall be processed and adjudicated in accordance with the provisions of subparts E and F of this part, except that the claim shall be denied unless the claimant demonstrates that one of the applicable conditions of entitlement (see §§ 725.202(d) (miner), 725.212 (spouse), 725.218 (child), and 725.222 (parent, brother, or sister)) has changed since the date upon which the order denying the prior claim became final. The applicability of this paragraph may be waived by the operator or fund, as appropriate. The following additional rules shall apply to the adjudication of a subsequent claim:

(1) Any evidence submitted in connection with any prior claim shall be made a part of the record in the subsequent claim, provided that it was not excluded in the adjudication of the prior claim.

(2) For purposes of this section, the applicable conditions of entitlement shall be limited to those conditions upon which the prior denial was based. For example, if the claim was denied solely on the basis that the individual was not a miner, the subsequent claim must be denied unless the individual worked as a miner following the prior denial. Similarly, if the claim was denied because the miner did not meet one or more of the eligibility criteria contained in part 718 of this subchapter, the subsequent claim must be denied unless the miner meets at least one of the criteria that he or she did not meet previously.

(3) If the applicable condition(s) of entitlement relate to the miner's physical condition, the subsequent claim may be approved only if new evidence submitted in connection with the subsequent claim establishes at least one applicable condition of entitlement. A subsequent claim filed by a surviving spouse, child, parent, brother, or sister shall be denied unless the applicable conditions of entitlement in such claim include at least one condition unrelated to the miner's physical condition at the time of his death.

(4) If the claimant demonstrates a change in one of the applicable conditions of entitlement, no findings made in connection with the prior claim, except those based on a party's failure to contest an issue (see § 725.463), shall be binding on any party in the adjudication of the subsequent claim. However, any stipulation made by any party in connection with the prior claim shall be binding on that party in the adjudication of the subsequent claim.

(5) In any case in which a subsequent claim is awarded, no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final.

(e) Notwithstanding any other provision of this part or part 727 of this subchapter (see § 725.4(d)), a person may exercise the right of review provided in paragraph (c) of § 727.103 at the same time such person is pursuing an appeal of a previously denied part B claim under the law as it existed prior to March 1, 1978. If the part B claim is ultimately approved as a result of the appeal, the claimant must immediately notify the Secretary of Labor and, where appropriate, the coal mine operator, and all duplicate payments made under part C shall be considered an overpayment and arrangements shall be made to insure the repayment of such overpayments to the fund or an operator, as appropriate.

(f) In any case involving more than one claim filed by the same claimant, under no circumstances are duplicate benefits payable for concurrent periods of eligibility. Any duplicate benefits paid shall be subject to collection or offset under subpart H of this part.

§ 725.310 Modification of awards and denials.

(a) Upon his or her own initiative, or upon the request of any party on grounds of a change in conditions or because of a mistake in a determination of fact, the district director may, at any time before one year from the date of the last payment of benefits, or at any time before one year after the denial of a claim, reconsider the terms of an award or denial of benefits.

(b) Modification proceedings shall be conducted in accordance with the provisions of this part as appropriate, except that the claimant and the operator, or group of operators or the fund, as appropriate, shall each be entitled to submit no more than one additional chest X-ray interpretation, one additional pulmonary function test, one additional arterial blood gas study, and one additional medical report in support of its affirmative case along with such rebuttal evidence and additional statements as are authorized by paragraphs (a)(2)(ii) and (a)(3)(ii) of § 725.414. Modification proceedings shall not be initiated before an administrative law judge or the Benefits Review Board.

(c) At the conclusion of modification proceedings before the district director, the district director may issue a proposed decision and order (§ 725.418) or, if appropriate, deny the claim by reason of abandonment (§ 725.409). In any case in which the district director has initiated modification proceedings on his own initiative to alter the terms of an award or denial of benefits issued by an administrative law judge, the

district director shall, at the conclusion of modification proceedings, forward the claim for a hearing (§ 725.421). In any case forwarded for a hearing, the administrative law judge assigned to hear such case shall consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact.

(d) An order issued following the conclusion of modification proceedings may terminate, continue, reinstate, increase or decrease benefit payments or award benefits. Such order shall not affect any benefits previously paid, except that an order increasing the amount of benefits payable based on a finding of a mistake in a determination of fact may be made effective on the date from which benefits were determined payable by the terms of an earlier award. In the case of an award which is decreased, no payment made in excess of the decreased rate prior to the date upon which the party requested reconsideration under paragraph (a) of this section shall be subject to collection or offset under subpart H of this part, provided the claimant is without fault as defined by § 725.543. In the case of an award which is decreased following the initiation of modification by the district director, no payment made in excess of the decreased rate prior to the date upon which the district director initiated modification proceedings under paragraph (a) shall be subject to collection or offset under subpart H of this part, provided the claimant is without fault as defined by § 725.543. In the case of an award which has become final and is thereafter terminated, no payment made prior to the date upon which the party requested reconsideration under paragraph (a) shall be subject to collection or offset under subpart H of this part. In the case of an award which has become final and is thereafter terminated following the initiation of modification by the district director, no payment made prior to the date upon which the district director initiated modification proceedings under paragraph (a) shall be subject to collection or offset under subpart H of this part.

§ 725.311 Communications with respect to claims; time computations.

(a) Unless otherwise specified by this part, all requests, responses, notices, decisions, orders, or other communications required or permitted by this part shall be in writing.

(b) If required by this part, any document, brief, or other statement submitted in connection with the adjudication of a claim under this part shall be sent to each party to the claim by the submitting party. If proof of service is required with respect to any communication, such proof of service shall be submitted to the appropriate adjudication officer and filed as part of the claim record.

(c) In computing any period of time described in this part, by any applicable statute, or by the order of any adjudication officer, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period extends until the next day which is not a Saturday, Sunday, or legal holiday. ''Legal holiday'' includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day and any other day appointed as a holiday by the President or the Congress of the United States.

(d) In any case in which a provision of this part requires a document to be sent to a person or party by certified mail, and the document is not sent by certified mail, but the person or party actually received the document, the document shall be deemed to have been sent in compliance with the provisions of this part. In such a case, any time period which commences upon the service of the document shall commence on the date the document was received.

Subpart D—Adjudication Officers; Parties and Representatives

§ 725.350 Who are the adjudication officers.

(a) *General.* The persons authorized by the Secretary of Labor to accept evidence and decide claims on the basis of such evidence are called ''adjudication officers.'' This section describes the status of black lung claims adjudication officers.

(b) *District Director.* The district director is that official of the DCMWC or his designee who is authorized to perform functions with respect to the development, processing, and adjudication of claims in accordance with this part.

(c) *Administrative law judge.* An administrative law judge is that official appointed pursuant to 5 U.S.C. 3105 (or Public Law 94–504) who is qualified to preside at hearings under 5 U.S.C. 557 and is empowered by the Secretary to conduct formal hearings with respect to, and adjudicate, claims in accordance with this part. A person appointed under Public Law 94–504 shall not be considered an administrative law judge for purposes of this part for any period after March 1, 1979.

§ 725.351 Powers of adjudication officers.

(a) *District Director.* The district director is authorized to:

(1) Make determinations with respect to claims as is provided in this part;

(2) Conduct conferences and informal discovery proceedings as provided in this part;

(3) Compel the production of documents by the issuance of a subpoena;

(4) Prepare documents for the signature of parties;

(5) Issue appropriate orders as provided in this part; and

(6) Do all other things necessary to enable him or her to discharge the duties of the office.

(b) *Administrative Law Judge.* An administrative law judge is authorized to:

(1) Conduct formal hearings in accordance with the provisions of this part;

(2) Administer oaths and examine witnesses;

(3) Compel the production of documents and appearance of witnesses by the issuance of subpoenas;

(4) Issue decisions and orders with respect to claims as provided in this part; and

(5) Do all other things necessary to enable him or her to discharge the duties of the office.

(c) If any person in proceedings before an adjudication officer disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the district director, or the administrative law judge responsible for the adjudication of the claim, shall certify the facts to the Federal district court having jurisdiction in the place in which he or she is sitting (or to the U.S. District Court for the District of Columbia if he or she is sitting in the District) which shall thereupon in a summary manner hear the evidence as to the acts complained of, and, if the evidence so warrants, punish such person in the same manner and to the

same extent as for a contempt committed before the court, or commit such person upon the same condition as if the doing of the forbidden act had occurred with reference to the process or in the presence of the court.

§ 725.352 Disqualification of adjudication officer.

(a) No adjudication officer shall conduct any proceedings in a claim in which he or she is prejudiced or partial, or where he or she has any interest in the matter pending for decision. A decision to withdraw from the consideration of a claim shall be within the discretion of the adjudication officer. If that adjudication officer withdraws, another officer shall be designated by the Director or the Chief Administrative Law Judge, as the case may be, to complete the adjudication of the claim.

(b) No adjudication officer shall be permitted to appear or act as a representative of a party under this part while such individual is employed as an adjudication officer. No adjudication officer shall be permitted at any time to appear or act as a representative in connection with any case or claim in which he or she was personally involved. No fee or reimbursement shall be awarded under this part to an individual who acts in violation of this paragraph.

(c) No adjudication officer shall act in any claim involving a party which employed such adjudication officer within one year before the adjudication of such claim.

(d) Notwithstanding paragraph (a) of this section, no adjudication officer shall be permitted to act in any claim involving a party who is related to the adjudication officer by consanguinity or affinity within the third degree as determined by the law of the place where such party is domiciled. Any action taken by an adjudication officer in knowing violation of this paragraph shall be void.

§ 725.360 Parties to proceedings.

(a) Except as provided in § 725.361, no person other than the Secretary of Labor and authorized personnel of the Department of Labor shall participate at any stage in the adjudication of a claim for benefits under this part, unless such person is determined by the appropriate adjudication officer to qualify under the provisions of this section as a party to the claim. The following persons shall be parties:

(1) The claimant;

(2) A person other than a claimant, authorized to execute a claim on such claimant's behalf under § 725.301;

(3) Any coal mine operator notified under § 725.407 of its possible liability for the claim;

(4) Any insurance carrier of such operator; and

(5) The Director in all proceedings relating to a claim for benefits under this part.

(b) A widow, child, parent, brother, or sister, or the representative of a decedent's estate, who makes a showing in writing that his or her rights with respect to benefits may be prejudiced by a decision of an adjudication officer, may be made a party.

(c) Any coal mine operator or prior operator or insurance carrier which has not been notified under § 725.407 and which makes a showing in writing that its rights may be prejudiced by a decision of an adjudication officer may be made a party.

(d) Any other individual may be made a party if that individual's rights with respect to benefits may be prejudiced by a decision to be made.

§ 725.361 Party amicus curiae.

At the discretion of the Chief Administrative Law Judge or the administrative law judge assigned to the case, a person or entity which is not a party may be allowed to participate amicus curiae in a formal hearing only as to an issue of law. A person may participate amicus curiae in a formal hearing upon written request submitted with supporting arguments prior to the hearing. If the request is granted, the administrative law judge hearing the case will inform the party of the extent to which participation will be permitted. The request may, however, be denied summarily and without explanation.

§ 725.362 Representation of parties.

(a) Except for the Secretary of Labor, whose interests shall be represented by the Solicitor of Labor or his or her designee, each of the parties may appoint an individual to represent his or her interest in any proceeding for determination of a claim under this part. Such appointment shall be made in writing or on the record at the hearing. An attorney qualified in accordance with § 725.363(a) shall file a written declaration that he or she is authorized to represent a party, or declare his or her representation on the record at a formal hearing. Any other person (see § 725.363(b)) shall file a written notice of appointment signed by the party or his or her legal guardian, or enter his or her appearance on the record at a formal hearing if the party he or she seeks to represent is present and consents to the representation. Any written declaration or notice required by this section shall include the OWCP number assigned by the Office and shall be sent to the Office or, for representation at a formal hearing, to the Chief Administrative Law Judge. In any case, such representative must be qualified under § 725.363. No authorization for representation or agreement between a claimant and representative as to the amount of a fee, filed with the Social Security Administration in connection with a claim under part B of title IV of the Act, shall be valid under this part. A claimant who has previously authorized a person to represent him or her in connection with a claim originally filed under part B of title IV may renew such authorization by filing a statement to such effect with the Office or appropriate adjudication officer.

(b) Any party may waive his or her right to be represented in the adjudication of a claim. If an adjudication officer determines, after an appropriate inquiry has been made, that a claimant who has been informed of his or her right to representation does not wish to obtain the services of a representative, such adjudication officer shall proceed to consider the claim in accordance with this part, unless it is apparent that the claimant is, for any reason, unable to continue without the help of a representative. However, it shall not be necessary for an adjudication officer to inquire as to the ability of a claimant to proceed without representation in any adjudication taking place without a hearing. The failure of a claimant to obtain representation in an adjudication taking place without a hearing shall be considered a waiver of the claimant's right to representation. However, at any time during the processing or adjudication of a claim, any claimant may revoke such waiver and obtain a representative.

§ 725.363 Qualification of representative.

(a) *Attorney.* Any attorney in good standing who is admitted to practice before a court of a State, territory, district, or insular possession, or before the Supreme Court of the United States or other Federal court and is not, pursuant to any provision of law, prohibited from acting as a representative, may be appointed as a representative.

(b) *Other person.* With the approval of the adjudication officer, any other person may be appointed as a representative so long as that person is not, pursuant to any provision of law, prohibited from acting as a representative.

§ 725.364 Authority of representative.

A representative, appointed and qualified as provided in §§ 725.362 and 725.363, may make or give on behalf of the party he or she represents, any request or notice relative to any proceeding before an adjudication officer, including formal hearing and review, except that such representative may not execute a claim for benefits, unless he or she is a person designated in § 725.301 as authorized to execute a claim. A representative shall be entitled to present or elicit evidence and make allegations as to facts and law in any proceeding affecting the party represented and to obtain information with respect to the claim of such party to the same extent as such party. Notice given to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such party and such notice or request shall have the same force and effect as if it had been sent to the party represented.

§ 725.365 Approval of representative's fees; lien against benefits.

No fee charged for representation services rendered to a claimant with respect to any claim under this part shall be valid unless approved under this subpart. No contract or prior agreement for a fee shall be valid. In cases where the obligation to pay the attorney's fee is upon the claimant, the amount of the fee awarded may be made a lien upon the benefits due under an award and the adjudication officer shall fix, in the award approving the fee, such lien and the manner of payment of the fee. Any representative who is not an attorney may be awarded a fee for services under this subpart, except that no lien may be imposed with respect to such representative's fee.

§ 725.366 Fees for representatives.

(a) A representative seeking a fee for services performed on behalf of a claimant shall make application therefor to the district director, administrative law judge, or appropriate appellate tribunal, as the case may be, before whom the services were performed. The application shall be filed and served upon the claimant and all other parties within the time limits allowed by the district director, administrative law judge, or appropriate appellate tribunal. The application shall be supported by a complete statement of the extent and character of the necessary work done, and shall indicate the professional status (e.g., attorney, paralegal, law clerk, lay representative or clerical) of the person performing such work, and the customary billing rate for each such person. The application shall also include a listing of reasonable unreimbursed expenses, including those for travel, incurred by the representative or an employee of a representative in establishing the claimant's case. Any fee requested under this paragraph shall also contain a description of any fee requested, charged, or received for services rendered to the claimant before any State or Federal court or agency in connection with a related matter.

(b) Any fee approved under paragraph (a) of this section shall be reasonably commensurate with the necessary work done and shall take into account the quality of the representation, the qualifications of the representative, the complexity of the legal issues involved, the level of proceedings to which the claim was raised, the level at which the representative entered the proceedings, and any other information which may be relevant to the amount of fee requested. No fee approved shall include payment for time spent in preparation of a fee application. No fee shall be approved for work done on claims filed between December 30, 1969, and June 30, 1973, under part B of title IV of the Act, except for services rendered on behalf of the claimant in regard to the review of the claim under section 435 of the Act and part 727 of this subchapter (see § 725.4(d)).

(c) In awarding a fee, the appropriate adjudication officer shall consider, and shall add to the fee, the amount of reasonable and unreimbursed expenses incurred in establishing the claimant's case. Reimbursement for travel expenses incurred by an attorney shall be determined in accordance with the provisions of § 725.459(a). No reimbursement shall be permitted for expenses incurred in obtaining medical or other evidence which has previously been submitted to the Office in connection with the claim.

(d) Upon receipt of a request for approval of a fee, such request shall be reviewed and evaluated by the appropriate adjudication officer and a fee award issued. Any party may request reconsideration of a fee awarded by the adjudication officer. A revised or modified fee award may then be issued, if appropriate.

(e) Each request for reconsideration or review of a fee award shall be in writing and shall contain supporting statements or information pertinent to any increase or decrease requested. If a fee awarded by a district director is disputed, such award shall be appealable directly to the Benefits Review Board. In such a fee dispute case, the record before the Board shall consist of the order of the district director awarding or denying the fee, the application for a fee, any written statement in opposition to the fee and the documentary evidence contained in the file which verifies or refutes any item claimed in the fee application.

§ 725.367 Payment of a claimant's attorney's fee by responsible operator or fund.

(a) An attorney who represents a claimant in the successful prosecution of a claim for benefits may be entitled to collect a reasonable attorney's fee from the responsible operator that is ultimately found liable for the payment of benefits, or, in a case in which there is no operator who is liable for the payment of benefits, from the fund. Generally, the operator or fund liable for the payment of benefits shall be liable for the payment of the claimant's attorney's fees where the operator or fund, as appropriate, took action, or acquiesced in action, that created an adversarial relationship between itself and the claimant. The fees payable under this section shall include fees for reasonable and necessary services performed prior to the creation of the adversarial relationship. Circumstances in which a successful attorney's fees shall be payable by the responsible operator or the fund include, but are not limited to, the following:

(1) The responsible operator initially found to be liable for the payment of benefits by the district director (see § 725.410(a)) contests the claimant's eligibility for benefits, either by filing a response pursuant to § 725.411(b)(1), or, in a case in which the district director issues an initial finding that the claimant is not eligible for benefits, by failing to file a response. The operator that is ultimately determined to be liable for benefits shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney;

(2) There is no operator that may be held liable for the payment of benefits, and the district director issues an initial finding that the claimant is not eligible for benefits. The fund shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney;

(3) The claimant submits a bill for medical treatment, and the party liable for the payment of benefits declines to pay the bill on the grounds that the treatment is unreasonable, or is for a condition that is not compensable. The responsible operator or fund, as appropriate, shall be liable for an attorney's fee with respect to all reasonable services performed by the claimant's attorney;

(4) A beneficiary seeks an increase in the amount of benefits payable, and the responsible operator or fund issues a notice of controversion contesting the claimant's right to that increase. If the beneficiary is successful in securing an increase in the amount of benefits payable, the operator or fund shall be liable for an attorney's fee with respect to all reasonable services performed by the beneficiary's attorney;

(5) The responsible operator or fund seeks a decrease in the amount of benefits payable. If the beneficiary is successful in resisting the request for a decrease in the amount of benefits payable, the operator or fund shall be liable for an attorney's fee with respect to all reasonable services performed by the beneficiary's attorney. A request for information clarifying the amount of benefits payable shall not be considered a request to decrease that amount.

(b) Any fee awarded under this section shall be in addition to the award of benefits, and shall be awarded, in an order, by the district director, administrative law judge, Board or court, before whom the work was performed. The operator or fund shall pay such fee promptly and directly to the claimant's attorney in a lump sum after the award of benefits becomes final.

(c) Section 205(a) of the Black Lung Benefits Amendments of 1981, Public Law 97–119, amended section 422 of the Act and relieved operators and carriers from liability for the payment of benefits on certain claims. Payment of benefits on those claims was made the responsibility of the fund. The claims subject to this transfer of liability are described in § 725.496. On claims subject to the transfer of liability described in this paragraph the fund will pay all fees and costs which have been or will be awarded to claimant's attorneys which were or would have become the liability of an operator or carrier but for the enactment of the 1981 Amendments and which have not already been paid by such operator or carrier. Section 9501(d)(7) of the Internal Revenue Code (26 U.S.C.), which was also enacted as a part of the 1981 Amendments to the Act, expressly prohibits the fund from reimbursing an operator or carrier for any attorney fees or costs which it has paid on cases subject to the transfer of liability provisions.

Subpart E—Adjudication of Claims by the District Director

§ 725.401 Claims development—general.

After a claim has been received by the district director, the district director shall take such action as is necessary to develop, process, and make determinations with respect to the claim as provided in this subpart.

§ 725.402 Approved State workers' compensation law.

If a district director determines that any claim filed under this part is one subject to adjudication under a workers' compensation law approved under part 722 of this subchapter, he or she shall advise the claimant of this determination and of the Act's requirement that the claim must be filed under the applicable State workers' compensation law. The district director shall then prepare a proposed decision and order dismissing the claim for lack of jurisdiction pursuant to § 725.418 and proceed as appropriate.

§ 725.403 [Reserved]

§ 725.404 Development of evidence—general.

(a) *Employment history.* Each claimant shall furnish the district director with a complete and detailed history of the coal miner's employment and, upon request, supporting documentation.

(b) *Matters of record.* Where it is necessary to obtain proof of age, marriage or termination of marriage, death, family relationship, dependency (see subpart B of this part), or any other fact which may be proven as a matter of public record, the claimant shall furnish such proof to the district director upon request.

(c) *Documentary evidence.* If a claimant is required to submit documents to the district director, the claimant shall submit either the original, a certified copy or a clear readable copy thereof. The district director or administrative law judge may require the submission of an original document or certified copy thereof, if necessary.

(d) *Submission of insufficient evidence.* In the event a claimant submits insufficient evidence regarding any matter, the district director shall inform the claimant of what further evidence is necessary and request that such evidence be submitted within a specified reasonable time which may, upon request, be extended for good cause.

§ 725.405 Development of medical evidence; scheduling of medical examinations and tests.

(a) Upon receipt of a claim, the district director shall ascertain whether the claim was filed by or on account of a miner as defined in § 725.202, and in the case of a claim filed on account of a deceased miner, whether the claim was filed by an eligible survivor of such miner as defined in subpart B of this part.

(b) In the case of a claim filed by or on behalf of a miner, the district director shall, where necessary, schedule the miner for a medical examination and testing under § 725.406.

(c) In the case of a claim filed by or on behalf of a survivor of a miner, the district director shall obtain whatever medical evidence is necessary and available for the development and evaluation of the claim.

(d) The district director shall, where appropriate, collect other evidence necessary to establish:

(1) The nature and duration of the miner's employment; and

(2) All other matters relevant to the determination of the claim.

(e) If at any time during the processing of the claim by the district director, the evidence establishes that the claimant is not entitled to benefits under the Act, the district director may terminate evidentiary development of the claim and proceed as appropriate.

§ 725.406 Medical examinations and tests.

(a) The Act requires the Department to provide each miner who applies for benefits with the opportunity to undergo a complete pulmonary evaluation at no expense to the miner. A complete pulmonary evaluation includes a report of physical examination, a pulmonary function study, a chest roentgenogram and, unless medically contraindicated, a blood gas study.

(b) As soon as possible after a miner files an application for benefits, the district director will provide the miner with a list of medical facilities and physicians in the state of the miner's residence and states contiguous to the state of the miner's residence that the Office has authorized to perform complete pulmonary evaluations. The miner shall select one of the facilities or physicians on the list, and the district director will make arrangements for the miner to be given a complete pulmonary evaluation by that facility or physician. The results of the complete pulmonary evaluation shall not be counted as evidence submitted by the miner under § 725.414.

(c) If any medical examination or test conducted under paragraph (a) of this section is not administered or reported in substantial compliance with the provisions of part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district

director shall schedule the miner for further examination and testing. Where the deficiencies in the report are the result of a lack of effort on the part of the miner, the miner will be afforded one additional opportunity to produce a satisfactory result. In order to determine whether any medical examination or test was administered and reported in substantial compliance with the provisions of part 718 of this subchapter, the district director may have any component of such examination or test reviewed by a physician selected by the district director.

(d) After the physician completes the report authorized by paragraph (a), the district director will inform the miner that he may elect to have the results of the objective testing sent to his treating physician for use in preparing a medical opinion. The district director will also inform the claimant that any medical opinion submitted by his treating physician will count as one of the two medical opinions that the miner may submit under § 725.414.

(e) If, at any time after the completion of the initial complete pulmonary evaluation, the district director believes that unresolved medical questions remain, he may require the claimant to be examined by a physician or medical facility selected by the district director from the list of physicians and facilities authorized to perform complete pulmonary evaluations. If additional medical evidence is obtained in accordance with this paragraph, the district director may order the physician selected to retest or reexamine the miner to do so without the presence or participation of any other physician who previously examined the miner, and without benefit of the conclusions of any other physician who has examined the miner. Any evidence obtained under this paragraph shall be considered a part of the complete pulmonary evaluation obtained under paragraph (b) of this section for purposes of the limitations established in § 725.414, except that any additional chest X-ray, pulmonary function test, or blood gas study performed in connection with a request for re-examination under this paragraph shall be substituted for the chest X-ray, pulmonary function test, or blood gas study performed in connection with the original evaluation.

(f) The cost of any medical examination or test authorized under this section, including the cost of travel to and from the examination, shall be paid by the fund. No reimbursement for overnight accommodations shall be authorized unless the district director determines that an adequate testing facility is unavailable within one day's round trip travel by automobile from the miner's residence. The fund shall be reimbursed for such payments by an operator, if any, found liable for the payment of benefits to the claimant. If an operator fails to repay such expenses, with interest, upon request of the Office, the entire amount may be collected in an action brought under section 424 of the Act and § 725.603.

§ 725.407 Identification and notification of responsible operator.

(a) Upon receipt of the miner's employment history, the district director shall investigate whether any operator may be held liable for the payment of benefits as a responsible operator in accordance with the criteria contained in subpart G of this part.

(b) Prior to issuing an initial finding pursuant to § 725.410, the district director may identify one or more operators potentially liable for the payment of benefits in accordance with the criteria set forth in § 725.495. The district director shall notify each such operator of the existence of the claim. Where the records maintained by the Office pursuant to part 726 of this subchapter indicate that the operator had obtained a policy of insurance, and the claim falls within such policy, the notice provided pursuant to this section shall also be sent to the operator's carrier. Any operator or carrier notified of the claim shall thereafter be considered a party to the claim in accordance with § 725.360 unless it is dismissed by an adjudication officer and is not thereafter notified again of its potential liability.

(c) The notification issued pursuant to this section shall include a copy of the claimant's application and a copy of all evidence obtained by the district director relating to the miner's employment. The district director may request the operator to answer specific questions, including, but not limited to, questions related to the nature of its operations, its relationship with the miner, its financial status, including any insurance obtained to secure its obligations under the Act, and its relationship with other potentially liable operators. A copy of any notification issued pursuant to this section shall be sent to the claimant by regular mail.

(d) If at any time before a case is referred to the Office of Administrative Law Judges, the district director determines that an operator which may be liable for the payment of benefits has not been notified under this section or has been incorrectly dismissed pursuant to § 725.413(c)(1), the district director shall give such operator notice of its potential liability in accordance with this section. The adjudication officer shall then take such further action on the claim as may be appropriate. There shall be no time limit applicable to a later identification of an operator under this paragraph if the operator fraudulently concealed its identity as an employer of the miner. The district director may not notify additional operators of their potential liability after a case has been referred to the Office of Administrative Law Judges, unless the case was referred for a hearing to determine whether the claim was properly denied as abandoned pursuant to § 725.409.

§ 725.408 Operator's response to notification.

(a)(1) An operator which receives notification under § 725.407 shall, within 30 days of receipt, file a response, and shall indicate its intent to accept or contest its identification as a potentially liable operator. The operator's response shall also be sent to the claimant by regular mail.

(2) If the operator contests its identification, it shall, on a form supplied by the district director, state the precise nature of its disagreement by admitting or denying each of the following assertions. In answering these assertions, the term ''operator'' shall include any operator for which the identified operator may be considered a successor operator pursuant to § 725.492.

(i) That the named operator was an operator for any period after June 30, 1973;

(ii) That the operator employed the miner as a miner for a cumulative period of not less than one year;

(iii) That the miner was exposed to coal mine dust while working for the operator;

(iv) That the miner's employment with the operator included at least one working day after December 31, 1969; and

(v) That the operator is capable of assuming liability for the payment of benefits.

(3) An operator which receives notification under § 725.407, and which fails to file a response within the time limit provided by this section, shall not be allowed to contest its liability for the payment of benefits on the grounds set forth in paragraph (a)(2) of this section.

(b)(1) Within 90 days of the date on which it receives notification under § 725.407, an operator may submit documentary evidence in support of its position.

(2) No documentary evidence relevant to the grounds set forth in paragraph (a)(2) may be admitted in any further proceedings unless it is submitted within the time limits set forth in this section.

§ 725.409 Denial of a claim by reason of abandonment.

(a) A claim may be denied at any time by the district director by reason of abandonment where the claimant fails:

(1) To undergo a required medical examination without good cause; or,

(2) To submit evidence sufficient to make a determination of the claim; or,

(3) To pursue the claim with reasonable diligence; or,

(4) To attend an informal conference without good cause.

(b)(1) If the district director determines that a denial by reason of abandonment under paragraphs (a)(1) through (3) of this section is appropriate, he or she shall notify the claimant of the reasons for such denial and of the action which must be taken to avoid a denial by reason of abandonment. If the claimant completes the action requested within the time allowed, the claim shall be developed, processed and adjudicated as specified in this part. If the claimant does not fully comply with the action requested by the district director, the district director shall notify the claimant that the claim has been denied by reason of abandonment. Any request for a hearing prior to the issuance of such notification shall be considered invalid and of no effect. Such notification shall be served on the claimant and all other parties to the claim by certified mail.

(2) In any case in which a claimant has failed to attend an informal conference and has not provided the district director with his reasons for failing to attend, the district director shall ask the claimant to explain his absence. In considering whether the claimant had good cause for his failure to attend the conference, the district director shall consider all relevant circumstances, including the age, education, and health of the claimant, as well as the distance between the claimant's residence and the location of the conference. If the district director concludes that the claimant had good cause for failing to attend the conference, he may continue processing the claim, including, where appropriate under § 725.416, the scheduling of an informal conference. If the claimant does not supply the district director with his reasons for failing to attend the conference within 30 days of the date of the district director's request, or the district director concludes that the reasons supplied by the claimant do not establish good cause, the district director shall notify the claimant that the claim has been denied by reason of abandonment. Any request for a hearing prior to the issuance of such notification shall be considered invalid and of no effect. Such notification shall be served on the claimant and all other parties to the claim by certified mail.

(c) The denial of a claim by reason of abandonment shall become effective and final unless, within 30 days after the denial is issued, the claimant requests a hearing. Following the expiration of the 30-day period, a new claim may be filed at any time pursuant to § 725.309. If the claimant timely requests a hearing, the district director shall refer the case to the Office of Administrative Law Judges in accordance with § 725.421. The hearing will be limited to the issue of whether the claim was properly denied by reason of abandonment. If the administrative law judge determines that the claim was not properly denied by reason of abandonment, he shall remand the claim to the district director for the completion of administrative processing.

§ 725.410 Initial findings by the district director.

(a) Based upon the evidence developed, the district director shall make an initial finding with respect to the claim. The initial finding shall include a determination with respect to the claimant's eligibility and a determination with respect to whether any of the operators notified of potential liability under § 725.407 of this part is the responsible operator in accordance with § 725.495.

(b) The district director shall serve the initial finding, together with a copy of all of the evidence developed, on the claimant, the responsible operator, and all other operators which received notification pursuant to § 725.407. The initial finding shall be served on each party by certified mail.

(c) If the evidence submitted does not support a finding of eligibility, the initial finding shall specify the reasons why the claim cannot be approved and the additional evidence necessary to establish entitlement. The initial finding shall notify the claimant that he has the right to obtain further adjudication of his eligibility in accordance with this subpart, that he has the right to submit additional evidence in accordance with this subpart, and that he has the right to obtain counsel, under the terms set forth in subpart D of this part, in order to assist him. The initial finding shall further notify the claimant that, if he establishes his entitlement to benefits, the cost of obtaining additional evidence, along with a reasonable attorney's fee, shall be reimbursed by the responsible operator, or, if no operator can be held liable, the fund.

§ 725.411 Initial finding—eligibility.

(a) *Claimant response.*

(1) *Finding that the claimant is not eligible for benefits.*

(i) Within one year after the district director issues an initial finding that the claimant is not eligible for benefits, the claimant may request further adjudication of the claim. Any statement filed during the applicable time period demonstrating the claimant's intention to pursue his or her claim shall be considered a request for further adjudication in accordance with this section. The claimant may not request a hearing at this point. Any request for a hearing prior to the issuance of a proposed decision and order shall be considered invalid and of no effect.

(ii) If the claimant does not request further adjudication of the claim within the time limits set forth in this section, the claim shall be deemed to have been denied, effective as of the date of the issuance of the initial finding. Any submission by the claimant after the time limits set forth in this section will be treated as an intent to file a new claim for benefits in accordance with § 725.305. Such a claim may be approved only if it meets the conditions of § 725.309.

(2) *Finding that the claimant is eligible for benefits.* If the district director issues an initial finding that the evidence submitted supports a finding of eligibility, the claimant may, within 30 days of the issuance of the initial finding, request revision of any of the terms of the initial finding. If the claimant does not file a timely request pursuant to this paragraph, he shall be deemed to have accepted the district director's initial finding.

(b) *Operator response.* (1) Within 30 days of the issuance of an initial finding, the responsible operator initially found liable for the payment of benefits shall file a response with regard to the claimant's eligibility for benefits. The response shall specifically indicate whether the operator agrees or disagrees with the initial finding of eligibility. A response that the operator is not liable for benefits shall not be sufficient to contest the claimant's eligibility under this section. A response to the initial finding of eligibility shall be filed regardless of whether the district director finds the claimant eligible for benefits.

(2) If the operator initially found liable for the payment of benefits does not file a timely response, it shall be deemed to have accepted the district director's initial finding with respect to the claimant's eligibility, and shall not, except as provided in § 725.463, be permitted to raise issues or present evidence with respect to issues inconsistent with the initial findings in any further proceeding conducted with respect to the claim.

§ 725.412 Initial finding-liability.

(a) Within 30 days of the issuance of an initial finding, the responsible operator initially found liable for the payment of benefits shall file a response with regard to its liability for benefits. The response shall specifically indicate whether the operator agrees or disagrees with the initial finding of liability. A response that the operator is not liable for benefits under this section shall not be sufficient to contest the claimant's eligibility. A response to the initial finding of liability shall be filed regardless of whether or not the district director finds the claimant eligible for benefits.

(b) If the responsible operator initially found liable for the payment of benefits does not file a timely response, it shall be deemed to have accepted the district director's initial finding with respect to its liability, and to have waived its right to contest its liability in any further proceeding conducted with respect to the claim.

§ 725.413 Initial adjudication by the district director.

(a) If the district director issues an initial finding that the evidence submitted supports a finding of eligibility, and

(1) The responsible operator does not file a timely response under either § 725.411 or § 725.412, or

(2) There is no operator responsible for the payment of benefits, the district director shall, after considering any request filed by the claimant pursuant to § 725.411(a)(2), issue a proposed decision and order in accordance with § 725.418.

(b) If the district director issues an initial finding that the evidence submitted does not support a finding of eligibility, and the claimant does not file a timely response pursuant to § 725.411, the claim shall be considered to have been denied, effective as of the date of the issuance of the initial finding. Any later submission by the claimant will be treated as an intent to file a claim for benefits in accordance with § 725.305. Such a claim may be approved only if it meets the conditions of § 725.309.

(c)(1) In all other cases, the district director shall, following the expiration of all applicable time periods for filing responses, or the receipt of responses, notify all parties of any responses received from the claimant and the responsible operator. The district director may, in his discretion, dismiss as parties any of the operators notified of their potential liability pursuant to § 725.407. If the district director thereafter determines that the participation of a party dismissed pursuant to this section is required, he may once again notify the operator in accordance with § 725.407(d).

(2) The district director shall notify the parties of a schedule for submitting documentary evidence. Such schedule shall allow the parties not less than 60 days within which to submit evidence in support of their contentions, and shall provide not less than an additional 30 days within which the parties may respond to evidence submitted by other parties. Any such evidence must meet the requirements set forth in § 725.414 in order to be admitted into the record.

§ 725.414 Development of evidence.

(a) *Medical evidence.* (1) For purposes of this section, a medical report shall consist of a physician's written assessment of the miner's respiratory or pulmonary condition. A medical report may be prepared by a physician who examined the miner and/or reviewed the available admissible evidence. A physician's written assessment of a single objective test, such as a chest X-ray or a pulmonary function test, shall not be considered a medical report for purposes of this section.

(2)(i) The claimant shall be entitled to submit, in support of his affirmative case, no more than two chest X-ray interpretations, the results of no more than two pulmonary function tests, the results of no more than two arterial blood gas studies, and no more than two medical reports. Any chest X-ray interpretations, pulmonary function test results, blood gas studies and physicians' opinions that appear in a medical report must each be admissible under this paragraph or paragraph (a)(4) of this section.

(ii) The claimant shall be entitled to submit, in rebuttal of the case presented by the party or parties opposing entitlement, no more than one physician's interpretation of each chest X-ray, pulmonary function test, or arterial blood gas study submitted by any potentially liable operator or the fund, as appropriate, under paragraph (a)(3)(i) or (a)(3)(iii) of this section and by the Director pursuant to § 725.406. In any case in which the party opposing entitlement has submitted the results of other testing pursuant to § 718.107, the claimant shall be entitled to submit one physician's assessment of each piece of such evidence in rebuttal. In addition, where the responsible operator or fund has submitted rebuttal evidence under paragraph (a)(3)(ii) or (a)(3)(iii) of this section with respect to medical testing submitted by the claimant, the claimant shall be entitled to submit an additional statement from the physician who originally interpreted the chest X-ray or administered the objective testing. Where the rebuttal evidence tends to undermine the conclusion of a physician who prepared a medical report submitted by the claimant, the claimant shall be entitled to submit an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence.

(3) The Department intends that all parties to a claim, including all operators notified of their potential liability under § 725.407 that have not been dismissed, shall be bound by a final adjudication of the claimant's eligibility. Accordingly, any operator notified of its potential liability in accordance with § 725.407 shall not be entitled to require the claimant to re-adjudicate his eligibility in the event the district director's initial finding with respect to the responsible operator is determined to have been erroneous.

(i) The responsible operator and any other operators that remain parties to the case shall collectively be entitled to obtain and submit, in support of their affirmative case, no more than two chest X-ray interpretations, the results of no more than two pulmonary function tests, the results of no more than two arterial blood gas studies, and no more than two medical reports. Any chest X-ray interpretations, pulmonary function test results, blood gas studies and physicians' opinions that appear in a medical report must each be admissible under this paragraph or paragraph (a)(4) of this section. In obtaining such evidence, neither the responsible operator, nor any other operator permitted to submit evidence under paragraph (a)(3)(iv) of this section, may require the miner to travel more than 100 miles from his or her place of residence, or the distance traveled by the miner in obtaining the complete pulmonary evaluation provided by § 725.406, whichever is greater, unless a trip of greater distance is authorized in writing by the district director. If a miner unreasonably refuses—

(A) To provide the Office or a coal mine operator with a complete statement of his or her medical history

and/or to authorize access to his or her medical records, or

(B) To submit to an evaluation or test requested by the district director or a potentially liable operator, the miner's claim may be denied by reason of abandonment (See § 725.409).

(ii) The responsible operator and any other operators that remain parties to the case shall be entitled to submit, in rebuttal of the case presented by the claimant, no more than one physician's interpretation of each chest X-ray, pulmonary function test, or arterial blood gas study submitted by the claimant under paragraph (a)(2)(i) of this section and by the Director pursuant to § 725.406. In any case in which the claimant has submitted the results of other testing pursuant to § 718.107, the responsible operator and other operators that remain parties to the case shall collectively be entitled to submit one physician's assessment of each piece of such evidence in rebuttal. In addition, where the claimant has submitted rebuttal evidence under paragraph (a)(2)(ii) of this section, the responsible operator and other operators that remain parties to the case shall collectively be entitled to submit an additional statement from the physician who originally interpreted the chest X-ray or administered the objective testing. Where the rebuttal evidence tends to undermine the conclusion of a physician who prepared a medical report submitted by the responsible operator, the responsible operator shall be entitled to submit an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence.

(iii) In a case in which the district director has not identified any potentially liable operators, the district director shall be entitled to exercise the rights of a responsible operator under this section, except that the evidence obtained in connection with the complete pulmonary evaluation performed pursuant to § 725.406 shall be considered evidence obtained and submitted by the Director, OWCP, for purposes of paragraph (a)(3)(i) of this section.

(iv) Except for the responsible operator, any operator notified of its potential liability pursuant to § 725.407, and which has not been dismissed as a party by the district director, must request permission of the adjudication officer to obtain and submit a medical report or the results of any objective medical testing. Such permission shall be granted only upon a showing that the responsible operator has not undertaken a full development of the evidence, and that without such permission, the potentially liable operator will be unable to secure a full and fair litigation of the claimant's eligibility. In granting such permission, the adjudication officer shall take such action as is necessary to prevent the miner from undergoing unnecessary testing, and shall ensure that the record contains, in support of the operators' affirmative case, no more than two chest X-ray interpretations, the results of no more than two pulmonary function tests, the results of no more than two arterial blood gas studies, and no more than two medical reports submitted by the operators opposing the claimant's eligibility. The adjudication officer shall also ensure that the record contains, in rebuttal of the affirmative case presented by the claimant, no more than one physician's interpretation of each chest X-ray, pulmonary function test, and arterial blood gas study submitted by the claimant under paragraph (a)(2)(ii) of this section and by the Director pursuant to § 725.406.

(4) Notwithstanding the limitations in paragraphs (a)(2) and (a)(3) of this section, any record of a miner's hospitalization for a respiratory or pulmonary or related disease, medical treatment for a respiratory or pulmonary or related disease, or a biopsy or autopsy may be received into evidence.

(5) A copy of any documentary evidence submitted by a party must be served on all other parties to the claim. If the claimant is not represented by an attorney, the district director shall mail a copy of all documentary evidence submitted by the claimant to all other parties to the claim. Following the development and submission of affirmative medical evidence, the parties may submit rebuttal evidence in accordance with the schedule issued by the district director.

(6) The district director shall admit into the record all evidence submitted in accordance with this section, and shall also admit the results of any medical examination or test conducted pursuant to § 725.406.

(b) *Evidence pertaining to liability.* (1) Except as provided by § 725.408(b)(2), the potential responsible operator may submit evidence to demonstrate that it is not the potentially liable operator that most recently employed the claimant. Failure to submit such evidence shall be deemed an acceptance of the district director's initial finding of liability.

(2) Any other party may submit evidence regarding the liability of the potential responsible operator or any other operator.

(3) A copy of any documentary evidence submitted under this paragraph must be mailed to all other parties to the claim. Following the submission of affirmative evidence, the parties may submit rebuttal evidence in accordance with the schedule issued by the district director.

(c) *Testimony.* A physician who prepared a medical report admitted under this section may testify with respect to the claim at any formal hearing conducted in accordance with subpart F of this part, or by deposition. If a party has submitted fewer than two medical reports as part of that party's affirmative case under this section, a physician who did not prepare a medical report may testify in lieu of such a medical report. The testimony of such a physician shall be considered a medical report for purposes of the limitations provided by this section. A party may offer the testimony of no more than two physicians under the provisions of this section unless the adjudication officer finds good cause under paragraph (b)(1) of § 725.456. In accordance with the schedule issued by the district director, all parties shall notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the responsible operator. Absent such notice, the testimony of a witness relevant to the liability of a potentially liable operator or the responsible operator shall not be admitted in any hearing conducted with respect to the claim unless the administrative law judge finds that the lack of notice should be excused due to extraordinary circumstances.

(d) Except to the extent permitted by § 725.456 and § 725.310(b), the limitations set forth in this section shall apply to all proceedings conducted with respect to a claim, and no documentary evidence pertaining to liability shall be admitted in any further proceeding conducted with respect to a claim unless it is submitted to the district director in accordance with this section.

(e) Any documentary evidence obtained by a party during the time a claim is pending before a district director, which is withheld from the district director or any other party to the claim, shall not be admitted into the record in any later proceedings held with respect to the claim in the absence of extraordinary circumstances, unless the admission of such evidence is requested by the Director or such other party.

§ 725.415 Action by the district director after development of operator's evidence.

(a) At the end of the period permitted under § 725.413(c)(2) for the submission

of evidence, the district director shall review the claim on the basis of all evidence submitted in accordance with § 725.414.

(b) After review of all evidence submitted, the district director may schedule a conference in accordance with § 725.416, issue a proposed decision and order in accordance with § 725.418, or take such other action as the district director considers appropriate.

§ 725.416 Conferences.

(a) At the conclusion of the period permitted by § 725.413(c)(2) for the submission of evidence, the district director may conduct an informal conference in any claim where it appears that such conference will assist in the voluntary resolution of any issue raised with respect to the claim. The conference proceedings shall not be stenographically reported and sworn testimony shall not be taken.

(b) The district director shall notify the parties of a definite time and place for the conference. The notification shall set forth the specific reasons why the district director believes that a conference will assist in the voluntary resolution of any issue raised with respect to the claim. No sanction may be imposed under paragraph (c) of this section unless the record contains a notification that meets the requirements of this section. The district director may in his or her discretion, or on the motion of any party, cancel or reschedule a conference, and allow any or all of the parties to participate by telephone.

(c) The unexcused failure of any party to appear at an informal conference shall be grounds for the imposition of sanctions. If the claimant fails to appear, the district director may take such steps as are authorized by § 725.409(b)(2) to deny the claim by reason of abandonment. If the responsible operator fails to appear, it shall be deemed to have waived its right to contest its potential liability for an award of benefits and, in the discretion of the district director, its right to contest any issue related to the claimant's eligibility.

(d) Any representative of an operator, of an operator's insurance carrier, or of a claimant, authorized to represent such party in accordance with § 725.362, shall be deemed to have sufficient authority to stipulate facts or issues or agree to a final disposition of the claim.

(e) Procedures to be followed at a conference shall be within the discretion of the district director. In the case of a conference involving an unrepresented claimant, the district director shall fully inform the claimant of the consequences of any agreement the claimant is asked to sign. If it is apparent that the unrepresented claimant does not understand the nature or effect of the proceedings, the district director shall not permit the execution of any stipulation or agreement in the claim unless it is clear that the best interests of the claimant are served thereby.

§ 725.417 Action at the conclusion of conference.

(a) At the conclusion of a conference, the district director shall prepare a stipulation of contested and uncontested issues which shall be signed by the parties and the district director. If a hearing is conducted with respect to the claim, this stipulation shall be submitted to the Office of Administrative Law Judges and placed in the claim record.

(b) In any case, where appropriate, the district director may permit a reasonable time for the submission of additional evidence following a conference, provided that such evidence does not exceed the limits set forth in § 725.414.

(c) Within 20 days after the termination of all conference proceedings, the district director shall prepare and send to the parties by certified mail a memorandum of conference, on a form prescribed by the Office, summarizing the conference and including the following:

(1) Date, time and place of conference;

(2) Names, addresses, telephone numbers, and status (i.e., claimant, attorney, operator, carrier's representative, etc.);

(3) Issues discussed at conference;

(4) Additional material presented (i.e., medical reports, employment reports, marriage certificates, birth certificates, etc.);

(5) Issues resolved at conference; and

(6) District director's recommendation.

(d) Each party shall, in writing, either accept or reject, in whole or in part, the district director's recommendation, stating the reasons for such rejection. If no reply is received within 30 days from the date on which the recommendation was sent to parties, the recommendation shall be deemed accepted.

§ 725.418 Proposed decision and order.

(a) After evaluating the parties' responses to the district director's recommendation pursuant to § 725.417, or, if no informal conference is to be held, at the conclusion of the period permitted by § 725.413(c)(2) for the submission of evidence, the district director shall issue a proposed decision and order. A proposed decision and order is a document, issued by the district director after the evidentiary development of the claim is completed and all contested issues, if any, are joined, which purports to resolve a claim on the basis of the evidence submitted to or obtained by the district director. A proposed decision and order shall be considered a final adjudication of a claim only as provided in § 725.419. A proposed decision and order may be issued by the district director in any claim and at any time during the adjudication of a claim if:

(1) Issuance is authorized or required by this part; or,

(2) The district director determines that its issuance will expedite the adjudication of the claim.

(b) A proposed decision and order shall contain findings of fact and conclusions of law and an appropriate order shall be served on all parties to the claim by certified mail.

§ 725.419 Response to proposed decision and order.

(a) Within 30 days after the date of issuance of a proposed decision and order, any party may, in writing, request a revision of the proposed decision and order or a hearing. If a hearing is requested, the district director shall refer the claim to the Office of Administrative Law Judges (see § 725.421).

(b) Any response made by a party to a proposed decision and order shall specify the findings and conclusions with which the responding party disagrees, and shall be served on the district director and all other parties to the claim.

(c) If a timely request for revision of a proposed decision and order is made, the district director may amend the proposed decision and order, as circumstances require, and serve the revised proposed decision and order on all parties or take such other action as is appropriate. If a revised proposed decision and order is issued, each party to the claim shall have 30 days from the date of issuance of that revised proposed decision and order within which to request a hearing.

(d) If no response to a proposed decision and order is sent to the district director within the period described in paragraph (a) of this section, or if no response to a revised proposed decision and order is sent to the district director within the period described in paragraph (c) of this section, the proposed decision and order shall become a final decision and order, which is effective upon the expiration of the applicable 30-day period. Once a

proposed decision and order or revised proposed decision and order becomes final and effective, all rights to further proceedings with respect to the claim shall be considered waived, except as provided in § 725.310.

§ 725.420 Initial determinations.

(a) Section 9501(d)(1)(A)(1) of the Internal Revenue Code (26 U.S.C.) provides that the Black Lung Disability Trust Fund shall begin the payment of benefits on behalf of an operator in any case in which the operator liable for such payments has not commenced payment of such benefits within 30 days after the date of an initial determination of eligibility by the Secretary. For claims filed on or after January 1, 1982, the payment of such interim benefits from the fund is limited to benefits accruing after the date of such initial determination.

(b) Except as provided in § 725.415, after the district director has determined that a claimant is eligible for benefits, on the basis of all evidence submitted by a claimant and operator, and has determined that a hearing will be necessary to resolve the claim, the district director shall in writing so inform the parties and direct the operator to begin the payment of benefits to the claimant in accordance with § 725.522. The date on which this writing is sent to the parties shall be considered the date of initial determination of the claim.

(c) If a notified operator refuses to commence payment of a claim within 30 days from the date on which an initial determination is made under this section, benefits shall be paid by the fund to the claimant in accordance with § 725.522, and the operator shall be liable to the fund, if such operator is determined liable for the claim, for all benefits paid by the fund on behalf of such operator, and, in addition, such penalties and interest as are appropriate.

§ 725.421 Referral of a claim to the Office of Administrative Law Judges.

(a) In any claim for which a formal hearing is requested or ordered, and with respect to which the district director has completed development and adjudication without having resolved all contested issues in the claim, the district director shall refer the claim to the Office of Administrative Law Judges for a hearing.

(b) In any case referred to the Office of Administrative Law Judges under this section, the district director shall transmit to that office the following documents, which shall be placed in the record at the hearing subject to the objection of any party:

(1) Copies of the claim form or forms;

(2) Any statement, document, or pleading submitted by a party to the claim;

(3) A copy of the notification to an operator of its possible liability for the claim;

(4) All evidence submitted to the district director under this part;

(5) Any written stipulation of law or fact or stipulation of contested and uncontested issues entered into by the parties;

(6) Any pertinent forms submitted to the district director;

(7) The statement by the district director of contested and uncontested issues in the claim; and

(8) The district director's initial determination of eligibility or other documents necessary to establish the right of the fund to reimbursement, if appropriate. Copies of the transmittal notice shall also be sent to all parties to the claim by regular mail.

(c) A party may at any time request and obtain from the district director copies of documents transmitted to the Office of Administrative Law Judges under paragraph (b) of this section. If the party has previously been provided with such documents, additional copies may be sent to the party upon the payment of a copying fee to be determined by the district director.

§ 725.422 Legal assistance.

The Secretary or his or her designee may, upon request, provide a claimant with legal assistance in processing a claim under the Act. Such assistance may be made available to a claimant in the discretion of the Solicitor of Labor or his or her designee at any time prior to or during the time in which the claim is being adjudicated and shall be furnished without charge to the claimant. Representation of a claimant in adjudicatory proceedings shall not be provided by the Department of Labor unless it is determined by the Solicitor of Labor that such representation is in the best interests of the black lung benefits program. In no event shall representation be provided to a claimant in a claim with respect to which the claimant's interests are adverse to those of the Secretary of Labor or the fund.

§ 725.423 Extensions of time.

Except for the one-year time limit set forth in § 725.411(a)(1)(i) and the 30-day time limit set forth in § 725.419, any of the time periods set forth in this subpart may be extended, for good cause shown, by filing a request for an extension with the district director prior to the expiration of the time period.

Subpart F—Hearings

§ 725.450 Right to a hearing.

Any party to a claim (see § 725.360) shall have a right to a hearing concerning any contested issue of fact or law unresolved by the district director. There shall be no right to a hearing until the processing and adjudication of the claim by the district director has been completed. There shall be no right to a hearing in a claim with respect to which a determination of the claim made by the district director has become final and effective in accordance with this part.

§ 725.451 Request for hearing.

After the completion of proceedings before the district director, or as is otherwise indicated in this part, any party may in writing request a hearing on any contested issue of fact or law (see § 725.419). A district director may on his or her own initiative refer a case for hearing. If a hearing is requested, or if a district director determines that a hearing is necessary to the resolution of any issue, the claim shall be referred to the Chief Administrative Law Judge for a hearing under § 725.421.

§ 725.452 Type of hearing; parties.

(a) A hearing held under this part shall be conducted by an administrative law judge designated by the Chief Administrative Law Judge. Except as otherwise provided by this part, all hearings shall be conducted in accordance with the provisions of 5 U.S.C. 554 *et seq.*

(b) All parties to a claim shall be permitted to participate fully at a hearing held in connection with such claim.

(c) A full evidentiary hearing need not be conducted if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and that the moving party is entitled to the relief requested as a matter of law. All parties shall be entitled to respond to the motion for summary judgment prior to decision thereon.

(d) If the administrative law judge believes that an oral hearing is not necessary (for any reason other than on motion for summary judgment), the judge shall notify the parties by written order and allow at least 30 days for the parties to respond. The administrative law judge shall hold the oral hearing if any party makes a timely request in response to the order.

§ 725.453 Notice of hearing.

All parties shall be given at least 30 days written notice of the date and place

of a hearing and the issues to be resolved at the hearing. Such notice shall be sent to each party or representative by certified mail.

§ 725.454 Time and place of hearing; transfer of cases.

(a) The Chief Administrative Law Judge shall assign a definite time and place for a formal hearing, and shall, where possible, schedule the hearing to be held at a place within 75 miles of the claimant's residence unless an alternate location is requested by the claimant.

(b) If the claimant's residence is not in any State, the Chief Administrative Law Judge may, in his or her discretion, schedule the hearing in the country of the claimant's residence.

(c) The Chief Administrative Law Judge or the administrative law judge assigned the case may in his or her discretion direct that a hearing with respect to a claim shall begin at one location and then later be reconvened at another date and place.

(d) The Chief Administrative Law Judge or administrative law judge assigned the case may change the time and place for a hearing, either on his or her own motion or for good cause shown by a party. The administrative law judge may adjourn or postpone the hearing for good cause shown, at any time prior to the mailing to the parties of the decision in the case. Unless otherwise agreed, at least 10 days notice shall be given to the parties of any change in the time or place of hearing.

(e) The Chief Administrative Law Judge may for good cause shown transfer a case from one administrative law judge to another.

§ 725.455 Hearing procedures; generally.

(a) *General.* The purpose of any hearing conducted under this subpart shall be to resolve contested issues of fact or law. Except as provided in § 725.421(b)(8), any findings or determinations made with respect to a claim by a district director shall not be considered by the administrative law judge.

(b) *Evidence.* The administrative law judge shall at the hearing inquire fully into all matters at issue, and shall not be bound by common law or statutory rules of evidence, or by technical or formal rules of procedure, except as provided by 5 U.S.C. 554 and this subpart. The administrative law judge shall receive into evidence the testimony of the witnesses and parties, the evidence submitted to the Office of Administrative Law Judges by the district director under § 725.421, and such additional evidence as may be submitted in accordance with the provisions of this subpart. The administrative law judge may entertain the objections of any party to the evidence submitted under this section.

(c) *Procedure.* The conduct of the hearing and the order in which allegations and evidence shall be presented shall be within the discretion of the administrative law judge and shall afford the parties an opportunity for a fair hearing.

(d) *Oral argument and written allegations.* The parties, upon request, may be allowed a reasonable time for the presentation of oral argument at the hearing. Briefs or other written statements or allegations as to facts or law may be filed by any party with the permission of the administrative law judge. Copies of any brief or other written statement shall be filed with the administrative law judge and served on all parties by the submitting party.

§ 725.456 Introduction of documentary evidence.

(a) All documents transmitted to the Office of Administrative Law Judges under § 725.421 shall be placed into evidence by the administrative law judge, subject to objection by any party.

(b)(1) Documentary evidence pertaining to the liability of a potentially liable operator and/or the identification of a responsible operator which was not submitted to the district director shall not be admitted into the hearing record in the absence of extraordinary circumstances. Medical evidence in excess of the limitations contained in § 725.414 shall not be admitted into the hearing record in the absence of good cause.

(2) Subject to the limitations in paragraph (b)(1) of this section, any other documentary material, including medical reports, which was not submitted to the district director, may be received in evidence subject to the objection of any party, if such evidence is sent to all other parties at least 20 days before a hearing is held in connection with the claim.

(3) Documentary evidence, which is not exchanged with the parties in accordance with this paragraph, may be admitted at the hearing with the written consent of the parties or on the record at the hearing, or upon a showing of good cause why such evidence was not exchanged in accordance with this paragraph. If documentary evidence is not exchanged in accordance with paragraph (b)(2) of this section and the parties do not waive the 20-day requirement or good cause is not shown, the administrative law judge shall either exclude the late evidence from the record or remand the claim to the district director for consideration of such evidence.

(4) A medical report which is not made available to the parties in accordance with paragraph (b)(2) of this section shall not be admitted into evidence in any case unless the hearing record is kept open for at least 30 days after the hearing to permit the parties to take such action as each considers appropriate in response to such evidence. If, in the opinion of the administrative law judge, evidence is withheld from the parties for the purpose of delaying the adjudication of the claim, the administrative law judge may exclude such evidence from the hearing record and close the record at the conclusion of the hearing.

(c) Documentary evidence which is obtained by any party during the time a claim is pending before the district director, and which is withheld from the district director or any other party until the claim is forwarded to the Office of Administrative Law Judges shall, notwithstanding paragraph (b) of this section, not be admitted into the hearing record in the absence of extraordinary circumstances, unless such admission is requested by any opposing party (see § 725.414(e)).

(d) Subject to paragraph (b) of this section, documentary evidence which the district director excludes from the record, and the objections to such evidence, may be submitted by the parties to the administrative law judge, who shall independently determine whether the evidence shall be admitted.

(1) If the evidence is admitted, the administrative law judge may, in his or her discretion, remand the claim to the district director for further consideration.

(2) If the evidence is admitted, the administrative law judge shall afford the opposing party or parties the opportunity to develop such additional documentary evidence as is necessary to protect the right of cross-examination.

(e) All medical records and reports submitted by any party shall be considered by the administrative law judge in accordance with the quality standards contained in part 718 of this subchapter.

(f) If the administrative law judge concludes that the complete pulmonary evaluation provided pursuant to § 725.406, or any part thereof, fails to comply with the applicable quality standards, or fails to address the relevant conditions of entitlement (see § 725.202(d)(2)(i) through (iv)) in a manner which permits resolution of the claim, the administrative law judge shall, in his or her discretion, remand the claim to the district director with

instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

§ 725.457 Witnesses.

(a) Witnesses at the hearing shall testify under oath or affirmation. The administrative law judge and the parties may question witnesses with respect to any matters relevant and material to any contested issue. Any party who intends to present the testimony of an expert witness at a hearing shall so notify all other parties to the claim at least 10 days before the hearing. The failure to give notice of the appearance of an expert witness in accordance with this paragraph, unless notice is waived by all parties, shall preclude the presentation of testimony by such expert witness.

(b) No person shall be required to appear as a witness in any proceeding before an administrative law judge at a place more than 100 miles from his or her place of residence, unless the lawful mileage and witness fee for 1 day's attendance is paid in advance of the hearing date.

(c) No person shall be permitted to testify as a witness at the hearing, or pursuant to deposition or interrogatory under § 725.458, unless that person meets the requirements of § 725.414(c).

(1) In the case of a witness offering testimony relevant to the liability of a potentially liable operator and/or the identification of the responsible operator, the witness must have been identified as a potential hearing witness while the claim was pending before the district director.

(2) In the case of a physician offering testimony relevant to the physical condition of the miner, such physician must have prepared a medical report. Alternatively, a physician may offer testimony relevant to the physical condition of the miner only to the extent that the party offering the physician's testimony has submitted fewer medical reports than permitted by § 725.414. Such physician's opinion shall be considered a medical report subject to the limitations of § 725.414. This provision shall apply to any testimony by a physician, whether at a formal hearing or a deposition, or by interrogatories.

(d) A physician whose testimony is permitted under this section may testify as to any other medical evidence of record, but shall not be permitted to testify as to any medical evidence relevant to the miner's condition that is not admissible.

§ 725.458 Depositions; interrogatories.

The testimony of any witness or party may be taken by deposition or interrogatory according to the rules of practice of the Federal district court for the judicial district in which the case is pending (or of the U.S. District Court for the District of Columbia if the case is pending in the District or outside the United States), except that at least 30 days prior notice of any deposition shall be given to all parties unless such notice is waived. No post-hearing deposition or interrogatory shall be permitted unless authorized by the administrative law judge upon the motion of a party to the claim. The testimony of any physician which is taken by deposition shall be subject to the limitations on the scope of the testimony contained in § 725.457(d).

§ 725.459 Witness fees.

(a) A witness testifying at a hearing before an administrative law judge, or whose deposition is taken, shall receive the same fees and mileage as witnesses in courts of the United States. If the witness is an expert, he or she shall be entitled to an expert witness fee. Except as provided in paragraphs (b) and (c) of this section, such fees shall be paid by the proponent of the witness.

(b) If the witness' proponent does not intend to call the witness to appear at a hearing or deposition, any other party may subpoena the witness for cross-examination. The administrative law judge shall authorize the least intrusive and expensive means of cross-examination as he deems appropriate and necessary to the full and true disclosure of facts. If such witness is required to attend the hearing, give a deposition or respond to interrogatories for cross-examination purposes, the proponent of the witness shall pay the witness' fee. If the claimant is the proponent of the witness whose cross-examination is sought, and demonstrates, within time limits established by the administrative law judge, that he would be deprived of ordinary and necessary living expenses if required to pay the witness fee and mileage necessary to produce that witness for cross-examination, the administrative law judge may apportion the costs of such cross-examination among the parties to the case. The administrative law judge may not apportion any costs against the fund in a case in which the district director has designated a responsible operator, except that the fund shall remain liable for any costs associated with the cross-examination of the physician who performed the complete pulmonary evaluation pursuant to § 725.406.

(c) If a claimant is determined entitled to benefits, there may be assessed as costs against a responsible operator, if any, or the fund, fees and mileage for necessary witnesses attending the hearing at the request of the claimant. Both the necessity for the witness and the reasonableness of the fees of any expert witness shall be approved by the administrative law judge. The amounts awarded against a responsible operator or the fund as attorney's fees, or costs, fees and mileage for witnesses, shall not in any respect affect or diminish benefits payable under the Act.

(d) A claimant shall be considered to be deprived of funds required for ordinary and necessary living expenses for purposes of paragraph (b) of this section where payment of the projected fee and mileage would meet the standards set forth at 20 CFR 404.508.

§ 725.460 Consolidated hearings.

When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one claim may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

§ 725.461 Waiver of right to appear and present evidence.

(a) If all parties waive their right to appear before the administrative law judge, it shall not be necessary for the administrative law judge to give notice of, or conduct, an oral hearing. A waiver of the right to appear shall be made in writing and filed with the Chief Administrative Law Judge or the administrative law judge assigned to hear the case. Such waiver may be withdrawn by a party for good cause shown at any time prior to the mailing of the decision in the claim. Even though all of the parties have filed a waiver of the right to appear, the administrative law judge may, nevertheless, after giving notice of the time and place, conduct a hearing if he or she believes that the personal appearance and testimony of the party or parties would assist in ascertaining the facts in issue in the claim. Where a waiver has been filed by all parties, and they do not appear before the administrative law judge personally or by representative, the administrative law judge shall make a record of the

relevant documentary evidence submitted in accordance with this part and any further written stipulations of the parties. Such documents and stipulations shall be considered the evidence of record in the case and the decision shall be based upon such evidence.

(b) Except as provided in § 725.456(a), the unexcused failure of any party to attend a hearing shall constitute a waiver of such party's right to present evidence at the hearing, and may result in a dismissal of the claim (see § 725.465).

§ 725.462 Withdrawal of controversion of issues set for formal hearing; effect.

A party may, on the record, withdraw his or her controversion of any or all issues set for hearing. If a party withdraws his or her controversion of all issues, the administrative law judge shall remand the case to the district director for the issuance of an appropriate order.

§ 725.463 Issues to be resolved at hearing; new issues.

(a) Except as otherwise provided in this section, the hearing shall be confined to those contested issues which have been identified by the district director (see § 725.421) or any other issue raised in writing before the district director.

(b) An administrative law judge may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the district director. Such new issue may be raised upon application of any party, or upon an administrative law judge's own motion, with notice to all parties, at any time after a claim has been transmitted by the district director to the Office of Administrative Law Judges and prior to decision by an administrative law judge. If a new issue is raised, the administrative law judge may, in his or her discretion, either remand the case to the district director with instructions for further proceedings, hear and resolve the new issue, or refuse to consider such new issue.

(c) If a new issue is to be considered by the administrative law judge, a party may, upon request, be granted an appropriate continuance.

§ 725.464 Record of hearing.

All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All medical reports, exhibits, and any other pertinent document or record, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

§ 725.465 Dismissals for cause.

(a) The administrative law judge may, at the request of any party, or on his or her own motion, dismiss a claim:

(1) Upon the failure of the claimant or his or her representative to attend a hearing without good cause;

(2) Upon the failure of the claimant to comply with a lawful order of the administrative law judge; or

(3) Where there has been a prior final adjudication of the claim or defense to the claim under the provisions of this subchapter and no new evidence is submitted (except as provided in part 727 of this subchapter; see § 725.4(d)).

(b) A party who is not a proper party to the claim (see § 725.360) shall be dismissed by the administrative law judge. The administrative law judge shall not dismiss any operator named as a potentially liable operator pursuant to § 725.407, except upon the motion or written agreement of the Director.

(c) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include an order dismissing the claim, defense or party.

(d) No claim shall be dismissed in a case with respect to which payments prior to final adjudication have been made to the claimant in accordance with § 725.522, except upon the motion or written agreement of the Director.

§ 725.466 Order of dismissal.

(a) An order dismissing a claim shall be served on the parties in accordance with § 725.478. The dismissal of a claim shall have the same effect as a decision and order disposing of the claim on its merits, except as provided in paragraph (b) of this section. Such order shall advise the parties of their right to request review by the Benefits Review Board.

(b) Where the Chief Administrative Law Judge or the presiding administrative law judge issues a decision and order dismissing the claim after a show cause proceeding, the district director shall terminate any payments being made to the claimant under § 725.522, and the order of dismissal shall, if appropriate, order the claimant to reimburse the fund for all benefits paid to the claimant.

§ 725.475 Termination of hearings.

Hearings are officially terminated when all the evidence has been received, witnesses heard, pleadings and briefs submitted to the administrative law judge, and the transcript of the proceedings has been printed and delivered to the administrative law judge.

§ 725.476 Issuance of decision and order.

Within 20 days after the official termination of the hearing (see § 725.475), the administrative law judge shall issue a decision and order with respect to the claim making an award to the claimant, rejecting the claim, or taking such other action as is appropriate.

§ 725.477 Form and contents of decision and order.

(a) Orders adjudicating claims for benefits shall be designated by the term ''decision and order'' or ''supplemental decision and order'' as appropriate, followed by a descriptive phrase designating the particular type of order, such as ''award of benefits,'' ''rejection of claim,'' ''suspension of benefits,'' ''modification of award.''

(b) A decision and order shall contain a statement of the basis of the order, the names of the parties, findings of fact, conclusions of law, and an award, rejection or other appropriate paragraph containing the action of the administrative law judge, his or her signature and the date of issuance. A decision and order shall be based upon the record made before the administrative law judge.

§ 725.478 Filing and service of decision and order.

On the date of issuance of a decision and order under § 725.477, the administrative law judge shall serve the decision and order on all parties to the claim by certified mail. On the same date, the original record of the claim shall be sent to the DCMWC in Washington, D.C. Upon receipt by the DCMWC, the decision and order shall be considered to be filed in the office of the district director, and shall become effective on that date.

§ 725.479 Finality of decisions and orders.

(a) A decision and order shall become effective when filed in the office of the district director (see § 725.478), and unless proceedings for suspension or setting aside of such order are instituted within 30 days of such filing, the order shall become final at the expiration of

the 30th day after such filing (see § 725.481).

(b) Any party may, within 30 days after the filing of a decision and order under § 725.478, request a reconsideration of such decision and order by the administrative law judge. The procedures to be followed in the reconsideration of a decision and order shall be determined by the administrative law judge.

(c) The time for appeal to the Benefits Review Board shall be suspended during the consideration of a request for reconsideration. After the administrative law judge has issued and filed a denial of the request for reconsideration, or a revised decision and order in accordance with this part, any dissatisfied party shall have 30 days within which to institute proceedings to set aside the decision and order on reconsideration.

(d) Regardless of any defect in service, actual receipt of the decision is sufficient to commence the 30-day period for requesting reconsideration or appealing the decision.

§ 725.480 Modification of decisions and orders.

A party who is dissatisfied with a decision and order which has become final in accordance with § 725.479 may request a modification of the decision and order if the conditions set forth in § 725.310 are met.

§ 725.481 Right to appeal to the Benefits Review Board.

Any party dissatisfied with a decision and order issued by an administrative law judge may, before the decision and order becomes final (see § 725.479), appeal the decision and order to the Benefits Review Board. A notice of appeal shall be filed with the Board. Proceedings before the Board shall be conducted in accordance with part 802 of this title.

§ 725.482 Judicial review.

(a) Any person adversely affected or aggrieved by a final order of the Benefits Review Board may obtain a review of that order in the U.S. court of appeals for the circuit in which the injury occurred by filing in such court within 60 days following the issuance of such Board order a written petition praying that the order be modified or set aside. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless ordered by the court. No stay shall be issued unless the court finds that irreparable injury would otherwise ensue to an operator or carrier.

(b) The Director, Office of Workers' Compensation Program, as designee of the Secretary of Labor responsible for the administration and enforcement of the Act, shall be considered the proper party to appear and present argument on behalf of the Secretary of Labor in all review proceedings conducted pursuant to this part and the Act, either as petitioner or respondent.

§ 725.483 Costs in proceedings brought without reasonable grounds.

If a United States court having jurisdiction of proceedings regarding any claim or final decision and order, determines that the proceedings have been instituted or continued before such court without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

Subpart G—Responsible Coal Mine Operators

General Provisions

§ 725.490 Statutory provisions and scope.

(a) One of the major purposes of the black lung benefits amendments of 1977 was to provide a more effective means of transferring the responsibility for the payment of benefits from the Federal government to the coal industry with respect to claims filed under this part. In furtherance of this goal, a Black Lung Disability Trust Fund financed by the coal industry was established by the Black Lung Benefits Revenue Act of 1977. The primary purpose of the Fund is to pay benefits with respect to all claims in which the last coal mine employment of the miner on whose account the claim was filed occurred before January 1, 1970. With respect to most claims in which the miner's last coal mine employment occurred after January 1, 1970, individual coal mine operators will be liable for the payment of benefits. The 1981 amendments to the Act relieved individual coal mine operators from the liability for payment of certain special claims involving coal mine employment on or after January 1, 1970, where the claim was previously denied and subsequently approved under section 435 of the Act. See § 725.496 for a detailed description of these special claims. Where no such operator exists or the operator determined to be liable is in default in any case, the fund shall pay the benefits due and seek reimbursement as is appropriate. See also § 725.420 for the fund's role in the payment of interim benefits in certain contested cases. In addition, the Black Lung Benefits Reform Act of 1977 amended certain provisions affecting the scope of coverage under the Act and describing the effects of particular corporate transactions on the liability of operators.

(b) The provisions of this subpart define the term ''operator'' and prescribe the manner in which the identity of an operator which may be liable for the payment of benefits—referred to herein as a ''responsible operator''—will be determined.

§ 725.491 Operator defined.

(a) For purposes of this part, the term ''operator'' shall include:

(1) Any owner, lessee, or other person who operates, controls, or supervises a coal mine, or any independent contractor performing services or construction at such mine; or

(2) Any other person who:

(i) Employs an individual in the transportation of coal or in coal mine construction in or around a coal mine, to the extent such individual was exposed to coal mine dust as a result of such employment (see § 725.202);

(ii) In accordance with the provisions of § 725.492, may be considered a successor operator; or

(iii) Paid wages or a salary, or provided other benefits, to an individual in exchange for work as a miner (see § 725.202).

(b) The terms ''owner,'' ''lessee,'' and ''person'' shall include any individual, partnership, association, corporation, firm, subsidiary of a corporation, or other organization, as appropriate, except that an officer of a corporation shall not be considered an ''operator'' for purposes of this part. Following the issuance of an order awarding benefits against a corporation that has not secured its liability for benefits in accordance with section 423 of the Act and § 726.4, such order may be enforced against the president, secretary, or treasurer of the corporation in accordance with subpart I of this part.

(c) The term ''independent contractor'' shall include any person who contracts to perform services. Such contractor's status as an operator shall not be contingent upon the amount or percentage of its work or business related to activities in or around a mine, nor upon the number or percentage of its employees engaged in such activities.

(d) For the purposes of determining whether a person is or was an operator that may be found liable for the payment of benefits under this part, there shall be a rebuttable presumption that during the course of an individual's employment with such employer, such individual was regularly and continuously exposed to coal mine dust during the course of employment. The presumption may be rebutted by a showing that the employee was not

exposed to coal mine dust for significant periods during such employment.

(e) The operation, control, or supervision referred to in paragraph (a)(1) of this section may be exercised directly or indirectly. Thus, for example, where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor may be considered an operator. Similarly, any parent entity or other controlling business entity may be considered an operator for purposes of this part, regardless of the nature of its business activities.

(f) Neither the United States, nor any State, nor any instrumentality or agency of the United States or any State, shall be considered an operator.

§ 725.492 Successor operator defined.

(a) Any person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof, shall be considered a ''successor operator'' with respect to any miners previously employed by such prior operator.

(b) The following transactions shall also be deemed to create successor operator liability:

(1) If an operator ceases to exist by reason of a reorganization which involves a change in identity, form, or place of business or organization, however effected;

(2) If an operator ceases to exist by reason of a liquidation into a parent or successor corporation; or

(3) If an operator ceases to exist by reason of a sale of substantially all its assets, or as a result of merger, consolidation, or division.

(c) In any case in which a transaction specified in paragraph (b), or substantially similar to a transaction specified in paragraph (b) took place, the resulting entity shall be considered a ''successor operator'' with respect to any miners previously employed by such prior operator.

(d) This section shall not be construed to relieve a prior operator of any liability if such prior operator meets the conditions set forth in § 725.494. If the prior operator does not meet the conditions set forth in § 725.494, the following provisions shall apply:

(1) In any case in which a prior operator transferred a mine or mines, or substantially all of the assets thereof, to a successor operator, or sold its coal mining business or substantially all of the assets thereof, to a successor operator, and then ceased to exist, within the terms of paragraph (b), the successor operator as identified in paragraph (a) shall be primarily liable for the payment of benefits to any miners previously employed by such prior operator.

(2) In any case in which a prior operator transferred mines, or substantially all of the assets thereof, to more than one successor operator, the successor operator that most recently acquired a mine or mines or assets from the prior operator shall be primarily liable for the payment of benefits to any miners previously employed by such prior operator.

(3) In any case in which a mine or mines, or substantially all the assets thereof, have been transferred more than once, the successor operator that most recently acquired such mine or mines or assets shall be primarily liable for the payment of benefits to any miners previously employed by the original prior operator. If the most recent successor operator does not meet the criteria for a potentially liable operator set forth in § 725.494, the next most recent successor operator shall be liable.

(e) An ''acquisition,'' for purposes of this section, shall include any transaction by which title to the mine or mines, or substantially all of the assets thereof, or the right to extract or prepare coal at such mine or mines, becomes vested in a person other than the prior operator.

§ 725.493 Employment relationship defined.

(a)(1) In determining the identity of a responsible operator under this part, the terms ''employ'' and ''employment'' shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner. Any individuals who participate with one or more persons in the mining of coal, such as owners, proprietors, partners, and joint venturers, whether they are compensated by wages, salaries, piece rates, shares, profits, or by any other means, shall be deemed employees. It is the specific intention of this paragraph to disregard any financial arrangement or business entity devised by the actual owners or operators of a coal mine or coal mine-related enterprise to avoid the payment of benefits to miners who, based upon the economic reality of their relationship to this enterprise, are, in fact, employees of the enterprise.

(2) The payment of wages or salary shall be prima facie evidence of the right to direct, control, or supervise an individual's work. The Department intends that where the operator who paid a miner's wages or salary meets the criteria for a potentially liable operator set forth in § 725.494, that operator shall be primarily liable for the payment of any benefits due the miner as a result of such employment. The absence of such payment, however, will not negate the existence of an employment relationship. Thus, the Department also intends that where the person who paid a miner's wages may not be considered a potentially liable operator, any other operator who retained the right to direct, control or supervise the work performed by the miner, or who benefitted from such work, may be considered a potentially liable operator.

(b) This paragraph contains examples of relationships that shall be considered employment relationships for purposes of this part. The list is not intended to be exclusive.

(1) In any case in which an operator may be considered a successor operator, as determined in accordance with § 725.492, any employment with a prior operator shall also be deemed to be employment with the successor operator. In a case in which the miner was not independently employed by the successor operator, the prior operator shall remain primarily liable for the payment of any benefits based on the miner's employment with the prior operator. In a case in which the miner was independently employed by the successor operator after the transaction giving rise to successor operator liability, the successor operator shall be primarily liable for the payment of any benefits.

(2) In any case in which the operator which directed, controlled or supervised the miner is no longer in business and such operator was a subsidiary of a parent company, a member of a joint venture, a partner in a partnership, or was substantially owned or controlled by another business entity, such parent entity or other member of a joint venture or partner or controlling business entity may be considered the employer of any employees of such operator.

(3) In any claim in which the operator which directed, controlled or supervised the miner is a lessee, the lessee shall be considered primarily liable for the claim. The liability of the lessor may be established only after it has been determined that the lessee is unable to provide for the payment of

benefits to a successful claimant. In any case involving the liability of a lessor for a claim arising out of employment with a lessee, any determination of lessor liability shall be made on the basis of the facts present in the case in accordance with the following considerations:

(i) Where a coal mine is leased, and the lease empowers the lessor to make decisions with respect to the terms and conditions under which coal is to be extracted or prepared, such as, but not limited to, the manner of extraction or preparation or the amount of coal to be produced, the lessor shall be considered the employer of any employees of the lessee.

(ii) Where a coal mine is leased to a self-employed operator, the lessor shall be considered the employer of such self-employed operator and its employees if the lease or agreement is executed or renewed after August 18, 1978 and such lease or agreement does not require the lessee to guarantee the payment of benefits which may be required under this part and part 726 of this subchapter.

(iii) Where a lessor previously operated a coal mine, it may be considered an operator with respect to employees of any lessee of such mine, particularly where the leasing arrangement was executed or renewed after August 18, 1978 and does not require the lessee to secure benefits provided by the Act.

(4) A self-employed operator, depending upon the facts of the case, may be considered an employee of any other operator, person, or business entity which substantially controls, supervises, or is financially responsible for the activities of the self-employed operator.

§ 725.494 Potentially liable operators.

An operator may be considered a ''potentially liable operator'' with respect to a claim for benefits under this part if each of the following conditions is met:

(a) The miner's disability or death arose at least in part out of employment in or around a mine or other facility during a period when the mine or facility was operated by such operator, or by a person with respect to which the operator may be considered a successor operator. For purposes of this section, there shall be a rebuttable presumption that the miner's disability or death arose in whole or in part out of his or her employment with such operator. Unless this presumption is rebutted, the responsible operator shall be liable to pay benefits to the claimant on account of the disability or death of the miner in accordance with this part. A miner's pneumoconiosis, or disability or death therefrom, shall be considered to have arisen in whole or in part out of work in or around a mine if such work caused, contributed to or aggravated the progression or advancement of a miner's loss of ability to perform his or her regular coal mine employment or comparable employment.

(b) The operator, or any person with respect to which the operator may be considered a successor operator, was an operator for any period after June 30, 1973.

(c) The miner was employed by the operator, or any person with respect to which the operator may be considered a successor operator, for a cumulative period of not less than one year (§ 725.101(a)(32)).

(d) The miner's employment with the operator, or any person with respect to which the operator may be considered a successor operator, included at least one working day (§ 725.101(a)(32)) after December 31, 1969.

(e) The operator is capable of assuming its liability for the payment of continuing benefits under this part. An operator will be deemed capable of assuming its liability for a claim if one of the following three conditions is met:

(1) The operator obtained a policy or contract of insurance under section 423 of the Act and part 726 of this subchapter that covers the claim, except that such policy shall not be considered sufficient to establish the operator's capability of assuming liability if the insurance company has been declared insolvent and its obligations for the claim are not otherwise guaranteed;

(2) The operator qualified as a self-insurer under section 423 of the Act and part 726 of this subchapter during the period in which the miner was last employed by the operator, provided that the operator still qualifies as a self-insurer or the security given by the operator pursuant to § 726.104(b) is sufficient to secure the payment of benefits in the event the claim is awarded; or

(3) The operator possesses sufficient assets to secure the payment of benefits in the event the claim is awarded in accordance with § 725.606.

§ 725.495 Criteria for determining a responsible operator.

(a)(1) The operator responsible for the payment of benefits in a claim adjudicated under this part (the ''responsible operator'') shall be the potentially liable operator, as determined in accordance with § 725.494, that most recently employed the miner.

(2) If more than one potentially liable operator may be deemed to have employed the miner most recently, then the liability for any benefits payable as a result of such employment shall be assigned as follows:

(i) First, to the potentially liable operator that directed, controlled, or supervised the miner;

(ii) Second, to any potentially liable operator that may be considered a successor operator with respect to miners employed by the operator identified in paragraph (a)(2)(i) of this section; and

(iii) Third, to any other potentially liable operator which may be deemed to have been the miner's most recent employer pursuant to § 725.493.

(3) If the operator that most recently employed the miner may not be considered a potentially liable operator, as determined in accordance with § 725.494, the responsible operator shall be the potentially liable operator that next most recently employed the miner. Any potentially liable operator that employed the miner for at least one day after December 31, 1969 may be deemed the responsible operator if no more recent employer may be considered a potentially liable operator.

(b) Except as provided in this section and § 725.408(a)(3), with respect to the adjudication of the identity of a responsible operator, the Director shall bear the burden of proving that the responsible operator initially found liable for the payment of benefits pursuant to § 725.410 (the ''designated responsible operator'') is a potentially liable operator. It shall be presumed, in the absence of evidence to the contrary, that the designated responsible operator is capable of assuming liability for the payment of benefits in accordance with § 725.494(e).

(c) The designated responsible operator shall bear the burden of proving either:

(1) That it does not possess sufficient assets to secure the payment of benefits in accordance with § 725.606; or

(2) That it is not the potentially liable operator that most recently employed the miner. Such proof must include evidence that the miner was employed as a miner after he or she stopped working for the designated responsible operator and that the person by whom he or she was employed is a potentially liable operator within the meaning of § 725.494. In order to establish that a more recent employer is a potentially liable operator, the designated responsible operator must demonstrate that the more recent employer possesses sufficient assets to secure the payment of benefits in accordance with

§ 725.606. The designated responsible operator may satisfy its burden by presenting evidence that the owner, if the more recent employer is a sole proprietorship; the partners, if the more recent employer is a partnership; or the president, secretary, and treasurer, if the more recent employer is a corporation that failed to secure the payment of benefits pursuant to part 726 of this subchapter, possess assets sufficient to secure the payment of benefits, provided such assets may be reached in a proceeding brought under subpart I of this part.

(d) In any case referred to the Office of Administrative Law Judges pursuant to § 725.421 in which the responsible operator initially found liable for the payment of benefits pursuant to § 725.410 is not the operator that most recently employed the miner, the record shall contain a statement from the district director explaining the reasons for such initial finding. If the reasons include the most recent employer's failure to meet the conditions of § 725.494(e), the record shall also contain a statement that the Office has searched the files it maintains pursuant to part 726, and that the Office has no record of insurance coverage for that employer, or of authorization to self-insure, that meets the conditions of § 725.494(e)(1) or (e)(2). Such a statement shall be prima facie evidence that the most recent employer is not financially capable of assuming its liability for a claim. In the absence of such a statement, it shall be presumed that the most recent employer is financially capable of assuming its liability for a claim.

§ 725.496 Special claims transferred to the fund.

(a) The 1981 amendments to the Act amended section 422 of the Act and transferred liability for payment of certain special claims from operators and carriers to the fund. These provisions apply to claims which were denied before March 1, 1978, and which have been or will be approved in accordance with section 435 of the Act.

(b) Section 402(i) of the Act defines three classes of denied claims subject to the transfer provisions:

(1) Claims filed with and denied by the Social Security Administration before March 1, 1978;

(2) Claims filed with the Department of Labor in which the claimant was notified by the Department of an administrative or informal denial before March 1, 1977, and in which the claimant did not within one year of such notification either:

(i) Request a hearing; or

(ii) Present additional evidence; or

(iii) Indicate an intention to present additional evidence; or

(iv) Request a modification or reconsideration of the denial on the ground of a change in conditions or because of a mistake in a determination of fact;

(3) Claims filed with the Department of Labor and denied under the law in effect prior to the enactment of the Black Lung Benefits Reform Act of 1977, that is, before March 1, 1978, following a formal hearing before an administrative law judge or administrative review before the Benefits Review Board or review before a United States Court of Appeals.

(c) Where more than one claim was filed with the Social Security Administration and/or the Department of Labor prior to March 1, 1978, by or on behalf of a miner or a surviving dependent of a miner, unless such claims were required to be merged by the agency's regulations, the procedural history of each such claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions.

(d) For a claim filed with and denied by the Social Security Administration prior to March 1, 1978, to come within the transfer provisions, such claim must have been or must be approved under the provisions of section 435 of the Act. No claim filed with and denied by the Social Security Administration is subject to the transfer of liability provisions unless a request was made by or on behalf of the claimant for review of such denied claim under section 435. Such review must have been requested by the filing of a valid election card or other equivalent document with the Social Security Administration in accordance with section 435(a) and its implementing regulations at 20 CFR 410.700 through 410.707.

(e) Where a claim filed with the Department of Labor prior to March 1, 1977, was subjected to repeated administrative or informal denials, the last such denial issued during the pendency of the claim determines whether the claim is subject to the transfer of liability provisions.

(f) Where a miner's claim comes within the transfer of liability provisions of the 1981 amendments the fund is also liable for the payment of any benefits to which the miner's dependent survivors are entitled after the miner's death. However, if the survivor's entitlement was established on a separate claim not subject to the transfer of liability provisions prior to approval of the miner's claim under section 435, the party responsible for the payment of such survivors' benefits shall not be relieved of that responsibility because the miner's claim was ultimately approved and found subject to the transfer of liability provisions.

§ 725.497 Procedures in special claims transferred to the fund.

(a) *General.* It is the purpose of this section to define procedures to expedite the handling and disposition of claims affected by the benefit liability transfer provisions of Section 205 of the Black Lung Benefits Amendments of 1981.

(b) *Action by the Department.* The OWCP shall, in accordance with the criteria contained in § 725.496, review each claim which is or may be affected by the provisions of Section 205 of the Black Lung Benefits Amendments of 1981. Any party to a claim, adjudication officer, or adjudicative body may request that such a review be conducted and that the record be supplemented with any additional documentation necessary for an informed consideration of the transferability of the claim. Where the issue of the transferability of the claim can not be resolved by agreement of the parties and the evidence of record is not sufficient for a resolution of the issue, the hearing record may be reopened or the case remanded for the development of the additional evidence concerning the procedural history of the claim necessary to such resolution. Such determinations shall be made on an expedited basis.

(c) *Dismissal of operators.* If it is determined that a coal mine operator or insurance carrier which previously participated in the consideration or adjudication of any claim, may no longer be found liable for the payment of benefits to the claimant by reason of section 205 of the Black Lung Benefits Amendments of 1981, such operator or carrier shall be promptly dismissed as a party to the claim. The dismissal of an operator or carrier shall be concluded at the earliest possible time and in no event shall an operator or carrier participate as a necessary party in any claim for which only the fund may be liable.

(d) *Procedure following dismissal of an operator.* After it has been determined that an operator or carrier must be dismissed as a party in any claim in accordance with this section, the Director shall take such action as is authorized by the Act to bring about the proper and expeditious resolution of the claim in light of all relevant medical and other evidence. Action to be taken in this regard by the Director may include, but is not limited to, the assignment of the claim to the Black

Lung Disability Trust Fund for the payment of benefits, the reimbursement of benefits previously paid by an operator or carrier if appropriate, the defense of the claim on behalf of the fund, or proceedings authorized by § 725.310.

(e) Any claimant whose claim has been subsequently denied in a modification proceeding will be entitled to expedited review of the modification decision. Where a formal hearing was previously held, the claimant may waive his right to a further hearing and ask that a decision be made on the record of the prior hearing, as supplemented by any additional documentary evidence which the parties wish to introduce and briefs of the parties, if desired. In any case in which the claimant waives his right to a second hearing, a decision and order must be issued within 30 days of the date upon which the parties agree the record has been completed.

Subpart H—Payment of Benefits

General Provisions

§ 725.501 Payment provisions generally.

The provisions of this subpart govern the payment of benefits to claimants whose claims are approved for payment under section 415 and part C of title IV of the Act or approved after review under section 435 of the Act and part 727 of this subchapter (see § 725.4(d)).

§ 725.502 When benefit payments are due; manner of payment.

(a)(1) Except with respect to benefits paid by the fund pursuant to an initial determination issued in accordance with § 725.418 (see § 725.522), benefits under the Act shall be paid when they become due. Benefits shall be considered due after the issuance of an effective order requiring the payment of benefits by a district director, administrative law judge, Benefits Review Board, or court, notwithstanding the pendency of a motion for reconsideration before an administrative law judge or an appeal to the Board or court, except that benefits shall not be considered due where the payment of such benefits has been stayed by the Benefits Review Board or appropriate court. An effective order shall remain in effect unless it is vacated by an administrative law judge on reconsideration, or, upon review under section 21 of the LHWCA, by the Benefits Review Board or an appropriate court, or is superseded by an effective order issued pursuant to § 725.310.

(2) A proposed order issued by a district director pursuant to § 725.418 becomes effective at the expiration of the thirtieth day thereafter if no party timely requests revision of the proposed decision and order or a hearing (see § 725.419). An order issued by an administrative law judge becomes effective when it is filed in the office of the district director (see § 725.479). An order issued by the Benefits Review Board shall become effective when it is issued. An order issued by a court shall become effective in accordance with the rules of the court.

(b)(1) While an effective order requiring the payment of benefits remains in effect, monthly benefits, at the rates set forth in § 725.520, shall be due on the fifteenth day of the month following the month for which the benefits are payable. For example, benefits payable for the month of January shall be due on the fifteenth day of February.

(2) Within 30 days after the issuance of an effective order requiring the payment of benefits, the district director shall compute the amount of benefits payable for periods prior to the effective date of the order, in addition to any interest payable for such periods (see § 725.608), and shall so notify the parties. Any computation made by the district director under this paragraph shall strictly observe the terms of the order. Benefits and interest payable for such periods shall be due on the thirtieth day following issuance of the district director's computation. A copy of the current table of applicable interest rates shall be attached.

(c) Benefits are payable for monthly periods and shall be paid directly to an eligible claimant or his or her representative payee (see § 725.510) beginning with the month during which eligibility begins. Benefits payments shall terminate with the month before the month during which eligibility terminates. If a claimant dies in the first month during which all requirements are met, benefits shall be paid for that month.

§ 725.503 Date from which benefits are payable.

(a) In accordance with the provisions of section 6(a) of the Longshore Act as incorporated by section 422(a) of the Act, and except as provided in § 725.504, the provisions of this section shall be applicable in determining the date from which benefits are payable to an eligible claimant for any claim filed after March 31, 1980. Except as provided in paragraph (d) of this section, the date from which benefits are payable for any claim approved under part 727 of this subchapter, shall be determined in accordance with § 727.302 (see § 725.4(d).

(b) *Miner's claim.* In the case of a miner who is entitled to benefits, benefits are payable to such miner beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment. Where the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed. In the case of a miner who filed a claim before January 1, 1982, benefits shall be payable to the miner's eligible survivor (if any) beginning with the month in which the miner died.

(c) *Survivor's claim.* In the case of an eligible survivor, benefits shall be payable beginning with the month of the miner's death, or January 1, 1974, whichever is later.

(d) If a claim is awarded pursuant to section 22 of the Longshore Act and § 725.310, then the date from which benefits are payable shall be determined as follows:

(1) *Mistake in fact.* The provisions of paragraphs (b) or (c) of this section, as applicable, shall govern the determination of the date from which benefits are payable.

(2) *Change in conditions.* Benefits are payable to a miner beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment, provided that no benefits shall be payable for any month prior to the effective date of the most recent denial of the claim by a district director or administrative law judge. Where the evidence does not establish the month of onset, benefits shall be payable to such miner from the month in which the claimant requested modification.

(e) In the case of a claim filed between July 1, 1973, and December 31, 1973, benefits shall be payable as provided by this section, except to the extent prohibited by § 727.303 (see § 725.4(d)).

(f) No benefits shall be payable with respect to a claim filed after December 31, 1973 (a part C claim), for any period of eligibility occurring before January 1, 1974.

(g) Each decision and order awarding benefits shall indicate the month from which benefits are payable to the eligible claimant.

§ 725.504 Payments to a claimant employed as a miner.

(a) In the case of a claimant who is employed as a miner (see § 725.202) at the time of a final determination of such miner's eligibility for benefits, no benefits shall be payable unless:

(1) The miner's eligibility is established under section 411(c)(3) of the Act; or

(2) The miner terminates his or her coal mine employment within 1 year from the date of the final determination of the claim.

(b) If the eligibility of a working miner is established under section 411(c)(3) of the Act, benefits shall be payable as is otherwise provided in this part. If eligibility cannot be established under section 411(c)(3), and the miner continues to be employed as a miner in any capacity for a period of less than 1 year after a final determination of the claim, benefits shall be payable beginning with the month during which the miner ends his or her coal mine employment. If the miner's employment continues for more than 1 year after a final determination of eligibility, such determination shall be considered a denial of benefits on the basis of the miner's continued employment, and the miner may seek benefits only as provided in § 725.310, if applicable, or by filing a new claim under this part. The provisions of subparts E and F of this part shall be applicable to claims considered under this section as is appropriate.

(c) In any case where the miner returns to coal mine or comparable and gainful work, the payments to such miner shall be suspended and no benefits shall be payable (except as provided in section 411(c)(3) of the Act) for the period during which the miner continues to work. If the miner again terminates employment, the district director may require the miner to submit to further medical examination before authorizing the payment of benefits.

§ 725.505 Payees.

Benefits may be paid, as appropriate, to a beneficiary, to a qualified dependent, or to a representative authorized under this subpart to receive payments on behalf of such beneficiary or dependent.

§ 725.506 Payment on behalf of another; ''legal guardian'' defined.

Benefits are paid only to the beneficiary, his or her representative payee (see § 725.510) or his or her legal guardian. As used in this section, ''legal guardian'' means an individual who has been appointed by a court of competent jurisdiction or otherwise appointed pursuant to law to assume control of and responsibility for the care of the beneficiary, the management of his or her estate, or both.

§ 725.507 Guardian for minor or incompetent.

An adjudication officer may require that a legal guardian or representative be appointed to receive benefit payments payable to any person who is mentally incompetent or a minor and to exercise the powers granted to, or to perform the duties otherwise required of such person under the Act.

§ 725.510 Representative payee.

(a) If the district director determines that the best interests of a beneficiary are served thereby, the district director may certify the payment of such beneficiary's benefits to a representative payee.

(b) Before any amount shall be certified for payment to any representative payee for or on behalf of a beneficiary, such representative payee shall submit to the district director such evidence as may be required of his or her relationship to, or his or her responsibility for the care of, the beneficiary on whose behalf payment is to be made, or of his or her authority to receive such a payment. The district director may, at any time thereafter, require evidence of the continued existence of such relationship, responsibility, or authority. If a person requesting representative payee status fails to submit the required evidence within a reasonable period of time after it is requested, no further payments shall be certified to him or her on behalf of the beneficiary unless the required evidence is thereafter submitted.

(c) All benefit payments made to a representative payee shall be available only for the use and benefit of the beneficiary, as defined in § 725.511.

§ 725.511 Use and benefit defined.

(a) Payments certified to a representative payee shall be considered as having been applied for the use and benefit of the beneficiary when they are used for the beneficiary's current maintenance—*i.e.*, to replace current income lost because of the disability of the beneficiary. Where a beneficiary is receiving care in an institution, current maintenance shall include the customary charges made by the institution and charges made for the current and foreseeable needs of the beneficiary which are not met by the institution.

(b) Payments certified to a representative payee which are not needed for the current maintenance of the beneficiary, except as they may be used under § 725.512, shall be conserved or invested on the beneficiary's behalf. Preferred investments are U.S. savings bonds which shall be purchased in accordance with applicable regulations of the U.S. Treasury Department (31 CFR part 315). Surplus funds may also be invested in accordance with the rules applicable to investment of trust estates by trustees. For example, surplus funds may be deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association if the account is either federally insured or is otherwise insured in accordance with State law requirements. Surplus funds deposited in an interest or dividend bearing account in a bank or trust company or in a savings and loan association must be in a form of account which clearly shows that the representative payee has only a fiduciary, and not a personal, interest in the funds. The preferred forms of such accounts are as follows:

Name of beneficiary _____
by (Name of representative payee)
representative payee,
or (Name of beneficiary)
by (Name of representative payee) trustee,

U.S. savings bonds purchased with surplus funds by a representative payee for an incapacitated adult beneficiary should be registered as follows: (Name of beneficiary) (Social Security No.), for whom (Name of payee) is representative payee for black lung benefits.

§ 725.512 Support of legally dependent spouse, child, or parent.

If current maintenance needs of a beneficiary are being reasonably met, a relative or other person to whom payments are certified as representative payee on behalf of the beneficiary may use part of the payments so certified for the support of the legally dependent spouse, a legally dependent child, or a legally dependent parent of the beneficiary.

§ 725.513 Accountability; transfer.

(a) The district director may require a representative payee to submit periodic reports including a full accounting of the use of all benefit payments certified to a representative payee. If a requested report or accounting is not submitted within the time allowed, the district director shall terminate the certification of the representative payee and thereafter payments shall be made directly to the beneficiary. A certification which is terminated under this section may be reinstated for good cause, provided that all required reports are supplied to the district director.

(b) A representative payee who has conserved or invested funds from payments under this part shall, upon the direction of the district director, transfer any such funds (including interest) to a successor payee appointed by the district director or, at the option of the district director, shall transfer such funds to the Office for

recertification to a successor payee or the beneficiary.

§ 725.514 Certification to dependent of augmentation portion of benefit.

(a) If the basic benefit of a miner or of a surviving spouse is augmented because of one or more dependents, and it appears to the district director that the best interests of such dependent would be served thereby, or that the augmented benefit is not being used for the use and benefit (as defined in this subpart) of the augmentee, the district director may certify payment of the amount of such augmentation (to the extent attributable to such dependent) to such dependent directly, or to a legal guardian or a representative payee for the use and benefit of such dependent.

(b) Any request to the district director to certify separate payment of the amount of an augmentation in accordance with paragraph (a) of this section shall be in writing on such form and in accordance with such instructions as are prescribed by the Office.

(c) The district director shall specify the terms and conditions of any certification authorized under this section and may terminate any such certification where appropriate.

(d) Any payment made under this section, if otherwise valid under the Act, is a complete settlement and satisfaction of all claims, rights, and interests in and to such payment, except that such payment shall not be construed to abridge the rights of any party to recoup any overpayment made.

§ 725.515 Assignment and exemption from claims of creditors.

(a) Except as provided by the Act and this part, no assignment, release, or commutation of benefits due or payable under this part by a responsible operator shall be valid, and all benefits shall be exempt from claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

(b) Notwithstanding any other provision of law, benefits due from, or payable by, the Black Lung Disability Trust Fund under the Act and this part to a claimant shall be subject to legal process brought for the enforcement against the claimant of his or her legal obligations to provide child support or make alimony payments to the same extent as if the fund was a private person.

Benefit Rates

§ 725.520 Computation of benefits.

(a) *Basic rate.* The amount of benefits payable to a beneficiary for a month is determined, in the first instance, by computing the ''basic rate.'' The basic rate is equal to 37½ percent of the monthly pay rate for Federal employees in GS–2, step 1. That rate for a month is determined by:

(1) Ascertaining the lowest annual rate of pay (step 1) for Grade GS–2 of the General Schedule applicable to such month (see 5 U.S.C. 5332);

(2) Ascertaining the monthly rate thereof by dividing the amount determined in paragraph (a)(1) of this section by 12; and

(3) Ascertaining the basic rate under the Act by multiplying the amount determined in paragraph (a)(2) of this section by 0.375 (that is, by 37½ percent).

(b) *Basic benefit.* When a miner or surviving spouse is entitled to benefits for a month for which he or she has no dependents who qualify under this part and when a surviving child of a miner or spouse, or a parent, brother, or sister of a miner, is entitled to benefits for a month for which he or she is the only beneficiary entitled to benefits, the amount of benefits to which such beneficiary is entitled is equal to the basic rate as computed in accordance with this section (raised, if not a multiple of 10 cents, to the next high multiple of 10 cents). This amount is referred to as the ''basic benefit.''

(c) *Augmented benefit.* (1) When a miner or surviving spouse is entitled to benefits for a month for which he or she has one or more dependents who qualify under this part, the amount of benefits to which such miner or surviving spouse is entitled is increased. This increase is referred to as an ''augmentation.''

(2) The benefits of a miner or surviving spouse are augmented to take account of a particular dependent beginning with the first month in which such dependent satisfies the conditions set forth in this part, and continues to be augmented through the month before the month in which such dependent ceases to satisfy the conditions set forth in this part, except in the case of a child who qualifies as a dependent because he or she is a student. In the latter case, such benefits continue to be augmented through the month before the first month during no part of which he or she qualifies as a student.

(3) The basic rate is augmented by 50 percent for one such dependent, 75 percent for two such dependents, and 100 percent for three or more such dependents.

(d) *Survivor benefits.* As used in this section, ''survivor'' means a surviving child of a miner or surviving spouse, or a surviving parent, brother, or sister of a miner, who establishes entitlement to benefits under this part.

(e) *Computation and rounding.* (1) Any computation prescribed by this section is made to the third decimal place.

(2) Monthly benefits are payable in multiples of 10 cents. Therefore, a monthly payment of amounts derived under paragraph (c)(3) of this section which is not a multiple of 10 cents is increased to the next higher multiple of 10 cents.

(3) Since a fraction of a cent is not a multiple of 10 cents, such an amount which contains a fraction in the third decimal place is raised to the next higher multiple of 10 cents.

(f) *Eligibility based on the coal mine employment of more than one miner.* Where an individual, for any month, is entitled (and/or qualifies as a dependent for purposes of augmentation of benefits) based on the disability or death due to pneumoconiosis arising out of the coal mine employment of more than one miner, the benefit payable to or on behalf of such individual shall be at a rate equal to the highest rate of benefits for which entitlement is established by reason of eligibility as a beneficiary, or by reason of his or her qualification as a dependent for augmentation of benefit purposes.

§ 725.521 Commutation of payments; lump sum awards.

(a) Whenever the district director determines that it is in the interest of justice, the liability for benefits or any part thereof as determined by a final adjudication, may, with the approval of the Director, be discharged by the payment of a lump sum equal to the present value of future benefit payments commuted, computed at 4 percent true discount compounded annually.

(b) Applications for commutation of future payments of benefits shall be made to the district director in the manner prescribed by the district director. If the district director determines that an award of a lump sum payment of such benefits would be in the interest of justice, he or she shall refer such application, together with the reasons in support of such determination, to the Director for consideration.

(c) The Director shall, in his or her discretion, grant or deny the application for commutation of payments. Such

decision may be appealed to the Benefits Review Board.

(d) The computation of all commutations of such benefits shall be made by the OWCP. For this purpose the file shall contain the date of birth of the person on whose behalf commutation is sought, as well as the date upon which such commutation shall be effective.

(e) For purposes of determining the amount of any lump sum award, the probability of the death of the disabled miner and/or other persons entitled to benefits before the expiration of the period during which he or she is entitled to benefits, shall be determined in accordance with the most current United States Life Tables, as developed by the Department of Health, Education, and Welfare, and the probability of the remarriage of a surviving spouse shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(f) In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall be notified of and given an opportunity to participate in the proceedings to determine whether a lump sum award shall be made. Such operator or carrier shall, in the event a lump sum award is made, tender full and prompt payment of such award to the claimant as though such award were a final payment of monthly benefits. Except as provided in paragraph (g) of this section, such lump sum award shall forever discharge such operator or carrier from its responsibility to make monthly benefit payments under the Act to the person who has requested such lump-sum award. In the event that an operator or carrier is adjudicated liable for the payment of benefits, such operator or carrier shall not be liable for any portion of a commuted or lump sum award predicated upon benefits due any claimant prior to January 1, 1974.

(g) In the event a lump-sum award is approved under this section, such award shall not operate to discharge an operator carrier, or the fund from any responsibility imposed by the Act for the payment of medical benefits to an eligible miner.

§ 725.522 Payments prior to final adjudication.

(a) If an operator or carrier fails or refuses to commence the payment of benefits within 30 days of issuance of an initial determination of eligibility by the district director (see § 725.420), or fails or refuses to commence the payment of any benefits due pursuant to an effective order by a district director, administrative law judge, Benefits Review Board, or court, the fund shall commence the payment of such benefits and shall continue such payments as appropriate. In the event that the fund undertakes the payment of benefits on behalf of an operator or carrier, the provisions of §§ 725.601 through 725.609 shall be applicable to such operator or carrier.

(b) If benefit payments are commenced prior to the final adjudication of the claim and it is later determined by an administrative law judge, the Board, or court that the claimant was ineligible to receive such payments, such payments shall be considered overpayments pursuant to § 725.540 and may be recovered in accordance with the provisions of this subpart.

Special Provisions for Operator Payments

§ 725.530 Operator payments; generally.

(a) Benefits payable by an operator or carrier pursuant to an effective order issued by a district director, administrative law judge, Benefits Review Board, or court, or by an operator that has agreed that it is liable for the payment of benefits to a claimant, shall be paid by the operator or carrier immediately when they become due (see § 725.502(b)). An operator that fails to pay any benefits that are due, with interest, shall be considered in default with respect to those benefits, and the provisions of § 725.605 shall be applicable. In addition, a claimant who does not receive any benefits within 10 days of the date they become due is entitled to additional compensation equal to twenty percent of those benefits (see § 725.607). Arrangements for the payment of medical costs shall be made by such operator or carrier in accordance with the provisions of subpart J of this part.

(b) Benefit payments made by an operator or carrier shall be made directly to the person entitled thereto or a representative payee if authorized by the district director. The payment of a claimant's attorney's fee, if any is awarded, shall be made directly to such attorney. Reimbursement of the fund, including interest, shall be paid directly to the Secretary on behalf of the fund.

§ 725.531 Receipt for payment.

Any individual receiving benefits under the Act in his or her own right, or as a representative payee, or as the duly appointed agent for the estate of a deceased beneficiary, shall execute receipts for benefits paid by any operator which shall be produced by such operator for inspection whenever the district director requires. A canceled check shall be considered adequate receipt of payment for purposes of this section. No operator or carrier shall be required to retain receipts for payments made for more than 5 years after the date on which such receipt was executed.

§ 725.532 Suspension, reduction, or termination of payments.

(a) No suspension, reduction, or termination in the payment of benefits is permitted unless authorized by the district director, administrative law judge, Board, or court. No suspension, reduction, or termination shall be authorized except upon the occurrence of an event which terminates a claimant's eligibility for benefits (see subpart B of this part) or as is otherwise provided in subpart C of this part, §§ 725.306 and 725.310, or this subpart (see also §§ 725.533 through 725.546).

(b) Any unauthorized suspension in the payment of benefits by an operator or carrier shall be treated as provided in subpart I.

(c) Unless suspension, reduction, or termination of benefits payments is required by an administrative law judge, the Benefits Review Board or a court, the district director, after receiving notification of the occurrence of an event that would require the suspension, reduction, or termination of benefits, shall follow the procedures for the determination of claims set forth in subparts E and F.

Increases and Reductions of Benefits

§ 725.533 Modification of benefits amounts; general.

(a) Under certain circumstances the amount of monthly benefits as computed in § 725.520 or lump-sum award (§ 725.521) shall be modified to determine the amount actually to be paid to a beneficiary. With respect to any benefits payable for all periods of eligibility after January 1, 1974, a reduction of the amount of benefits payable shall be required on account of:

(1) Any compensation or benefits received under any State workers' compensation law because of death or partial or total disability due to pneumoconiosis; or

(2) Any compensation or benefits received under or pursuant to any Federal law including part B of title IV of the Act because of death or partial or total disability due to pneumoconiosis; or

(3) In the case of benefits to a parent, brother, or sister as a result of a claim

filed at any time or benefits payable on a miner's claim which was filed on or after January 1, 1982, the excess earnings from wages and from net earnings from self-employment (see § 410.530 of this title) of such parent, brother, sister, or miner, respectively; or

(4) The fact that a claim for benefits from an additional beneficiary is filed, or that such claim is effective for a payment during the month of filing, or a dependent qualifies under this part for an augmentation portion of a benefit of a miner or widow for a period in which another dependent has previously qualified for an augmentation.

(b) An adjustment in a beneficiary's monthly benefit may be required because an overpayment or underpayment has been made to such beneficiary (see §§ 725.540 through 725.546).

(c) A suspension of a beneficiary's monthly benefits may be required when the Office has information indicating that reductions on account of excess earnings may reasonably be expected.

(d) Monthly benefit rates are payable in multiples of 10 cents. Any monthly benefit rate which, after the applicable computations, augmentations, and reductions is not a multiple of 10 cents, is increased to the next higher multiple of 10 cents. Since a fraction of a cent is not a multiple of 10 cents, a benefit rate which contains such a fraction in the third decimal is raised to the next higher multiple of 10 cents.

(e) Any individual entitled to a benefit, who is aware of any circumstances which could affect entitlement to benefits, eligibility for payment, or the amount of benefits, or result in the termination, suspension, or reduction of benefits, shall promptly report these circumstances to the Office. The Office may at any time require an individual receiving, or claiming entitlement to, benefits, either on his or her own behalf or on behalf of another, to submit a written statement giving pertinent information bearing upon the issue of whether or not an event has occurred which would cause such benefit to be terminated, or which would subject such benefit to reductions or suspension under the provisions of the Act. The failure of an individual to submit any such report or statement, properly executed, to the Office shall subject such benefit to reductions, suspension, or termination as the case may be.

§ 725.534 Reduction of State benefits.

No benefits under section 415 of part B of title IV of the Act shall be payable to the residents of a State which, after December 31, 1969, reduces the benefits payable to persons eligible to receive benefits under section 415 of the Act under State laws applicable to its general work force with regard to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance benefits which are funded in whole or in part out of employer contributions.

§ 725.535 Reductions; receipt of State or Federal benefit.

(a) As used in this section the term ''State or Federal benefit'' means a payment to an individual on account of total or partial disability or death due to pneumoconiosis only under State or Federal laws relating to workers' compensation. With respect to a claim for which benefits are payable for any month between July 1 and December 31, 1973, ''State benefit'' means a payment to a beneficiary made on account of disability or death due to pneumoconiosis under State laws relating to workers' compensation (including compensation for occupational disease), unemployment compensation, or disability insurance.

(b) Benefit payments to a beneficiary for any month are reduced (but not below zero) by an amount equal to any payments of State or Federal benefits received by such beneficiary for such month.

(c) Where a State or Federal benefit is paid periodically but not monthly, or in a lump sum as a commutation of or a substitution for periodic benefits, the reduction under this section is made at such time or times and in such amounts as the Office determines will approximate as nearly as practicable the reduction required under paragraph (b) of this section. In making such a determination, a weekly State or Federal benefit is multiplied by 4⅓ and a biweekly benefit is multiplied by 2⅙ to ascertain the monthly equivalent for reduction purposes.

(d) Amounts paid or incurred or to be incurred by the individual for medical, legal, or related expenses in connection with this claim for State or Federal benefits (defined in paragraph (a) of this section) are excluded in computing the reduction under paragraph (b) of this section, to the extent that they are consistent with State or Federal Law. Such medical, legal, or related expenses may be evidenced by the State or Federal benefit awards, compromise agreement, or court order in the State or Federal benefit proceedings, or by such other evidence as the Office may require. Such other evidence may consist of:

(1) A detailed statement by the individual's attorney, physician, or the employer's insurance carrier; or

(2) Bills, receipts, or canceled checks; or

(3) Other evidence indicating the amount of such expenses; or

(4) Any combination of the foregoing evidence from which the amount of such expenses may be determinable. Such expenses shall not be excluded unless established by evidence as required by the Office.

§ 725.536 Reductions; excess earnings.

In the case of a surviving parent, brother, or sister, whose claim was filed at any time, or of a miner whose claim was filed on or after January 1, 1982, benefit payments are reduced as appropriate by an amount equal to the deduction which would be made with respect to excess earnings under the provisions of sections 203(b), (f), (g), (h), (j), and (l) of the Social Security Act (42 U.S.C. 403(b), (f), (g), (h), (j), and (l)), as if such benefit payments were benefits payable under section 202 of the Social Security Act (42 U.S.C. 402) (see §§ 404.428 through 404.456 of this title).

§ 725.537 Reductions; retroactive effect of an additional claim for benefits.

Except as provided in § 725.212(b), beginning with the month in which a person other than a miner files a claim and becomes entitled to benefits, the benefits of other persons entitled to benefits with respect to the same miner, are adjusted downward, if necessary, so that no more than the permissible amount of benefits (the maximum amount for the number of beneficiaries involved) will be paid.

§ 725.538 Reductions; effect of augmentation of benefits based on subsequent qualification of individual.

(a) Ordinarily, a written request that the benefits of a miner or surviving spouse be augmented on account of a qualified dependent is made as part of the claim for benefits. However, it may also be made thereafter.

(b) In the latter case, beginning with the month in which such a request is filed on account of a particular dependent and in which such dependent qualifies for augmentation purposes under this part, the augmented benefits attributable to other qualified dependents (with respect to the same miner or surviving spouse), if any, are adjusted downward, if necessary, so that the permissible amount of augmented benefits (the maximum amount for the number of dependents involved) will not be exceeded.

(c) Where, based on the entitlement to benefits of a miner or surviving spouse,

a dependent would have qualified for augmentation purposes for a prior month of such miner's or surviving spouse's entitlement had such request been filed in such prior month, such request is effective for such prior month. For any month before the month of filing such request, however, otherwise correct benefits previously certified by the Office may not be changed. Rather the amount of the augmented benefit attributable to the dependent filing such request in the later month is reduced for each month of the retroactive period to the extent that may be necessary. This means that for each month of the retroactive period, the amount payable to the dependent filing the later augmentation request is the difference, if any, between:

(1) The total amount of augmented benefits certified for payment for other dependents for that month, and

(2) The permissible amount of augmented benefits (the maximum amount for the number of dependents involved) payable for the month for all dependents, including the dependent filing later.

§ 725.539 More than one reduction event.

If a reduction for receipt of State or Federal benefits and a reduction on account of excess earnings are chargeable to the same month, the benefit for such month is first reduced (but not below zero) by the amount of the State or Federal benefits, and the remainder of the benefit for such month, if any, is then reduced (but not below zero) by the amount of excess earnings chargeable to such month.

Overpayments; Underpayments

§ 725.540 Overpayments.

(a) *General.* As used in this subpart, the term ''overpayment'' includes:

(1) Payment where no amount is payable under this part;

(2) Payment in excess of the amount payable under this part;

(3) A payment under this part which has not been reduced by the amounts required by the Act (see § 725.533);

(4) A payment under this part made to a resident of a State whose residents are not entitled to benefits (see §§ 725.402 and 725.403);

(5) Payment resulting from failure to terminate benefits to an individual no longer entitled thereto;

(6) Duplicate benefits paid to a claimant on account of concurrent eligibility under this part and parts 410 or 727 (see § 725.4(d)) of this title or as provided in § 725.309.

(b) *Overpaid beneficiary is living.* If the beneficiary to whom an overpayment was made is living at the time of a determination of such overpayment, is entitled to benefits at the time of the overpayment, or at any time thereafter becomes so entitled, no benefit for any month is payable to such individual, except as provided in paragraph (c) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded.

(c) *Adjustment by withholding part of a monthly benefit.* Adjustment under paragraph (b) of this section may be effected by withholding a part of the monthly benefit payable to a beneficiary where it is determined that:

(1) Withholding the full amount each month would deprive the beneficiary of income required for ordinary and necessary living expenses;

(2) The overpayment was not caused by the beneficiary's intentionally false statement or representation, or willful concealment of, or deliberate failure to furnish, material information; and

(3) Recoupment can be effected in an amount of not less than $ 10 a month and at a rate which would not unreasonably extend the period of adjustment.

(d) *Overpaid beneficiary dies before adjustment.* If an overpaid beneficiary dies before adjustment is completed under the provisions of paragraph (b) of this section, recovery of the overpayment shall be effected through repayment by the estate of the deceased overpaid beneficiary, or by withholding of amounts due the estate of such deceased beneficiary, or both.

§ 725.541 Notice of waiver of adjustment or recovery of overpayment.

Whenever a determination is made that more than the correct amount of payment has been made, notice of the provisions of section 204(b) of the Social Security Act regarding waiver of adjustment or recovery shall be sent to the overpaid individual, to any other individual against whom adjustment or recovery of the overpayment is to be effected, and to any operator or carrier which may be liable to such overpaid individual.

§ 725.542 When waiver of adjustment or recovery may be applied.

There shall be no adjustment or recovery of an overpayment in any case where an incorrect payment has been made with respect to an individual:

(a) Who is without fault, and where

(b) Adjustment or recovery would either:

(1) Defeat the purpose of title IV of the Act, or

(2) Be against equity and good conscience.

§ 725.543 Standards for waiver of adjustment or recovery.

The standards for determining the applicability of the criteria listed in § 725.542 shall be the same as those applied by the Social Security Administration under §§ 404.506 through 404.512 of this title.

§ 725.544 Collection and compromise of claims for overpayment.

(a) *General effect of 31 U.S.C. 3711.* In accordance with 31 U.S.C. 3711 and applicable regulations, claims by the Office against an individual for recovery of an overpayment under this part not exceeding the sum of $ 100,000, exclusive of interest, may be compromised, or collection suspended or terminated, where such individual or his or her estate does not have the present or prospective ability to pay the full amount of the claim within a reasonable time (see paragraph (c) of this section), or the cost of collection is likely to exceed the amount of recovery (see paragraph (d) of this section), except as provided under paragraph (b) of this section.

(b) *When there will be no compromise, suspension, or termination of collection of a claim for overpayment.* (1) In any case where the overpaid individual is alive, a claim for overpayment will not be compromised, nor will there be suspension or termination of collection of the claim by the Office, if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such individual or on the part of any other party having any interest in the claim.

(2) In any case where the overpaid individual is deceased:

(i) A claim for overpayment in excess of $ 5,000 will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication of fraud, the filing of a false claim, or misrepresentation on the part of such deceased individual; and

(ii) A claim for overpayment, regardless of the amount, will not be compromised, nor will there be suspension or termination of collection of the claim by the Office if there is an indication that any person other than the deceased overpaid individual had a part in the fraudulent action which resulted in the overpayment.

(c) *Inability to pay claim for recovery of overpayment.* In determining whether the overpaid individual is unable to pay a claim for recovery of an overpayment under this part, the Office shall consider the individual's age, health, present and potential income (including inheritance prospects), assets (e.g., real property,

savings account), possible concealment or improper transfer of assets, and assets or income of such individual which may be available in enforced collection proceedings. The Office will also consider exemptions available to such individual under the pertinent State or Federal law in such proceedings. In the event the overpaid individual is deceased, the Office shall consider the available assets of the estate, taking into account any liens or superior claims against the estate.

(d) *Cost of collection or litigative probabilities.* Where the probable costs of recovering an overpayment under this part would not justify enforced collection proceedings for the full amount of the claim, or where there is doubt concerning the Office's ability to establish its claim as well as the time which it will take to effect such collection, a compromise or settlement for less than the full amount may be considered.

(e) *Amount of compromise.* The amount to be accepted in compromise of a claim for overpayment under this part shall bear a reasonable relationship to the amount which can be recovered by enforced collection proceedings, giving due consideration to the exemption available to the overpaid individual under State or Federal law and the time which collection will take.

(f) *Payment.* Payment of the amount the Office has agreed to accept as a compromise in full settlement of a claim for recovery of an overpayment under this part shall be made within the time and in the manner set by the Office. A claim for the overpayment shall not be considered compromised or settled until the full payment of the compromised amount has been made within the time and manner set by the Office. Failure of the overpaid individual or his or her estate to make such payment as provided shall result in reinstatement of the full amount of the overpayment less any amounts paid prior to such default.

§ 725.545 Underpayments.

(a) *General.* As used in this subpart, the term ''underpayment'' includes a payment in an amount less than the amount of the benefit due for such month, and nonpayment where some amount of such benefits is payable.

(b) *Underpaid individual is living.* If an individual to whom an underpayment was made is living, the deficit represented by such underpayment shall be paid to such individual either in a single payment (if he or she is not entitled to a monthly benefit or if a single payment is requested by the claimant in writing) or by increasing one or more monthly benefit payments to which such individual becomes entitled.

(c) *Underpaid individual dies before adjustment of underpayment.* If an individual to whom an underpayment was made dies before receiving payment of the deficit or negotiating the check or checks representing payment of the deficit, such payment shall be distributed to the living person (or persons) in the highest order of priority as follows:

(1) The deceased individual's surviving spouse who was either:

(i) Living in the same household with the deceased individual at the time of such individual's death; or

(ii) In the case of a deceased miner, entitled for the month of death to black lung benefits as his or her surviving spouse or surviving divorced spouse.

(2) In the case of a deceased miner or spouse his or her child entitled to benefits as the surviving child of such miner or surviving spouse for the month in which such miner or spouse died (if more than one such child, in equal shares to each such child).

(3) In the case of a deceased miner, his parent entitled to benefits as the surviving parent of such miner for the month in which such miner died (if more than one such parent, in equal shares to each such parent).

(4) The surviving spouse of the deceased individual who does not qualify under paragraph (c)(1) of this section.

(5) The child or children of the deceased individual who do not qualify under paragraph (c)(2) of this section (if more than one such child, in equal shares to each such child).

(6) The parent or parents of the deceased individual who do not qualify under paragraph (c)(3) of this section (if more than one such parent, in equal shares to each such parent).

(7) The legal representative of the estate of the deceased individual as defined in paragraph (e) of this section.

(d) *Deceased beneficiary.* In the event that a person, who is otherwise qualified to receive payments as the result of a deficit caused by an underpayment under the provisions of paragraph (c) of this section, dies before receiving payment or before negotiating the check or checks representing such payment, his or her share of the underpayment shall be divided among the remaining living person(s) in the same order or priority. In the event that there is (are) no other such person(s), the underpayment shall be paid to the living person(s) in the next lower order of priority under paragraph (c) of this section.

(e) *Definition of legal representative.* The term ''legal representative,'' for the purpose of qualifying for receipt of an underpayment, generally means the executor or the administrator of the estate of the deceased beneficiary. However, it may also include an individual, institution or organization acting on behalf of an unadministered estate, provided the person can give the Office good acquittance (as defined in paragraph (f) of this section). The following persons may qualify as legal representative for purposes of this section, provided they can give the Office good acquittance:

(1) A person who qualifies under a State's ''small estate'' statute; or

(2) A person resident in a foreign country who under the laws and customs of that country, has the right to receive assets of the estate; or

(3) A public administrator; or

(4) A person who has the authority under applicable law to collect the assets of the estate of the deceased beneficiary.

(f) *Definition of ''good acquittance.''* A person is considered to give the Office *good acquittance* when payment to that person will release the Office from further liability for such payment.

§ 725.546 Relation to provisions for reductions or increases.

The amount of an overpayment or an underpayment is the difference between the amount to which the beneficiary was actually entitled and the amount paid. Overpayment and underpayment simultaneously outstanding against the same beneficiary shall first be adjusted against one another before adjustment pursuant to the other provisions of this subpart.

§ 725.547 Applicability of overpayment and underpayment provisions to operator or carrier.

(a) The provisions of this subpart relating to overpayments and underpayments shall be applicable to overpayments and underpayments made by responsible operators or their insurance carriers, as appropriate.

(b) No operator or carrier may recover, or make an adjustment of, an overpayment without prior application to, and approval by, the Office which shall exercise full supervisory authority over the recovery or adjustment of all overpayments.

§ 725.548 Procedures applicable to overpayments and underpayments.

(a) In any case involving either overpayments or underpayments, the Office may take any necessary action, and district directors may issue

appropriate orders to protect the rights of the parties.

(b) Disputes arising out of orders so issued shall be resolved by the procedures set out in subpart F of this part.

Subpart I—Enforcement of Liability; Reports

§ 725.601 Enforcement generally.

(a) The Act, together with certain incorporated provisions from the Longshoremen's and Harbor Workers' Compensation Act, contains a number of provisions which subject an operator or other employer, claimants and others to penalties for failure to comply with certain provisions of the Act, or failure to commence and continue prompt periodic payments to a beneficiary.

(b) It is the policy and intent of the Department to vigorously enforce the provisions of this part through the use of the remedies provided by the Act. Accordingly, if an operator refuses to pay benefits with respect to a claim for which the operator has been adjudicated liable, the Director shall invoke and execute the lien on the property of the operator as described in § 725.603. Enforcement of this lien shall be pursued in an appropriate U.S. district court. If the Director determines that the remedy provided by § 725.603 may not be sufficient to guarantee the continued compliance with the terms of an award or awards against the operator, the Director shall in addition seek an injunction in the U.S. district court to prohibit future noncompliance by the operator and such other relief as the court considers appropriate (see § 725.604). If an operator unlawfully suspends or terminates the payment of benefits to a claimant, the district director shall declare the award in default and proceed in accordance with § 725.605. In all cases payments in addition to compensation (see § 725.607) and interest (see § 725.608) shall be sought by the Director or awarded by the district director.

(c) In certain instances the remedies provided by the Act are concurrent; that is, more than one remedy might be appropriate in any given case. In such a case, the Director shall select the remedy or remedies appropriate for the enforcement action. In making this selection, the Director shall consider the best interests of the claimant as well as those of the fund.

§ 725.602 Reimbursement of the fund.

(a) In any case in which the fund has paid benefits, including medical benefits, on behalf of an operator or other employer which is determined liable therefore, or liable for a part thereof, such operator or other employer shall simultaneously with the first payment of benefits made to the beneficiary, reimburse the fund (with interest) for the full amount of all benefit payments made by the fund with respect to the claim.

(b) In any case where benefit payments have been made by the fund, the fund shall be subrogated to the rights of the beneficiary. The Secretary of Labor may, as appropriate, exercise such subrogation rights.

§ 725.603 Payments by the fund on behalf of an operator; liens.

(a) If an amount is paid out of the fund to an individual entitled to benefits under this part or part 727 of this subchapter (see § 725.4(d)) on behalf of an operator or other employer which is or was required to pay or secure the payment of all or a portion of such amount (see § 725.522), the operator or other employer shall be liable to the United States for repayment to the fund of the amount of benefits properly attributable to such operator or other employer.

(b) If an operator or other employer liable to the fund refuses to pay, after demand, the amount of such liability, there shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such operator or other employer. The lien arises on the date on which such liability is finally determined, and continues until it is satisfied or becomes unenforceable by reason of lapse of time. (c)(1) Except as otherwise provided under this section, the priority of the lien shall be determined in the same manner as under section 6323 of the Internal Revenue Code (26 U.S.C.).

(2) In the case of a bankruptcy or insolvency proceeding, the lien imposed under this section shall be treated in the same manner as a lien for taxes due and owing to the United States for purposes of the Bankruptcy Act or section 3466 of the Revised Statutes (31 U.S.C. 191).

(3) For purposes of applying section 6323(a) of the Internal Revenue Code (26 U.S.C.) to determine the priority between the lien imposed under this section and the Federal tax lien, each lien shall be treated as a judgment lien arising as of the time notice of such lien is filed.

(4) For purposes of the section, notice of the lien imposed hereunder shall be filed in the same manner as under section 6323(f) (disregarding paragraph (4) thereof) and (g) of the Internal Revenue Code (26 U.S.C.).

(5) In any case where there has been a refusal or neglect to pay the liability imposed under this section, the Secretary of Labor may bring a civil action in a district court of the United States to enforce the lien of the United States under this section with respect to such liability or to subject any property, of whatever nature, of the operator, or in which it has any right, title, or interest, to the payment of such liability.

(6) The liability imposed by this paragraph may be collected at a proceeding in court if the proceeding is commenced within 6 years after the date upon which the liability was finally determined, or prior to the expiration of any period for collection agreed upon in writing by the operator and the United States before the expiration of such 6-year period. This period of limitation shall be suspended for any period during which the assets of the operator are in the custody or control of any court of the United States, or of any State, or the District of Columbia, and for 6 months thereafter, and for any period during which the operator is outside the United States if such period of absence is for a continuous period of at least 6 months.

§ 725.604 Enforcement of final awards.

Notwithstanding the provisions of § 725.603, if an operator or other employer or its officers or agents fails to comply with an order awarding benefits that has become final, any beneficiary of such award or the district director may apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the U.S. District Court for the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such operator or other employer or its officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such operator or other employer and its officers or agents compliance with the order.

§ 725.605 Defaults.

(a) Except as is otherwise provided in this part, no suspension, termination or other failure to pay benefits awarded to a claimant is permitted. If an employer found liable for the payment of such benefits fails to make such payments within 30 days after any date on which such benefits are due and payable, the person to whom such benefits are payable may, within one year after such default, make application to the district

director for a supplementary order declaring the amount of the default.

(b) If after investigation, notice and hearing as provided in subparts E and F of this part, a default is found, the district director or the administrative law judge, if a hearing is requested, shall issue a supplementary order declaring the amount of the default, if any. In cases where a lump-sum award has been made, if the payment in default is an installment, the district director or administrative law judge, may, in his or her discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Federal district court for the judicial district in which the operator has its principal place of business or maintains an office or for the judicial district in which the injury occurred. In case such principal place of business or office is in the District of Columbia, a copy of such supplementary order may be filed with the clerk of the U.S. District Court for the District of Columbia. Such supplementary order shall be final and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order if such supplementary order is in accordance with law. Review of the judgment may be had as in civil suits for damages at common law. Final proceedings to execute the judgment may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later benefits order upon presentation of a certified copy thereof to the court.

(c) In cases where judgment cannot be satisfied by reason of the employer's insolvency or other circumstances precluding payment, the district director shall make payment from the fund, and in addition, provide any necessary medical, surgical, and other treatment required by subpart J of this part. A defaulting employer shall be liable to the fund for payment of the amounts paid by the fund under this section; and for the purpose of enforcing this liability, the fund shall be subrogated to all the rights of the person receiving such payments or benefits.

§ 725.606 Security for the payment of benefits.

(a) Following the issuance of an effective order by a district director (see § 725.418), administrative law judge (see § 725.479), Benefits Review Board, or court that requires the payment of benefits by an operator that has failed to secure the payment of benefits in accordance with section 423 of the Act and § 726.4 of this subchapter, or by a coal mine construction or transportation employer, the Director may request that the operator secure the payment of all benefits ultimately payable on the claim. Such operator or other employer shall thereafter immediately secure the payment of benefits in accordance with the provisions of this section, and provide proof of such security to the Director. Such security may take the form of an indemnity bond, a deposit of cash or negotiable securities in compliance with §§ 726.106(c) and 726.107 of this subchapter, or any other form acceptable to the Director.

(b) The amount of security initially required by this section shall be determined as follows:

(1) In a case involving an operator subject to section 423 of the Act and § 726.4 of this subchapter, the amount of the security shall not be less than $175,000, and may be a higher amount as determined by the Director, taking into account the life expectancies of the claimant and any dependents using the most recent life expectancy tables published by the Social Security Administration; or

(2) In a case involving a coal mine construction or transportation employer, the amount of the security shall be determined by the Director, taking into account the life expectancies of the claimant and any dependents using the most recent life expectancy tables published by the Social Security Administration.

(c) If the operator or other employer fails to provide proof of such security to the Director within 30 days of its receipt of the Director's request to secure the payment of benefits issued under paragraph (a) of this section, the appropriate adjudication officer shall issue an order requiring the operator or other employer to make a deposit of negotiable securities with a Federal Reserve Bank in the amount required by paragraph (b). Such securities shall comply with the requirements of sections 726.106(c) and 726.107 of this subchapter. In a case in which the effective order was issued by a district director, the district director shall be considered the appropriate adjudication officer. In any other case, the administrative law judge who issued the most recent decision in the case, or such other administrative law judge as the Chief Administrative Law Judge shall designate, shall be considered the appropriate adjudication officer, and shall issue an order under this paragraph on motion of the Director. The administrative law judge shall have jurisdiction to issue an order under this paragraph notwithstanding the pendency of an appeal of the award of benefits with the Benefits Review Board or court.

(d) An order issued under this section shall be considered effective when issued. Disputes regarding such orders shall be resolved in accordance with subpart F of this part.

(e) Notwithstanding any further review of the order in accordance with subpart F of this part, if an operator or other employer subject to an order issued under this section fails to comply with such order, the appropriate adjudication officer shall certify such non-compliance to the appropriate United States district court in accordance with § 725.351(c).

(f) Security posted in accordance with this section may be used to make payment of benefits that become due with respect to the claim in accordance with § 725.502. In the event that either the order awarding compensation or the order issued under this section is vacated or reversed, the operator or other employer may apply to the appropriate adjudication officer for an order authorizing the return of any amounts deposited with the United States Treasurer and not yet disbursed, and such application shall be granted. If at any time the Director determines that additional security is required beyond that initially required by paragraph (b) of this section, he may request the operator or other employer to increase the amount. Such request shall be treated as if it were issued under paragraph (a) of this section.

(g) If a coal mine construction or transportation employer fails to comply with an order issued under paragraph (c), and such employer is a corporation, the provisions of § 725.609 shall be applicable to the president, secretary, and treasurer of such employer.

§ 725.607 Payments in addition to compensation.

(a) If any benefits payable under the terms of an award by a district director (§ 725.419(d)), a decision and order filed and served by an administrative law judge (§ 725.478), or a decision filed by the Board or a U.S. court of appeals, are not paid by an operator or other employer ordered to make such payments within 10 days after such

payments become due, there shall be added to such unpaid benefits an amount equal to 20 percent thereof, which shall be paid to the claimant at the same time as, but in addition to, such benefits, unless review of the order making such award is sought as provided in section 21 of the LHWCA and an order staying payments has been issued.

(b) If, on account of an operator's or other employer's failure to pay benefits as provided in paragraph (a) of this section, benefit payments are made by the fund, the eligible claimant shall nevertheless be entitled to receive such additional compensation to which he or she may be eligible under paragraph (a) of this section, with respect to all amounts paid by the fund on behalf of such operator or other employer.

(c) The fund shall not be liable for payments in addition to compensation under any circumstances.

§ 725.608 Interest.

(a)(1) In any case in which an operator fails to pay benefits that are due (§ 725.502), the beneficiary shall also be entitled to simple annual interest, computed from the date on which the benefits were due. The interest shall be computed through the date on which the operator paid the benefits, except that the beneficiary shall not be entitled to interest for any period following the date on which the beneficiary received payment of any benefits from the fund pursuant to § 725.522.

(2) In any case in which an operator is liable for the payment of retroactive benefits, the beneficiary shall also be entitled to simple annual interest on such benefits, computed from 30 days after the date of the first determination that such an award should be made. The first determination that such an award should be made may be a district director's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of entitlement made upon the claim.

(3) In any case in which an operator is liable for the payment of additional compensation (§ 725.607), the beneficiary shall also be entitled to simple annual interest computed from the date upon which the beneficiary's right to additional compensation first arose.

(4) In any case in which an operator is liable for the payment of medical benefits, the beneficiary or medical provider to whom such benefits are owed shall also be entitled to simple annual interest, computed from the date upon which the services were rendered, or from 30 days after the date of the first determination that the miner is generally entitled to medical benefits, whichever is later. The first determination that the miner is generally entitled to medical benefits may be a district director's initial determination of entitlement, an award made by an administrative law judge or a decision by the Board or a court, whichever is the first such determination of general entitlement made upon the claim. The interest shall be computed through the date on which the operator paid the benefits, except that the beneficiary shall not be entitled to interest for any period following the date on which the beneficiary received payment of any benefits from the fund pursuant to § 725.522 or subpart I of this part.

(b) If an operator or other employer fails or refuses to pay any or all benefits due pursuant to an award of benefits or an initial determination of eligibility made by the district director and the fund undertakes such payments, such operator or other employer shall be liable to the fund for simple annual interest on all payments made by the fund for which such operator is determined liable, computed from the first date on which such benefits are paid by the fund, in addition to such operator's liability to the fund, as is otherwise provided in this part. Interest payments owed pursuant to this paragraph shall be paid directly to the fund.

(c) In any case in which an operator is liable for the payment of an attorney's fee pursuant to § 725.367, and the attorney's fee is payable because the award of benefits has become final, the attorney shall also be entitled to simple annual interest, computed from the date on which the attorney's fee was awarded. The interest shall be computed through the date on which the operator paid the attorney's fee.

(d) The rates of interest applicable to paragraphs (a), (b), and (c) of this section shall be computed as follows:

(1) For all amounts outstanding prior to January 1, 1982, the rate shall be 6% simple annual interest;

(2) For all amounts outstanding for any period during calendar year 1982, the rate shall be 15% simple annual interest; and

(3) For all amounts outstanding during any period after calendar year 1982, the rate shall be simple annual interest at the rate established by section 6621 of the Internal Revenue Code (26 U.S.C.) which is in effect for such period.

(e) The fund shall not be liable for the payment of interest under any circumstances, other than the payment of interest on advances from the United States Treasury as provided by section 9501(c) of the Internal Revenue Code (26 U.S.C.).

§ 725.609 Enforcement against other persons.

In any case in which an award of benefits creates obligations on the part of an operator or insurer that may be enforced under the provisions of this subpart, such obligations may also be enforced, in the discretion of the Secretary or district director, as follows:

(a) In a case in which the operator is a sole proprietorship or partnership, against any person who owned, or was a partner in, such operator during any period commencing on or after the date on which the miner was last employed by the operator;

(b) In a case in which the operator is a corporation that failed to secure its liability for benefits in accordance with section 423 of the Act and § 726.4 of this subchapter, and the operator has not secured its liability for the claim in accordance with § 725.606, against any person who served as the president, secretary, or treasurer of such corporation during any period commencing on or after the date on which the miner was last employed by the operator;

(c) In a case in which the operator is no longer capable of assuming its liability for the payment of benefits (§ 725.494(e)), against any operator which became a successor operator with respect to the liable operator (§ 725.492) after the date on which the claim was filed, beginning with the most recent such successor operator;

(d) In a case in which the operator is no longer capable of assuming its liability for the payment of benefits (§ 725.494(e)), and such operator was a subsidiary of a parent company or a product of a joint venture, or was substantially owned or controlled by another business entity, against such parent entity, any member of such joint venture, or such controlling business entity; or

(e) Against any other person who has assumed or succeeded to the obligations of the operator or insurer by operation of any state or federal law, or by any other means.

§ 725.620 Failure to secure benefits; other penalties.

(a) If an operator fails to discharge its insurance obligations under the Act, the provisions of subpart D of part 726 of this subchapter shall apply.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in

any manner disposes of, conceals, secrets, or destroys any property belonging to such employer, after one of its employees has been injured within the purview of the Act, and with intent to avoid the payment of benefits under the Act to such miner or his or her dependents, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $1,000, or by imprisonment for not more than one year, or by both. In any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable for such penalty or imprisonment as well as jointly liable with such corporation for such fine.

(c) No agreement by a miner to pay any portion of a premium paid to a carrier by such miner's employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing benefits or medical services and supplies as required by this part shall be valid; and any employer who makes a deduction for such purpose from the pay of a miner entitled to benefits under the Act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000.

(d) No agreement by a miner to waive his or her right to benefits under the Act and the provisions of this part shall be valid.

(e) This section shall not affect any other liability of the employer under this part.

§ 725.621 Reports.

(a) Upon making the first payment of benefits and upon suspension, reduction, or increase of payments, the operator or other employer responsible for making payments shall immediately notify the district director of the action taken, in accordance with a form prescribed by the Office.

(b) Within 16 days after final payment of benefits has been made by an employer, such employer shall so notify the district director, in accordance with a form prescribed by the Office, stating that such final payment, has been made, the total amount of benefits paid, the name of the beneficiary, and such other information as the Office deems pertinent.

(c) The Director may from time to time prescribe such additional reports to be made by operators, other employers, or carriers as the Director may consider necessary for the efficient administration of the Act.

(d) Any employer who fails or refuses to file any report required of such employer under this section shall be subject to a civil penalty not to exceed $500 for each failure or refusal, which penalty shall be determined in accordance with the procedures set forth in subpart D of part 726 of this subchapter, as appropriate. The maximum penalty applicable to any violation of this paragraph that takes place after [effective date of the final rule] shall be $550.

(e) No request for information or response to such request shall be considered a report for purposes of this section or the Act, unless it is so designated by the Director or by this section.

Subpart J—Medical Benefits and Vocational Rehabilitation

§ 725.701 Availability of medical benefits.

(a) A miner who is determined to be eligible for benefits under this part or part 727 of this subchapter (see § 725.4(d)) is entitled to medical benefits as set forth in this subpart as of the date of his or her claim, but in no event before January 1, 1974. No medical benefits shall be provided to the survivor or dependent of a miner under this part.

(b) A responsible operator, other employer, or where there is neither, the fund, shall furnish a miner entitled to benefits under this part with such medical, surgical, and other attendance and treatment, nursing and hospital services, medicine and apparatus, and any other medical service or supply, for such periods as the nature of the miner's pneumoconiosis and disability requires.

(c) The medical benefits referred to in paragraphs (a) and (b) of this section shall include palliative measures useful only to prevent pain or discomfort associated with the miner's pneumoconiosis or attendant disability.

(d) The costs recoverable under this subpart shall include the reasonable cost of travel necessary for medical treatment (to be determined in accordance with prevailing United States government mileage rates) and the reasonable documented cost to the miner or medical provider incurred in communicating with the employer, carrier, or district director on matters connected with medical benefits.

(e) If a miner receives a medical service or supply, as described in this section, for any pulmonary disorder, there shall be a rebuttable presumption that the disorder is caused or aggravated by the miner's pneumoconiosis. The party liable for the payment of benefits may rebut the presumption by producing credible evidence that the medical service or supply provided was not for a covered pulmonary disorder as defined in § 718.201 of this subchapter, or was beyond that necessary to effectively treat a covered disorder, or was not for a pulmonary disorder at all.

(f) Evidence that the miner does not have pneumoconiosis or is not totally disabled by pneumoconiosis arising out of coal mine employment is insufficient to defeat a request for coverage of any medical service or supply under this subpart. In determining whether the treatment is compensable, the opinion of the miner's treating physician may be entitled to controlling weight pursuant to § 718.104(d). A finding that a medical service or supply is not covered under this subpart shall not otherwise affect the miner's entitlement to benefits.

§ 725.702 Claims for medical benefits only under section 11 of the Reform Act.

(a) Section 11 of the Reform Act directs the Secretary of Health, Education and Welfare to notify each miner receiving benefits under part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 725.308(b) provides that a claim for medical treatment benefits shall be filed on or before December 31, 1980, unless the period is enlarged for good cause shown. This section sets forth the rules governing the processing, adjudication, and payment of claims filed under section 11.

(b) (1) A claim filed pursuant to the notice described in paragraph (a) of this section shall be considered a claim for medical benefits only, and shall be filed, processed, and adjudicated in accordance with the provisions of this part, except as provided in this section. While a claim for medical benefits must be treated as any other claim filed under part C of title IV of the Act, the Department shall accept the Social Security Administration's finding of entitlement as its initial determination.

(2) In the case of a part B beneficiary whose coal mine employment terminated before January 1, 1970, the Secretary shall make an immediate award of medical benefits. Where the part B beneficiary's coal mine employment terminated on or after January 1, 1970, the Secretary shall immediately authorize the payment of medical benefits and thereafter inform the responsible operator, if any, of the operator's right to contest the claimant's entitlement for medical benefits.

(c) A miner on whose behalf a claim is filed under this section (see § 725.301) must have been alive on March 1, 1978, in order for the claim to be considered.

(d) The criteria contained in subpart C of part 727 of this subchapter (see

§ 725.4(d)) are applicable to claims for medical benefits filed under this section.

(e) No determination made with respect to a claim filed under this section shall affect any determination previously made by the Social Security Administration. The Social Security Administration may, however, reopen a previously approved claim if the conditions set forth in § 410.672(c) of this chapter are present. These conditions are generally limited to fraud or concealment.

(f) If medical benefits are awarded under this section, such benefits shall be payable by a responsible coal mine operator (see subpart G of this part), if the miner's last employment occurred on or after January 1, 1970, and in all other cases by the fund. An operator which may be required to provide medical treatment benefits to a miner under this section shall have the right to participate in the adjudication of the claim as is otherwise provided in this part.

(g) Any miner whose coal mine employment terminated after January 1, 1970, may be required to submit to a medical examination requested by an identified operator. The unreasonable refusal to submit to such an examination shall have the same consequences as are provided under § 725.414.

(h) If a miner is determined eligible for medical benefits in accordance with this section, such benefits shall be provided from the date of filing, except that such benefits may also include payments for any unreimbursed medical treatment costs incurred personally by such miner during the period from January 1, 1974, to the date of filing which are attributable to medical care required as a result of the miner's total disability due to pneumoconiosis. No reimbursement for health insurance premiums, taxes attributable to any public health insurance coverage, or other deduction or payments made for the purpose of securing third party liability for medical care costs is authorized by this section. If a miner seeks reimbursement for medical care costs personally incurred before the filing of a claim under this section, the district director shall require documented proof of the nature of the medical service provided, the identity of the medical provider, the cost of the service, and the fact that the cost was paid by the miner, before reimbursement for such cost may be awarded.

§ 725.703 Physician defined.

The term ''physician'' includes only doctors of medicine (MD) and osteopathic practitioners within the scope of their practices as defined by State law. No treatment or medical services performed by any other practitioner of the healing arts is authorized by this part, unless such treatment or service is authorized and supervised both by a physician as defined in this section and the district director.

§ 725.704 Notification of right to medical benefits; authorization of treatment.

(a) Upon notification to a miner of such miner's entitlement to benefits, the Office shall provide the miner with a list of authorized treating physicians and medical facilities in the area of the miner's residence. The miner may select a physician from this list or may select another physician with approval of the Office. Where emergency services are necessary and appropriate, authorization by the Office shall not be required.

(b) The Office may, on its own initiative, or at the request of a responsible operator, order a change of physicians or facilities, but only where it has been determined that the change is desirable or necessary in the best interest of the miner. The miner may change physicians or facilities subject to the approval of the Office.

(c) If adequate treatment cannot be obtained in the area of the claimant's residence, the Office may authorize the use of physicians or medical facilities outside such area as well as reimbursement for travel expenses and overnight accommodations.

§ 725.705 Arrangements for medical care.

(a) *Operator liability.* If an operator has been determined liable for the payment of benefits to a miner, the Office shall notify such operator or insurer of the names, addresses, and telephone numbers of the authorized providers of medical benefits chosen by an entitled miner, and shall require the operator or insurer to:

(1) Notify the miner and the providers chosen that such operator will be responsible for the cost of medical services provided to the miner on account of the miner's total disability due to pneumoconiosis;

(2) Designate a person or persons with decisionmaking authority with whom the Office, the miner and authorized providers may communicate on matters involving medical benefits provided under this subpart and notify the Office, miner and providers of such designation;

(3) Make arrangements for the direct reimbursement of providers for their services.

(b) *Fund liability.* If there is no operator found liable for the payment of benefits, the Office shall make necessary arrangements to provide medical care to the miner, notify the miner and medical care facility selected of the liability of the fund, designate a person or persons with whom the miner or provider may communicate on matters relating to medical care, and make arrangements for the direct reimbursement of the medical provider.

§ 725.706 Authorization to provide medical services.

(a) Except as provided in paragraph (b) of this section, medical services from an authorized provider which are payable under § 725.701 shall not require prior approval of the Office or the responsible operator.

(b) Except where emergency treatment is required, prior approval of the Office or the responsible operator shall be obtained before any hospitalization or surgery, or before ordering an apparatus for treatment where the purchase price exceeds $300. A request for approval of non-emergency hospitalization or surgery shall be acted upon expeditiously, and approval or disapproval will be given by telephone if a written response cannot be given within 7 days following the request. No employee of the Department of Labor, other than a district director or the Chief, Branch of Medical Analysis and Services, DCMWC, is authorized to approve a request for hospitalization or surgery by telephone.

(c) Payment for medical services, treatment, or an apparatus shall be made at no more than the rate prevailing in the community in which the providing physician, medical facility or supplier is located.

§ 725.707 Reports of physicians and supervision of medical care.

(a) Within 30 days following the first medical or surgical treatment provided under § 725.701, the treating physician or facility shall furnish to the Office and the responsible operator, if any, a report of such treatment.

(b) In order to permit continuing supervision of the medical care provided to the miner with respect to the necessity, character and sufficiency of any medical care furnished or to be furnished, the treating physician, facility, employer or carrier shall provide such reports in addition to those required by paragraph (a) of this section as the Office may from time to time require. Within the discretion of

the district director, payment may be refused to any medical provider who fails to submit any report required by this section.

§ 725.708 Disputes concerning medical benefits.

(a) Whenever a dispute develops concerning medical services under this part, the district director shall attempt to informally resolve such dispute. In this regard the district director may, on his or her own initiative or at the request of the responsible operator order the claimant to submit to an examination by a physician selected by the district director.

(b) If no informal resolution is accomplished, the district director shall refer the case to the Office of Administrative Law Judges for hearing in accordance with this part. Any such hearing shall be scheduled at the earliest possible time and shall take precedence over all other requests for hearing except for prior requests for hearing arising under this section and as provided by § 727.405 of this subchapter (see § 725.4(d)). During the pendency of such adjudication, the Director may order the payment of medical benefits prior to final adjudication under the same conditions applicable to benefits awarded under § 725.522.

(c) In the development or adjudication of a dispute over medical benefits, the adjudication officer is authorized to take whatever action may be necessary to protect the health of a totally disabled miner.

(d) Any interested medical provider may, if appropriate, be made a party to a dispute over medical benefits.

§ 725.710 Objective of vocational rehabilitation.

The objective of vocational rehabilitation is the return of a miner who is totally disabled for work in or around a coal mine and who is unable to utilize those skills which were employed in the miner's coal mine employment to gainful employment commensurate with such miner's physical impairment. This objective may be achieved through a program of re-evaluation and redirection of the miner's abilities, or retraining in another occupation, and selective job placement assistance.

§ 725.711 Requests for referral to vocational rehabilitation assistance.

Each miner who has been determined entitled to receive benefits under part C of title IV of the Act shall be informed by the OWCP of the availability and advisability of vocational rehabilitation services. If such miner chooses to avail himself or herself of vocational rehabilitation, his or her request shall be processed and referred by OWCP vocational rehabilitation advisors pursuant to the provisions of §§ 702.501 through 702.508 of this chapter as is appropriate.

5. Part 726 is proposed to be revised as follows:

PART 726—BLACK LUNG BENEFITS; REQUIREMENTS FOR COAL MINE OPERATOR'S INSURANCE

Subpart A—General

Sec.

726.1 Statutory insurance requirements for coal mine operators.
726.2 Purpose and scope of this part.
726.3 Relationship of this part to other parts in this subchapter.
726.4 Who must obtain insurance coverage.
726.5 Effective date of insurance coverage.
726.6 The Office of Workers' Compensation Programs.
726.7 Forms, submission of information.
726.8 Definitions.

Subpart B—Authorization of Self-Insurers

726.101 Who may be authorized to self-insure.
726.102 Application for authority to become a self-insurer; how filed; information to be submitted.
726.103 Application for authority to self-insure; effect of regulations contained in this part.
726.104 Action by the Office upon application of operator.
726.105 Fixing the amount of security.
726.106 Type of security.
726.107 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.
726.108 Withdrawal of negotiable securities.
726.109 Increase or reduction in the amount of security.
726.110 Filing of agreement and undertaking.
726.111 Notice of authorization to self-insure.
726.112 Reports required of self-insurer; examination of accounts of self-insurer.
726.113 Disclosure of confidential information.
726.114 Period of authorization as self-insurer; reauthorization.
726.115 Revocation of authorization to self-insure.

Subpart C—Insurance Contracts

726.201 Insurance contracts—generally.
726.202 Who may underwrite an operator's liability.
726.203 Federal Coal Mine Health and Safety Act endorsement.
726.204 Statutory policy provisions.
726.205 Other forms of endorsement and policies.
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726.207 Discharge by the carrier of obligations and duties of operator.

Reports by Carrier

726.208 Report by carrier of issuance of policy or endorsement.
726.209 Report; by whom sent.
726.210 Agreement to be bound by report.
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726.212 Notice of cancellation.
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Subpart D—Civil Money Penalties

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726.302 Determination of penalty.
726.303 Notification; investigation.
726.304 Notice of initial assessment.
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726.306 Finality of administrative assessment.
726.307 Form of notice of contest and request for hearing.
726.308 Service and computation of time.
726.309 Referral to the Office of Administrative Law Judges.
726.310 Appointment of Administrative Law Judge and notification of hearing date.
726.311 Evidence.
726.312 Burdens of proof.
726.313 Decision and Order of Administrative Law Judge.
726.314 Review by the Secretary.
726.315 Contents.
726.316 Filing and Service.
726.317 Discretionary Review.
726.318 Final decision of the Secretary.
726.319 Retention of official record.
726.320 Collection and recovery of penalty.

Authority: 5 U.S.C. 301, Reorganization Plan No. 6 of 1950, 15 FR 3174, 30 U.S.C. 901 et seq., 902(f), 925, 932, 933, 934, 936, 945; 33 U.S.C. 901 et seq., Secretary's Order 7–87, 52 FR 48466, Employment Standards Order No. 90–02.

Subpart A—General

§ 726.1 Statutory insurance requirements for coal mine operators.

Section 423 of title IV of the Federal Coal Mine Health and Safety Act as amended (hereinafter the Act) requires each coal mine operator who is operating or has operated a coal mine in a State which is not included in the list published by the Secretary (see part 722 of this subchapter) to secure the payment of benefits for which he may be found liable under section 422 of the Act and the provisions of this subchapter by either:

(a) Qualifying as a self-insurer, or

(b) By subscribing to and maintaining in force a commercial insurance contract (including a policy or contract procured from a State agency).

§ 726.2 Purpose and scope of this part.

(a) This part provides rules directing and controlling the circumstances under which a coal mine operator shall fulfill his insurance obligations under the Act.

(b) This subpart A sets forth the scope and purpose of this part and generally describes the statutory framework within which this part is operative.

(c) Subpart B of this part sets forth the criteria a coal mine operator must meet in order to qualify as a self-insurer.

(d) Subpart C of this part sets forth the rules and regulations of the Secretary governing contracts of insurance entered into by coal operators and commercial insurance sources for the payment of black lung benefits under part C of the Act.

(e) Subpart D of this part sets forth the rules governing the imposition of civil money penalties on coal mine operators that fail to secure their liability under the Act.

§ 726.3 Relationship of this part to other parts in this subchapter.

(a) This part 726 implements and effectuates responsibilities for the payment of black lung benefits placed upon coal operators by sections 415 and 422 of the Act and the regulations of the Secretary in this subchapter, particularly those set forth in part 725 of this subchapter. All definitions, usages, procedures, and other rules affecting the responsibilities of coal operators prescribed in part 725 of this subchapter are applicable, as appropriate, to this part 726.

(b) If the provisions of this part appear to conflict with any provision of any other part in this subchapter, the apparently conflicting provisions should be read harmoniously to the fullest extent possible. If a harmonious interpretation is not possible, the provisions of this part should be applied to govern the responsibilities and obligations of coal mine operators to secure the payment of black lung benefits as prescribed by the Act. The provisions of this part do not apply to matters falling outside the scope of this part.

§ 726.4 Who must obtain insurance coverage.

(a) Section 423 of part C of title IV of the Act requires each operator of a coal mine or former operator in any State which does meet the requirements prescribed by the Secretary pursuant to section 411 of part C of title IV of the Act to self-insure or obtain a policy or contract of insurance to guarantee the payment of benefits for which such operator may be adjudicated liable under section 422 of the Act. In enacting sections 422 and 423 of the Act Congress has unambiguously expressed its intent that coal mine operators bear the cost of providing the benefits established by part C of title IV of the Act. Section 3 of the Act defines an ''operator'' as any owner, lessee, or other person who operates, controls, or supervises a coal mine.

(b) Section 422(i) of the Act clearly recognizes that any individual or business entity who is or was a coal mine operator may be found liable for the payment of pneumoconiosis benefits after December 31, 1973. Within this framework it is clear that the Secretary has wide latitude for determining which operator shall be liable for the payment of part C benefits. Comprehensive standards have been promulgated in subpart G of part 725 of this subchapter for the purpose of guiding the Secretary in making such determination. It must be noted that pursuant to these standards any parent or subsidiary corporation, any individual or corporate partner, or partnership, any lessee or lessor of a coal mine, any joint venture or participant in a joint venture, any transferee or transferor of a corporation or other business entity, any former, current, or future operator or any other form of business entity which has had or will have a substantial and reasonably direct interest in the operation of a coal mine may be determined liable for the payment of pneumoconiosis benefits after December 31, 1973. The failure of any such business entity to self-insure or obtain a policy or contract of insurance shall in no way relieve such business entity of its obligation to pay pneumoconiosis benefits in respect of any case in which such business entity's responsibility for such payments has been properly adjudicated. Any business entity described in this section shall take appropriate steps to insure that any liability imposed by part C of the Act on such business entity shall be dischargeable.

§ 726.5 Effective date of insurance coverage.

Pursuant to section 422(c) of part C of title IV of the Act, no coal mine operator shall be responsible for the payment of any benefits whatsoever for any period prior to January 1, 1974. However, coal mine operators shall be liable as of January 1, 1974, for the payment of benefits in respect of claims which were filed under section 415 of part B of title IV of the Act after July 1, 1973. Section 415(a)(3) requires the Secretary to notify any operator who may be liable for the payment of benefits under part C of title IV beginning on January 1, 1974, of the pendency of a section 415 claim. Section 415(a)(5) declares that any operator who has been notified of the pendency of a section 415 claim shall be bound by the determination of the Secretary as to such operator's liability and as to the claimant's entitlement to benefits as if the claim were filed under part C of title IV of the Act and section 422 thereof had been applicable to such operator. Therefore, even though no benefit payments shall be required of an operator prior to January 1, 1974, the liability for these payments may be finally adjudicated at any time after July 1, 1973. Neither the failure of an operator to exercise his right to participate in the adjudication of such a claim nor the failure of an operator to obtain insurance coverage in respect of claims filed after June 30, 1973, but before January 1, 1974, shall excuse such operator from his liability for the payment of benefits to such claimants under part C of title IV of the Act.

§ 726.6 The Office of Workers' Compensation Programs.

The Office of Workers' Compensation Programs (hereinafter the Office or OWCP) is that subdivision of the Employment Standards Administration of the U.S. Department of Labor which has been empowered by the Secretary of Labor to carry out his functions under section 415 and part C of title IV of the Act. As noted throughout this part 726 the Office shall perform a number of functions with respect to the regulation of both the self-insurance and commercial insurance programs. All correspondence with or submissions to the Office should be addressed as follows: Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

§ 726.7 Forms, submission of information.

Any information required by this part 726 to be submitted to the Office of Workmen's Compensation Programs or any other office or official of the Department of Labor, shall be submitted on such forms or in such manner as the Secretary deems appropriate and has authorized from time to time for such purposes.

§ 726.8 Definitions.

In addition to the definitions provided in part 725 of this subchapter, the following definitions apply to this part:

(a) *Director* means the Director, Office of Workers' Compensation Programs, and includes any official of the Office of Workers' Compensation Programs authorized by the Director to perform any of the functions of the Director under this part and part 725 of this subchapter.

(b) *Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

(c) *Secretary* means the Secretary of Labor or such other official as the Secretary shall designate to carry out any responsibility under this part.

(d) The terms *employ* and *employment* shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner. Any individuals who participate with one or more persons in the mining of coal, such as owners, proprietors, partners, and joint venturers, whether they are compensated by wages, salaries, piece rates, shares, profits, or by any other means, shall be deemed employees. It is the specific intention of this paragraph to disregard any financial arrangement or business entity devised by the actual owners or operators of a coal mine or coal mine-related enterprise to avoid the payment of benefits to miners who, based upon the economic reality of their relationship to this enterprise, are, in fact, employees of the enterprise.

Subpart B—Authorization of Self-Insurers

§ 726.101 Who may be authorized to self-insure.

(a) Pursuant to section 423 of part C of title IV of the Act, authorization to self-insure against liability incurred by coal mine operators on account of the total disability or death of miners due to pneumoconiosis may be granted or denied in the discretion of the Secretary. The provisions of this subpart describe the minimum requirements established by the Secretary for determining whether any particular coal mine operator shall be authorized as a self-insurer.

(b) The minimum requirements which must be met by any operator seeking authorization to self-insure are as follows:

(1) Such operator must, at the time of application, have been in the business of mining coal for at least the 3 consecutive years prior to such application; and,

(2) Such operator must demonstrate the administrative capacity to fully service such claims as may be filed against him; and,

(3) Such operator's average current assets over the preceding 3 years (in computing average current assets such operator shall not include the amount of any negotiable securities which he may be required to deposit to secure his obligations under the Act) must exceed current liabilities by the sum of—

(i) The estimated aggregate amount of black lung benefits (including medical benefits) which such operator may expect to be required to pay during the ensuing year; and,

(ii) The annual premium cost for any indemnity bond purchased; and

(4) Such operator must obtain security, in a form approved by the Office (see § 726.104) and in an amount to be determined by the Office (see § 726.105); and

(5) No operator with fewer than 5 full-time employee-miners shall be permitted to self-insure.

(c) No operator who is unable to meet the requirements of this section should apply for authorization to self-insure and no application for self-insurance shall be approved by the Office until such time as the amount prescribed by the Office has been secured as prescribed in this subpart.

§ 726.102 Application for authority to become a self-insurer; how filed; information to be submitted.

(a) *How filed.* Application for authority to become a self-insurer shall be addressed to the Office and be made on a form provided by the Office. Such application shall be signed by the applicant over his typewritten name and if the applicant is not an individual, by the principal officer of the applicant duly authorized to make such application over his typewritten name and official designation and shall be sworn to by him. If the applicant is a corporation, the corporate seal shall be affixed. The application shall be filed with the Office in Washington, DC.

(b) *Information to be submitted.* Each application for authority to self-insure shall contain:

(1) A statement of the employer's payroll report for each of the preceding 3 years;

(2) A statement of the average number of employees engaged in employment within the purview of the Act for each of the preceding 3 years;

(3) A list of the mine or mines to be covered by any particular self-insurance agreement. Each such mine or mines listed shall be described by name and reference shall be made to the Federal Identification Number assigned such mine by the Bureau of Mines, U.S. Department of the Interior;

(4) A certified itemized statement of the gross and net assets and liabilities of the operator for each of the 3 preceding years in such manner as prescribed by the Office;

(5) A statement demonstrating the applicant's administrative capacity to provide or procure adequate servicing for a claim including both medical and dollar claims; and

(6) In addition to the aforementioned, the Office may in its discretion, require the applicant to submit such further information or such evidence as the Office may deem necessary to have in order to enable it to give adequate consideration to such application.

(c) *Who may file.* An application for authorization to self-insure may be filed by any parent or subsidiary corporation, partner or partnership, party to a joint venture or joint venture, individual, or other business entity which may be determined liable for the payment of black lung benefits under part C of title IV of the Act, regardless of whether such applicant is directly engaged in the business of mining coal. However, in each case for which authorization to self-insure is granted, the agreement and undertaking filed pursuant to § 726.110 and the security deposit shall be respectively filed by and deposited in the name of the applicant only.

§ 726.103 Application for authority to self-insure; effect of regulations contained in this part.

As appropriate, each of the regulations, interpretations and requirements contained in this part 726 including those described in subpart C of this part shall be binding upon each applicant under this subpart, and the applicant's consent to be bound by all requirements of the said regulations shall be deemed to be included in and a part of the application, as fully as though written therein.

§ 726.104 Action by the Office upon application of operator.

(a) Upon receipt of a completed application for authorization to self-insure, the Office shall, after examination of the information contained in the application deny the applicant's request for authorization to self-insure or, determine the amount of security which must be given by the applicant to guarantee the payment of benefits and the discharge of all other obligations which may be required of such applicant under the Act.

(b) The applicant shall thereafter be notified that he may give security in the amount fixed by the Office (see § 726.105):

(1) In the form of an indemnity bond with sureties satisfactory to the Office;

(2) By a deposit of negotiable securities with a Federal Reserve Bank in compliance with §§ 726.106(c) and 726.107;

(3) In the form of a letter of credit issued by a financial institution satisfactory to the Office (except that a letter of credit shall not be sufficient by itself to satisfy a self-insurer's obligations under this part); or

(4) By funding a trust pursuant to section 501(c)(21) of the Internal Revenue Code (26 U.S.C.).

(c) Any applicant who cannot meet the security deposit requirements imposed by the Office should proceed to obtain a commercial policy or contract of insurance. Any applicant for authorization to self-insure whose application has been rejected or who believes that the security deposit requirements imposed by the Office are excessive may, in writing, request that the Office review its determination. A request for review should contain such information as may be necessary to support the request that the amount of security required be reduced.

(d) Upon receipt of any such request the Office shall review its previous determination in light of any new or additional information submitted and inform the applicant whether or not a reduction in the amount of security initially required is warranted.

§ 726.105 Fixing the amount of security.

The amount of security to be fixed and required by the Office shall be such as the Office shall deem to be necessary and sufficient to secure the performance by the applicant of all obligations imposed upon him as an operator by the Act. In determining the amount of security required, the factors that the Office will consider include, but are not limited to, the operator's net worth, the existence of a guarantee by a parent corporation, and the operator's existing liability for benefits. Other factors such as the Office may deem relevant to any particular case shall be considered. The amount of security which shall be required may be increased or decreased when experience or changed conditions so warrant.

§ 726.106 Type of security.

(a) The Office shall determine the type or types of security which an applicant shall or may procure. (See § 726.104(b).)

(b) In the event the indemnity bond option is selected such indemnity bond shall be in such form and contain such provisions as the Office may prescribe: *Provided,* That only corporations may act as sureties on such indemnity bonds. In each case in which the surety on any such bond is a surety company, such company must be one approved by the U.S. Treasury Department under the laws of the United States and the applicable rules and regulations governing bonding companies (see Department of Treasury's Circular–570).

(c) An applicant for authorization to self-insure authorized to deposit negotiable securities to secure his obligations under the Act in the amount fixed by the Office shall deposit any negotiable securities acceptable as security for the deposit of public moneys of the United States under regulations issued by the Secretary of the Treasury. (See 31 CFR part 225.) The approval, valuation, acceptance, and custody of such securities is hereby committed to the several Federal Reserve Banks and the Treasurer of the United States.

§ 726.107 Deposits of negotiable securities with Federal Reserve banks or the Treasurer of the United States; authority to sell such securities; interest thereon.

Deposits of securities provided for by the regulations in this part shall be made with any Federal Reserve bank or any branch of a Federal Reserve bank designated by the Office, or the Treasurer of the United States, and shall be held subject to the order of the Office with power in the Office, in its discretion in the event of default by the said self-insurer, to collect the interest as it may become due, to sell the securities or any of them as may be required to discharge the obligations of the self-insurer under the Act and to apply the proceeds to the payment of any benefits or medical expenses for which the self-insurer may be liable. The Office may, however, whenever it deems it unnecessary to resort to such securities for the payment of benefits, authorize the self-insurer to collect interest on the securities deposited by him.

§ 726.108 Withdrawal of negotiable securities.

No withdrawal of negotiable securities deposited by a self-insurer, shall be made except upon authorization by the Office. A self-insurer discontinuing business, or discontinuing operations within the purview of the Act, or providing security for the payment of benefits by commercial insurance under the provisions of the Act may apply to the Office for the withdrawal of securities deposited under the regulations in this part. With such application shall be filed a sworn statement setting forth:

(a) A list of all outstanding cases in which benefits are being paid, with the names of the miners and other beneficiaries, giving a statement of the amounts of benefits paid and the periods for which such benefits have been paid; and

(b) A similar list of all pending cases in which no benefits have as yet been paid. In such cases withdrawals may be authorized by the Office of such securities as in the opinion of the Office may not be necessary to provide adequate security for the payment of outstanding and potential liabilities of such self-insurer under the Act.

§ 726.109 Increase or reduction in the amount of security.

Whenever in the opinion of the Office the amount of security given by the self-insurer is insufficient to afford adequate security for the payment of benefits and medical expenses under the Act, the self-insurer shall, upon demand by the Office, file such additional security as the Office may require. At any time upon application of a self-insurer, or on the initiative of the Office, when in its opinion the facts warrant, the amount of security may be reduced. A self-insurer seeking such reduction shall furnish such information as the Office may request relative to his current affairs, the nature and hazard of the work of his employees, the amount of the payroll of his employees engaged in coal mine employment within the purview of the Act, his financial condition, and such other evidence as may be deemed material, including a record of payment of benefits made by him.

§ 726.110 Filing of agreement and undertaking.

(a) In addition to the requirement that adequate security be procured as set forth in this subpart, the applicant for the authorization to self-insure shall as a condition precedent to receiving authorization to act as a self-insurer, execute and file with the Office an agreement and undertaking in a form prescribed and provided by the Office in which the applicant shall agree:

(1) To pay when due, as required by the provisions of said Act, all benefits payable on account of total disability or death of any of its employee-miners within the purview of the Act;

(2) In such cases to furnish medical, surgical, hospital, and other attendance, treatment, and care as required by the provisions of the Act;

(3) To provide security in a form approved by the Office (see § 726.104) and in an amount established by the Office (see § 726.105), accordingly as elected in the application;

(4) To authorize the Office to sell any negotiable securities so deposited or any part thereof and from the proceeds thereof to pay such benefits, medical, and other expenses and any accrued

penalties imposed by law as it may find to be due and payable.

(b) At such time when an applicant has provided the requisite security, such applicant shall send a completed agreement and undertaking together with satisfactory proof that his obligations and liabilities under the Act have been secured to the Office in Washington, D.C.

§ 726.111 Notice of authorization to self-insure.

Upon receipt of a completed agreement and undertaking and satisfactory proof that adequate security has been provided an applicant for authorization to self-insure shall be notified by the Office in writing, that he is authorized to self-insure to meet the obligations imposed upon such applicant by section 415 and part C of title IV of the Act.

§ 726.112 Reports required of self-insurer; examination of accounts of self-insurer.

(a) Each operator who has been authorized to self-insure under this part shall submit to the Office reports containing such information as the Office may from time to time require or prescribe.

(b) Whenever it deems it to be necessary, the Office may inspect or examine the books of account, records, and other papers of a self-insurer for the purpose of verifying any financial statement submitted to the Office by the self-insurer or verifying any information furnished to the Office in any report required by this section, or any other section of the regulations in this part, and such self-insurer shall permit the Office or its duly authorized representative to make such an inspection or examination as the Office shall require. In lieu of this requirement the Office may in its discretion accept an adequate report of a certified public accountant.

(c) Failure to submit or make available any report or information requested by the Office from an authorized self-insurer pursuant to this section may, in appropriate circumstances result in a revocation of the authorization to self-insure.

§ 726.113 Disclosure of confidential information.

Any financial information or records, or other information relating to the business of an authorized self-insurer or applicant for the authorization of self-insurance obtained by the Office shall be exempt from public disclosure to the extent provided in 5 U.S.C. 552(b) and the applicable regulations of the Department of Labor promulgated thereunder. (See 29 CFR part 70.)

§ 726.114 Period of authorization as self-insurer; reauthorization.

(a) No initial authorization as a self-insurer shall be granted for a period in excess of 18 months. A self-insurer who has made an adequate deposit of negotiable securities in compliance with §§ 726.106(c) and 726.107 will be reauthorized for the ensuing fiscal year without additional security if the Office finds that his experience as a self-insurer warrants such action. If it is determined that such self-insurer's experience indicates a need for the deposit of additional security, no reauthorization shall be issued for the ensuing fiscal year until such time as the Office receives satisfactory proof that the requisite amount of additional securities have been deposited. A self-insurer who currently has on file an indemnity bond, will receive from the Office each year a bond form for execution in contemplation of reauthorization, and the submission of such bond duly executed in the amount indicated by the Office will be deemed and treated as such self-insurer's application for reauthorization for the ensuing Federal fiscal year.

(b) In each case for which there is an approved change in the amount of security provided, a new agreement and undertaking shall be executed.

(c) Each operator authorized to self-insure under this part shall apply for reauthorization for any period during which it engages in the operation of a coal mine and for additional periods after it ceases operating a coal mine. Upon application by the operator, accompanied by proof that the security posted by the operator is sufficient to secure all benefits potentially payable to miners formerly employed by the operator, the Office shall issue a certification that the operator is exempt from the requirements of this part based on its prior operation of a coal mine. The provisions of subpart D of this part shall be applicable to any operator that fails to apply for reauthorization in accordance with the provisions of this section.

§ 726.115 Revocation of authorization to self-insure.

The Office may for good cause shown suspend or revoke the authorization of any self-insurer. Failure by a self-insurer to comply with any provision or requirement of law or of the regulations in this part, or with any lawful order or communication of the Office, or the failure or insolvency of the surety on his indemnity bond, or impairment of financial responsibility of such self-insurer, may be deemed good cause for such suspension or revocation.

Subpart C—Insurance Contracts

§ 726.201 Insurance contracts—generally.

Each operator of a coal mine who has not obtained authorization as a self-insurer shall purchase a policy or enter into a contract with a commercial insurance carrier or State agency. Pursuant to authority contained in sections 422(a) and 423 (b) and (c) of part C of title IV of the Act, this subpart describes a number of provisions which are required to be incorporated in a policy or contract of insurance obtained by a coal mine operator for the purpose of meeting the responsibility imposed upon such operator by the Act in respect of the total disability or death of miners due to pneumoconiosis.

§ 726.202 Who may underwrite an operator's liability.

Each coal mine operator who is not authorized to self-insure shall insure and keep insured the payment of benefits as required by the Act with any stock company or mutual company or association, or with any other person, or fund, including any State fund while such company, association, person, or fund is authorized under the law of any State to insure workmen's compensation.

§ 726.203 Federal Coal Mine Health and Safety Act endorsement.

(a) The following form of endorsement shall be attached and applicable to the standard workmen's compensation and employer's liability policy prepared by the National Council on Compensation Insurance affording coverage under the Federal Coal Mine Health and Safety Act of 1969, as amended:

It is agreed that: (1) With respect to operations in a State designated in item 3 of the declarations, the unqualified term ''workmen's compensation law'' includes part C of title IV of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. section 931–936, and any laws amendatory thereto, or supplementary thereto, which may be or become effective while this policy is in force, and definition (a) of Insuring Agreement III is amended accordingly; (2) with respect to such insurance as is afforded by this endorsement, (a) the States, if any, named below, shall be deemed to be designated in item 3 of the declaration; (b) Insuring Agreement IV(2) is amended to read ''by disease caused or aggravated by exposure of which the last day of the last exposure, in the employment of the insured, to conditions causing the disease occurs during the policy period, or occurred prior to (effective date) and claim based on such disease is first filed against the insured during the policy period.''

(b) The term ''effective date'' as used in the endorsement provisions

contained in paragraph (a) of this section shall be construed to mean the effective date of the first policy or contract of insurance procured by an operator for purposes of meeting the obligations imposed on such operator by section 423 of part C of title IV of the Act.

(c) The Act contains a number of provisions and imposes a number of requirements on operators which differ in varying degrees from traditional workmen's compensation concepts. To avoid unnecessary administrative delays and expense which might be occasioned by the drafting of an entirely new standard workmen's compensation policy specially tailored to the Act, the Office has determined that the existing standard workmen's compensation policy subject to the endorsement provisions contained in paragraph (a) of this section shall be acceptable for purposes of writing commercial insurance coverage under the Act. However, to avoid undue disputes over the meaning of certain policy provisions and in accordance with the authority contained in section 423(b)(3) of the Act, the Office has determined that the following requirements shall be applicable to all commercial insurance policies obtained by an operator for the purpose of insuring any liability incurred pursuant to the Act:

(1) *Operator liability.* (i) Section 415 and part C of title IV of the Act provide coverage for total disability or death due to pneumoconiosis to all claimants who meet the eligibility requirements imposed by the Act. Section 422 of the Act and the regulations duly promulgated thereunder (part 725 of this subchapter) set forth the conditions under which a coal mine operator may be adjudicated liable for the payment of benefits to an eligible claimant for any period subsequent to December 31, 1973.

(ii) Section 422(c) of the Act prescribes that except as provided in 422(i) (see paragraph (c)(2) of this section) an operator may be adjudicated liable for the payment of benefits in any case if the total disability or death due to pneumoconiosis upon which the claim is predicated arose at least in part out of employment in a mine in any period during which it was operated by such operator. The Act does not require that such employment which contributed to or caused the total disability or death due to pneumoconiosis occur subsequent to any particular date in time. The Secretary in establishing a formula for determining the operator liable for the payment of benefits (see subpart D of part 725 of this subchapter) in respect of any particular claim, must therefore, within the framework and intent of title IV of the Act find in appropriate cases that an operator is liable for the payment of benefits for some period after December 31, 1973, even though the employment upon which an operator's liability is based occurred prior to July 1, 1973, or prior to the effective date of the Act or the effective date of any amendments thereto, or prior to the effective date of any policy or contract of insurance obtained by such operator. The endorsement provisions contained in paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(2) *Successor liability.* Section 422(i) of part C of title IV of the Act requires that a coal mine operator who after December 30, 1969, acquired his mine or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, shall be liable for and shall secure the payment of benefits which would have been payable by the prior operator with respect to miners previously employed in such mine if the acquisition had not occurred and the prior operator had continued to operate such mine. In the case of an operator who is determined liable for the payment of benefits under section 422(i) of the Act and part 725 of this subchapter, such liability shall accrue to such operator regardless of the fact that the miner on whose total disability or death the claim is predicated was never employed by such operator in any capacity. The endorsement provisions contained in paragraph (a) of this section shall be construed to incorporate this requirement in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(3) *Medical eligibility.* Pursuant to section 422(h) of part C of title IV of the Act and the regulations described therein (see subpart D of part 410 of this title) benefits shall be paid to eligible claimants on account of total disability or death due to pneumoconiosis and in cases where the miner on whose death a claim is predicated was totally disabled by pneumoconiosis at the time of his death regardless of the cause of such death. The endorsement provisions contained in paragraph (a) of this section shall be construed to incorporate these requirements in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(4) *Payment of benefits, rates.* Section 422(c) of the Act by incorporating section 412(a) of the Act requires the payment of benefits at a rate equal to 50 per centum of the minimum monthly payment to which a Federal employee in grade GS–2, who is totally disabled is entitled at the time of payment under Chapter 81 of title 5, United States Code. These benefits are augmented on account of eligible dependents as appropriate (see section 412(a) of part B of title IV of the Act). Since the dollar amount of benefits payable to any beneficiary is required to be computed at the time of payment such amounts may be expected to increase from time to time as changes in the GS–2 grade are enacted into law. The endorsement provisions contained in paragraph (a) of this section shall be construed to incorporate in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act, the requirement that the payment of benefits to eligible beneficiaries shall be made in such dollar amounts as are prescribed by section 412(a) of the Act computed at the time of payment.

(5) *Compromise and waiver of benefits.* Section 422(a) of part C of title IV of the Act by incorporating sections 15(b) and 16 of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 915(b) and 916) prohibits the compromise and/or waiver of claims for benefits filed or benefits payable under section 415 and part C of title IV of the Act. The endorsement provisions contained in paragraph (a) of this section shall be construed to incorporate these prohibitions in any policy or contract of insurance obtained by an operator to meet the obligations imposed on such operator by section 423 of the Act.

(6) *Additional requirements.* In addition to the requirements described in paragraph (c)(1) through (5) of this section, the endorsement provisions contained in paragraph (a) of this section shall, to the fullest extent possible, be construed to bring any policy or contract of insurance entered into by an operator for the purpose of insuring such operator's liability under part C of title IV of the Act into conformity with the legal requirements placed upon such operator by section 415 and part C of title IV of the Act and parts 720 and 725 of this subchapter.

(d) Nothing in this section shall relieve any operator or carrier of the duty to comply with any State workmen's compensation law, except

insofar as such State law is in conflict with the provisions of this section.

§ 726.204 Statutory policy provisions.

Pursuant to section 423(b) of part C of title IV of the Act each policy or contract of insurance obtained to comply with the requirements of section 423(a) of the Act must contain or shall be construed to contain—

(a) A provision to pay benefits required under section 422 of the Act, notwithstanding the provisions of the State workmen's compensation law which may provide for lesser payments; and,

(b) A provision that insolvency or bankruptcy of the operator or discharge therein (or both) shall not relieve the carrier from liability for such payments.

§ 726.205 Other forms of endorsement and policies.

Forms of endorsement or policies other than that described in § 726.203 may be entered into by operators to insure their liability under the Act. However, any form of endorsement or policy which materially alters or attempts to materially alter an operator's liability for the payment of any benefits under the Act shall be deemed insufficient to discharge such operator's duties and responsibilities as prescribed in part C of title IV of the Act. In any event, the failure of an operator to obtain an adequate policy or contract of insurance shall not affect such operator's liability for the payment of any benefits for which he is determined liable.

§ 726.206 Terms of policies.

A policy or contract of insurance shall be issued for the term of 1 year from the date that it becomes effective, but if such insurance be not needed except for a particular contract or operation, the term of the policy may be limited to the period of such contract or operation.

§ 726.207 Discharge by the carrier of obligations and duties of operator.

Every obligation and duty in respect of payment of benefits, the providing of medical and other treatment and care, the payment or furnishing of any other benefit required by the Act and in respect of the carrying out of the administrative procedure required or imposed by the Act or the regulations in this part or part 725 of this subchapter upon an operator shall be discharged and carried out by the carrier as appropriate. Notice to or knowledge of an operator of the occurrence of total disability or death due to pneumoconiosis shall be notice to or knowledge of such carrier. Jurisdiction of the operator by a district director, administrative law judge, the Office, or appropriate appellate authority under the Act shall be jurisdiction of such carrier. Any requirement under any benefits order, finding, or decision shall be binding upon such carrier in the same manner and to the same extent as upon the operator.

Reports by Carrier

§ 726.208 Report by carrier of issuance of policy or endorsement.

Each carrier shall report to the Office each policy and endorsement issued, canceled, or renewed by it to an operator. The report shall be made in such manner and on such form as the Office may require.

§ 726.209 Report; by whom sent.

The report of issuance, cancellation, or renewal of a policy and endorsement provided for in § 726.208 shall be sent by the home office of the carrier, except that any carrier may authorize its agency or agencies to make such reports to the Office.

§ 726.210 Agreement to be bound by report.

Every carrier seeking to write insurance under the provisions of the Act shall be deemed to have agreed that the acceptance by the Office of a report of the issuance or renewal of a policy of insurance, as provided for by § 726.208 shall bind the carrier to full liability for the obligations under the Act of the operator named in said report. It shall be no defense to this agreement that the carrier failed or delayed to issue, cancel, or renew the policy to the operator covered by this report.

§ 726.211 Name of one employer only shall be given in each report.

A separate report of the issuance or renewal of a policy and endorsement, provided for by § 726.208, shall be made for each operator covered by a policy. If a policy is issued or renewed insuring more than one operator, a separate report for each operator so covered shall be sent to the Office with the name of only one operator on each such report.

§ 726.212 Notice of cancellation.

Cancellation of a contract or policy of insurance issued under authority of the Act shall not become effective otherwise than as provided by 33 U.S.C. 936(b); and notice of a proposed cancellation shall be given to the Office and to the operator in accordance with the provisions of 33 U.S.C. 912(c), 30 days before such cancellation is intended to be effective (see section 422(a) of part C of title IV of the Act).

§ 726.213 Reports by carriers concerning the payment of benefits.

Pursuant to 33 U.S.C. 914(c) as incorporated by section 422(a) of part C of title IV of the Act and § 726.207 each carrier issuing a policy or contract of insurance under the Act shall upon making the first payment of benefits and upon the suspension of any payment in any case, immediately notify the Office in accordance with a form prescribed by the Office that payment of benefit has begun or has been suspended as the case may be. In addition, each such carrier shall at the request of the Office submit to the Office such additional information concerning policies or contracts of insurance issued to guarantee the payment of benefits under the Act and any benefits paid thereunder, as the Office may from time to time require to carry out its responsibilities under the Act.

Subpart D—Civil Money Penalties

§ 726.300 Purpose and scope.

Any operator which is required to secure the payment of benefits under section 423 of the Act and § 726.4 and which fails to secure such benefits shall be subject to a civil penalty of not more than $1,000 for each day during which such failure occurs. If the operator is a corporation, the president, secretary, and treasurer of the operator shall also be severally liable for the penalty based on the operator's failure to secure the payment of benefits. This subpart defines those terms necessary for administration of the civil money penalty provisions, describes the criteria for determining the amount of penalty to be assessed, and sets forth applicable procedures for the assessment and contest of penalties.

§ 726.301 Definitions.

In addition to the definitions provided in part 725 of this subchapter and § 726.8, the following definitions apply to this subpart:

(a) Division Director means the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, or such other official authorized by the Division Director to perform any of the functions of the Division Director under this subpart.

(b) President, secretary, or treasurer means the officers of a corporation as designated pursuant to the laws and regulations of the state in which the corporation is incorporated or, if that state does not require the designation of such officers, to the employees of a company who are performing the work

usually performed by such officers in the state in which the corporation's principal place of business is located.

(c) Principal means any person who has an ownership interest in an operator that is not a corporation, and shall include, but is not limited to, partners, sole proprietors, and any other person who exercises control over the operation of a coal mine.

§ 726.302 Determination of penalty.

(a) The following method shall be used for determining the amount of any penalty assessed under this subpart.

(b) The penalty shall be determined by multiplying the daily base penalty amount or amounts, determined in accordance with the formula set forth in this section, by the number of days in the period during which the operator is subject to the security requirements of section 423 of the Act and § 726.4, and fails to secure its obligations under the Act. The period during which an operator is subject to liability for a penalty for failure to secure its obligations shall be deemed to commence on the first day on which the operator met the definition of the term ''operator'' as set forth in § 725.101 of this subchapter. The period shall be deemed to continue even where the operator has ceased coal mining and any related activity, unless the operator secured its liability for all previous periods through a policy or policies of insurance obtained in accordance with subpart C of this part or has obtained a certification of exemption in accordance with the provisions of § 726.114.

(c)(1) A daily base penalty amount shall be determined for all periods up to and including the 10th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, during which the operator failed to secure its obligations under section 423 of the Act and § 726.4.

(2)(i) The daily base penalty amount shall be determined based on the number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on each day of the period defined by this section, and shall be computed as follows:

Employees	Penalty (per day)
Less than 25	$100
25 to 50	200
51 to 100	300
More than 100	400

(ii) For any period after the operator has ceased coal mining and any related activity, the daily penalty amount shall be computed based on the largest number of persons employed in coal mine employment by the operator, or engaged in coal mine employment on behalf of the operator, on any day while the operator was engaged in coal mining or any related activity. For purposes of this section, it shall be presumed, in the absence of evidence to the contrary, that any person employed by an operator is employed in coal mine employment.

(3) In any case in which the operator had prior notice of the applicability of the Black Lung Benefits Act to its operations, the daily base penalty amounts set forth in paragraph (b) of this section shall be doubled. Prior notice may be inferred where the operator, or an entity in which the operator or any of its principals had an ownership interest, or an entity in which the operator's president, secretary, or treasurer were employed:

(i) Previously complied with section 423 of the Act and § 726.4;

(ii) Was notified of its obligation to comply with section 423 of the Act and § 726.4; or

(iii) Was notified of its potential liability for a claim filed under the Black Lung Benefits Act pursuant to § 725.407 of this subchapter.

(4) Commencing with the 11th day after the operator's receipt of the notification sent by the Director pursuant to § 726.303, the daily base penalty amounts set forth in paragraph (b) shall be increased by $100.

(5) In any case in which the operator, or any of its principals, or an entity in which the operator's president, secretary, or treasurer were employed, has been the subject of a previous penalty assessment under this part, the daily base penalty amounts shall be increased by $300, up to a maximum daily base penalty amount of $1,000. The maximum daily base penalty amount applicable to any violation of § 726.4 that takes place after [effective date of the final rule] shall be $1,100.

(d) The penalty shall be subject to reduction for any period during which the operator had a reasonable belief that it was not required to comply with section 423 of the Act and § 726.4 or a reasonable belief that it had obtained insurance coverage to comply with section 423 of the Act and § 726.4. A notice of contest filed in accordance with § 726.307 shall not be sufficient to establish a reasonable belief that the operator was not required to comply with the Act and regulations.

§ 726.303 Notification; investigation.

(a) If the Director determines that an operator has violated the provisions of section 423 of the Act and § 726.4, he or she shall notify the operator of its violation and request that the operator immediately secure the payment of benefits. Such notice shall be sent by certified mail.

(b) The Director shall also direct the operator to supply information relevant to the assessment of a penalty. Such information, which shall be supplied within 30 days of the Director's request, may include:

(1) The date on which the operator commenced its operation of a coal mine;

(2) The number of persons employed by the operator since it began operating a coal mine and the dates of their employment; and

(3) The identity and last known address:

(i) In the case of a corporation, of all persons who served as president, secretary, and treasurer of the operator since it began operating a coal mine; or

(ii) In the case of an operator which is not incorporated, of all persons who were principals of the operator since it began operating a coal mine;

(c) In conducting any investigation of an operator under this subpart, the Division Director shall have all of the powers of a district director, as set forth at § 725.351(a) of this subchapter. For purposes of § 725.351(c), the Division Director shall be considered to sit in the District of Columbia.

§ 726.304 Notice of initial assessment.

(a) After an operator receives notification under § 726.303 and fails to secure its obligations for the period defined in § 726.302(b), and following the completion of any investigation, the Director may issue a notice of initial penalty assessment in accordance with the criteria set forth in § 726.302.

(b)(1) A copy of such notice shall be sent by certified mail to the operator. If the operator is a corporation, a copy shall also be sent by certified mail to each of the persons who served as president, secretary, or treasurer of the operator during any period in which the operator was in violation of section 423 of the Act and § 726.4.

(2) Where service by certified mail is not accepted by any person, the notice shall be deemed received by that person on the date of attempted delivery. Where service is not accepted, the Director may exercise discretion to serve the notice by regular mail.

§ 726.305 Contents of notice.

The notice required by § 726.304 shall:

(a) Identify the operator against whom the penalty is assessed as well as the name of any other person severally liable for such penalty;

(b) Set forth the determination of the Director as to the amount of the penalty and the reason or reasons therefor;

(c) Set forth the right of each person identified in paragraph (a) of this section to contest the notice and request a hearing before the Office of Administrative Law Judges;

(d) Set forth the method for each person identified in paragraph (a) to contest the notice and request a hearing before the Office of Administrative Law Judges; and

(e) Inform any affected person that in the absence of a timely contest and request for hearing received within 30 days of the date of receipt of the notice, the Director's assessment will become final and unappealable as to that person.

§ 726.306 Finality of administrative assessment.

Except as provided in § 726.307(c), if any person identified as potentially liable for the assessment does not, within 30 days after receipt of notice, contest the assessment, the Director's assessment shall be deemed final as to that person, and collection and recovery of the penalty may be instituted pursuant to § 726.320.

§ 726.307 Form of notice of contest and request for hearing.

(a) Any person desiring to contest the Director's notice of initial assessment shall request an administrative hearing pursuant to this part. The notice of contest shall be made in writing to the Director, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, United States Department of Labor. The notice of contest must be received no later than 30 days after the date of receipt of the notice issued under § 726.304. No additional time shall be added where service of the notice is made by mail.

(b) The notice of contest shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) State the specific issues to be contested. In particular, the person must indicate his agreement or disagreement with:

(i) The Director's determination that the person against whom the penalty is assessed is an operator subject to the requirements of section 423 of the Act and § 726.4, or is the president, secretary, or treasurer of an operator, if the operator is a corporation.

(ii) The Director's determination that the operator violated section 423 of the Act and § 726.4 for the time period in question; and

(iii) The Director's determination of the amount of penalty owed;

(4) Be signed by the person making the request or an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) A notice of contest filed by the operator shall be deemed a notice of contest on behalf of all other persons to the Director's determinations that the operator is subject to section 423 of the Act and § 726.4 and that the operator violated those provisions for the time period in question, and to the Director's determination of the amount of penalty owed. An operator may not contest the Director's determination that a person against whom the penalty is assessed is the president, secretary, or treasurer of the operator.

(d) Failure to specifically identify an issue as contested pursuant to paragraph (b)(3) of this section shall be deemed a waiver of the right to contest that issue.

§ 726.308 Service and computation of time.

(a) Service of documents under this part shall be made by delivery to the person, an officer of a corporation, or attorney of record, or by mailing the document to the last known address of the person, officer, or attorney. If service is made by mail, it shall be considered complete upon mailing. Unless otherwise provided in this subpart, service need not be made by certified mail. If service is made by delivery, it shall be considered complete upon actual receipt by the person, officer, or attorney; upon leaving it at the person's, officer's or attorney's office with a clerk or person in charge; upon leaving it at a conspicuous place in the office if no one is in charge; or by leaving it at the person's or attorney's residence.

(b) If a complaint has been filed pursuant to § 726.309, two copies of all documents filed in any administrative proceeding under this subpart shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Black Lung Benefits Division, Room N–2605, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Ave., N.W., Washington, DC 20210, and one copy on the attorney representing the Department in the proceeding.

(c) The time allowed a party to file any response under this subpart shall be computed beginning with the day following the action requiring a response, and shall include the last day of the period, unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period shall include the next business day.

§ 726.309 Referral to the Office of Administrative Law Judges.

(a) Upon receipt of a timely notice of contest filed in accordance with § 726.307, the Director, by the Associate Solicitor for Black Lung Benefits or the Regional Solicitor for the Region in which the violation occurred, may file a complaint with the Office of Administrative Law Judges. The Director may, in the complaint, reduce the total penalty amount requested. A copy of the notice of initial assessment issued by the Director and all notices of contest filed in accordance with § 726.307 shall be attached. A notice of contest shall be given the effect of an answer to the complaint for purposes of the administrative proceeding, subject to any amendment that may be permitted under this subpart and 29 CFR part 18.

(b) A copy of the complaint and attachments thereto shall be served by counsel for the Director on the person who filed the notice of contest.

(c) The Director, by counsel, may withdraw a complaint filed under this section at any time prior to the date upon which the decision of the Department becomes final by filing a motion with the Office of Administrative Law Judges or the Secretary, as appropriate. If the Director makes such a motion prior to the date on which an administrative law judge renders a decision in accordance § 726.313, the dismissal shall be without prejudice to further assessment against the operator for the period in question.

§ 726.310 Appointment of Administrative Law Judge and notification of hearing date.

Upon receipt from the Director of a complaint filed pursuant to § 726.309, the Chief Administrative Law Judge shall appoint an Administrative Law Judge to hear the case. The Administrative Law Judge shall notify all interested parties of the time and place of the hearing.

§ 726.311 Evidence.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) Notwithstanding 29 CFR 18.1101(b)(2), subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges shall apply to administrative

proceedings under this part, except that documents contained in Department of Labor files and offered on behalf of the Director shall be admissible in proceedings under this subpart without regard to their compliance with the Rules of Practice and Procedure.

§ 726.312 Burdens of proof.

(a) The Director shall bear the burden of proving the existence of a violation, and the time period for which the violation occurred. To prove a violation, the Director must establish:

(1) That the person against whom the penalty is assessed is an operator, or is the president, secretary, or treasurer of an operator, if such operator is a corporation.

(2) That the operator violated section 423 of the Act and § 726.4. The filing of a complaint shall be considered *prima facie* evidence that the Director has searched the records maintained by OWCP and has determined that the operator was not authorized to self-insure its liability under the Act for the time period in question, and that no insurance carrier reported coverage of the operator for the time period in question.

(b) The Director need not produce further evidence in support of his burden of proof with respect to the issues set forth in paragraph (a) if no party contested them pursuant to § 726.307(b)(3).

(c) The Director shall bear the burden of proving the size of the operator as required by § 726.302, except that if the Director has requested the operator to supply information with respect to its size under § 726.303 and the operator has not fully complied with that request, it shall be presumed that the operator has more than 100 employees engaged in coal mine employment. The person or persons liable for the assessment shall thereafter bear the burden of proving the actual number of employees engaged in coal mine employment.

(d) The Director shall bear the burden of proving the operator's receipt of the notification required by § 726.303, the operator's prior notice of the applicability of the Black Lung Benefits Act to its operations, and the existence of any previous assessment against the operator, the operator's principals, or the operator's officers.

(e) The person or persons liable for an assessment shall bear the burden of proving the applicability of the mitigating factors listed in § 726.302(d).

§ 726.313 Decision and order of Administrative Law Judge.

(a) The Administrative Law Judge shall render a decision on the issues referred by the Director.

(b) The decision of the Administrative Law Judge shall be limited to determining, where such issues are properly before him or her:

(1) Whether the operator has violated section 423 of the Act and § 726.4;

(2) Whether other persons identified by the Director as potentially severally liable for the penalty were the president, treasurer, or secretary of the corporation during the time period in question; and

(3) The appropriateness of the penalty assessed by the Director in light of the factors set forth in § 726.302. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and bases therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, reverse, or modify, in whole or in part, the determination of the Director.

(d) The Administrative Law Judge shall serve copies of the decision on each of the parties by certified mail.

(e) The decision of the Administrative Law Judge shall be deemed to have been issued on the date that it is rendered, and shall constitute the final order of the Secretary unless there is a request for reconsideration by the Administrative Law Judge pursuant to paragraph (f) of this section or a petition for review filed pursuant to § 726.314.

(f) Any party may request that the Administrative Law Judge reconsider his or her decision by filing a motion within 30 days of the date upon which the decision of the Administrative Law Judge is issued. A timely motion for reconsideration will suspend the running of the time for any party to file a petition for review pursuant to § 726.314.

(g) Following issuance of the decision and order, the Chief Administrative Law Judge shall promptly forward the complete hearing record to the Director.

§ 726.314 Review by the Secretary.

(a) The Director or any party aggrieved by a decision of the Administrative Law Judge may petition the Secretary for review of the decision by filing a petition within 30 days of the date on which the decision was issued. Any other party may file a cross-petition for review within 15 days of its receipt of a petition for review or within 30 days of the date on which the decision was issued, whichever is later. Copies of any petition or cross-petition shall be served on all parties and on the Chief Administrative Law Judge.

(b) A petition filed by one party shall not affect the finality of the decision with respect to other parties.

(c) If any party files a timely motion for reconsideration, any petition for review, whether filed prior to or subsequent to the filing of the timely motion for reconsideration, shall be dismissed without prejudice as premature. The 30-day time limit for filing a petition for review by any party shall commence upon issuance of a decision on reconsideration.

§ 726.315 Contents.

Any petition or cross-petition for review shall:

(a) Be dated;

(b) Be typewritten or legibly written;

(c) State the specific reason or reasons why the party petitioning for review believes the Administrative Law Judge's decision is in error;

(d) Be signed by the party filing the petition or an authorized representative of such party; and

(e) Attach copies of the Administrative Law Judge's decision and any other documents admitted into the record by the Administrative Law Judge which would assist the Secretary in determining whether review is warranted.

§ 726.316 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210.

(b) *Number of copies.* An original and four copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time was made by mail.

(d) *Manner and proof of service.* A copy of each document filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

§ 726.317 Discretionary review.

(a) Following receipt of a timely petition for review, the Secretary shall

determine whether the decision warrants review, and shall send a notice of such determination to the parties and the Chief Administrative Law Judge. If the Secretary declines to review the decision, the Administrative Law Judge's decision shall be considered the final decision of the agency. The Secretary's determination to review a decision by an Administrative Law Judge under this subpart is solely within the discretion of the Secretary.

(b) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed; and

(2) The schedule for submitting arguments, in the form of briefs or such other pleadings as the Secretary deems appropriate.

(c) Upon receipt of the Secretary's notice, the Director shall forward the record to the Secretary.

§ 726.318 Final decision of the Secretary.

The Secretary's review shall be based upon the hearing record. The findings of fact in the decision under review shall be conclusive if supported by substantial evidence in the record as a whole. The Secretary's review of conclusions of law shall be *de novo.* Upon review of the decision, the Secretary may affirm, reverse, modify, or vacate the decision, and may remand the case to the Office of Administrative Law Judges for further proceedings. The Secretary's final decision shall be served upon all parties and the Chief Administrative Law Judge, in person or by mail to the last known address.

§ 726.319 Retention of official record.

The official record of every completed administrative hearing held pursuant to this part shall be maintained and filed under the custody and control of the Director.

§ 726.320 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final, in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in, or following the decision of the Secretary, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor on behalf of the Black Lung Disability Trust Fund. The person against whom such penalty has been assessed or imposed shall promptly remit the amount thereof, as finally determined, to the Secretary by certified check or by money order, made payable to the order of U.S. Department of Labor, Black Lung Program. Such remittance shall be delivered or mailed to the Director.

(b) If such remittance is not received within 30 days after it becomes due and payable, it may be recovered in a civil action brought by the Secretary in any court of competent jurisdiction, in which litigation the Secretary shall be represented by the Solicitor of Labor.

PART 727—[REMOVED]

6. Under the authority of sections 932 and 936 of the Black Lung Benefits Act, part 727 is proposed to be removed.

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Friday
October 8, 1999

Part III

Department of Health and Human Services

Administration of Children and Families

45 CFR Part 302, et al.

Child Support Enforcement Program; Incentive Payments, Audit Penalties; Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, 304 and 305

RIN 0970–AB85

Child Support Enforcement Program; Incentive Payments, Audit Penalties

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This regulation proposes to implement the statutory requirement of the Social Security Act that requires the Secretary of Health and Human Services to establish the new performance-based incentive system. It also proposes a performance-based penalty system and establishes standards for certain types of audits. Finally, OCSE is proposing a requirement that States establish an administrative review process. Beginning in fiscal year 2000, the incentive system will be used to reward States for their performance in running a Child Support Enforcement (IV–D) Program. The penalty system will be used to penalize States that fail to perform at acceptable levels or fail to submit complete and reliable data.

DATES: Consideration will be given to written comments received by December 7, 1999.

ADDRESSES: Comments should be submitted in writing to the Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director of Policy and Planning Division, Mail Stop: OCSE/DPP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. on the 4th floor of the Department's offices at the above address. Comments may also be submitted by sending electronic mail (e-mail) to jpitts@acf.dhhs.gov, or by telefaxing to 202–401–3444. This is a not a toll-free number. Comments sent electronically must be in ASCII format.

FOR FURTHER INFORMATION CONTACT: Joyce Pitts, OCSE Division of Policy and Planning, (202) 401–5374. Hearing impaired individuals may call the Federal Dual Party Relay Service at 800–877–8339 between 8:00 a.m. and 7:00 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Authority

These proposed regulations implement sections 409(a)(8), 452 (a)(4) and (g), and 458A of the Social Security Act (Act), as added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, (PRWORA), by the Child Support Performance and Incentive Act of 1998, Public Law 105–200, and as amended by the Welfare Reform Technical Amendments Act of 1997, Public Law 105–34.

These regulations are also issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which the Secretary is responsible under the Act.

II. Summary

These regulations cover four subjects: incentives to States; penalties against State TANF grants; audits; and administrative reviews. Each is briefly summarized below and is discussed in detail in subsequent sections of the preamble.

The incentive payment provisions are set forth in section 458A of the Act. Incentive payments would be made to States each fiscal year based on their collections and their performance levels on five statutory performance measures: paternity establishment; establishment of support orders; collections for current support; case collections for child support arrearages; and cost-effectiveness. The States would be assigned a statutorily set percentage based on their performance levels on each measure or their improved performance levels over the preceding year. The precise amount a State would be entitled to receive would be determined based on a number of different formulae set forth in the statute. First, an incentive base amount would be calculated for each State taking into account the State's collections base amount. This latter amount would be computed based on the amounts collected by the State with extra weight being given to cases that are or were formerly assigned to the State. For certain performance measures, the State would be credited with the full amount of the collections base and for others, 75 percent of the collections base. These amounts would then be multiplied by the percentages earned on each of the five performance measures and all would be added together to compute the State incentive base. Second, the incentive base amount would be used to compute the State's share of the incentive pool appropriated each year. A State's share of the pool would be the State's incentive base amount divided by the sum of the incentive base amounts for all States for that year multiplied by the amount appropriated for incentives for the year. However, in order to receive incentive amounts each year, the State's data must also be determined to be complete and reliable. Incentive payments would be made quarterly based on estimates with adjustments made following the end of the year based on actual data and performance levels. These provisions would be used to determine one-third of incentive payments made to States in fiscal year 2000, two-thirds of the incentive payments made for fiscal year 2001, and all of the incentive payments in subsequent years.

The penalty provisions are contained in section 409(a)(8) of the Act. A reduction of up to five percent would be taken against a State's family assistance grant for any of the following types of failures to meet requirements of the child support enforcement program under title IV–D of the Act: the failure to meet the paternity establishment percentages; the failure to meet other performance standards specified by the Secretary; the failure to submit complete and reliable data; and the failure to substantially comply with one or more IV–D program requirements. The Secretary proposes to adopt two additional performance measures for penalty purposes, i.e. support order establishment and collections for current support. These failures would be determined either based on a review of data submitted by a State, or as a result of a federal audit. After a failure has been identified, a State would have an automatic one-year corrective action period to remedy the failure or meet the performance standard or other requirement. A reduction would be imposed for quarters following the end of the corrective action year if the State fails to take sufficient corrective action and would continue through the first quarter in which the State is fully in compliance. The hearing and appeal provisions and 25 percent penalty ceiling applicable to other reductions in the State's family assistance grant under section 409 of the Act would also apply.

The audit provisions are set forth mainly in section 452(a)(4)(C) of the Act, but are also further clarified in section 409(a)(8) of the Act. OCSE would be required to conduct audits for the following purposes: to assess the completeness, reliability, and security of the data and the accuracy of the reporting systems used in calculating incentive and penalty performance measures; to determine the adequacy of financial management of the State IV–D

programs; to determine whether a State IV–D program is substantially complying with IV–D program requirements; and such other purposes as the Secretary finds necessary. The proposed regulations also establish specific standards for audits to determine whether a State IV–D program is in substantial compliance. Certain audits must be performed at least once every three years or more frequently if the State fails to meet standards.

The administrative review provisions are being proposed based on the Secretary's rulemaking authority under section 1102 of the Act. They would require a State to establish procedures to provide recipients of IV–D program services the opportunity to request a review of actions taken or not taken in their case. The State must establish procedures for reviewing such requests, taking appropriate actions, if necessary, and notifying the recipients of the results of the review and any actions taken.

III. Background

A. The National Strategic Plan

OCSE and its State IV–D program partners saw an opportunity to create a closer working relationship in the Government Performance and Results Act of 1993. This Act required Federal programs to set goals and measure results by establishing strategic plans. OCSE and State partners embarked on an effort to develop a National Child Support Enforcement Strategic Plan by consensus with a vision, mission, goals and objectives. This was achieved in February, 1995. The plan can be viewed on OCSE's website at http://www.acf.dhhs.gov/programs/cse/new/spwith.htm.

The plan includes three major goals for the child support program—that all children have paternity established, all children in the program have financial and medical support orders established, and all children in the program receive financial and medical support from both parents.

The plan has provided the foundation for both reshaping the State-Federal relationship into a collaborative partnership and building a results-oriented framework for the child support enforcement program. After development of the National Child Support Enforcement Strategic Plan, States and OCSE worked together to develop specific performance indicators that could be used to measure the program's success in achieving the goals and objectives.

It was this Strategic Plan and its array of performance measures that the States and OCSE looked to in order to recommend a performance-based incentive funding system to reward States for results. State and Federal partners sought a formula that would spur States to achieve the goals and objectives of the Strategic Plan. The array of performance measures was reviewed and the key indicators for the major activities of the child support enforcement program were selected. Essentially, the performance measures selected for the new incentive system are a subset of key measures for the program. The Strategic Plan measures and incentive measures for paternity establishment, support order establishment, collections on current support and cost-effectiveness are the same. The only deviation from the plan was the measure for collections on past-due support. State and Federal partners rejected the Strategic Plan measure that would provide an arrearage collection rate because there is a wide variation in how States laws affect arrearages. State and Federal partners concluded that the only workable measure that would level the playing field among States in this important area was one based on the number of cases that were paying on arrears.

After the incentive funding proposals were developed, State and Federal partners further collaborated to recommend a system of performance penalties for States. They returned to the Strategic Plan, its full array of measures and the recommended incentive funding system that was being considered for legislation. First the larger array of measures from the Strategic Plan were considered for penalties but rejected. Next, the partners focused on those key measures of the program's performance which had been recommended for incentives. The States and OCSE chose a subset of the incentive measures for application of financial penalties. These were the incentive measures which were given a greater weight in the computation of the incentive formula—paternity establishment, order establishment and the collection of current support.

In addition to the use of the Strategic Plan for developing performance measures for the child support enforcement program, recommending a State incentive funding system, and a system of performance penalties, it has also more recently shaped a revision of the child support data reporting and collection systems and the role of the Federal audit process. This proposed rule would implement key structures that have been shaped and guided by the Strategic Plan and these structures will, in turn, help achieve outcomes that fulfill the goals and objectives of the Plan itself.

B. Issues and Activities Leading to the New Incentive Provisions

Under section 458 of title IV–D of the Act, States are paid a minimum of six percent of their collections in TANF cases and six percent of their non-TANF collections as an incentive. Under this system, there is also the potential to earn up to 10 percent of collections based on the State's cost-effectiveness in running a child support program. However, the amount of non-TANF incentives is capped at 115 percent of the TANF incentive earned.

This incentive system has been questioned for focusing on only one aspect of the IV–D program—cost-effectiveness. It does not reward States for other important aspects of child support enforcement, such as paternity and support order establishment. In addition, since all States receive the minimum incentive amount of six percent of collections regardless of performance, this system was not regarded as having a real incentive effect.

Over the past decade, a number of commissions and organizations have recommended the adoption of a new performance-based incentive system. In 1988, Congress authorized the creation of the U.S. Commission on Interstate Child Support to make recommendations to Congress on improving the child support program. That Commission's report called for a study of the Federal funding formula and changes to an incentive structure that is based on performance. In addition, other national organizations, including the National Conference of State Legislatures, the American Public Welfare Association (now the American Public Human Services Association, APHSA), the National Governor's Association, and several national advocacy organizations recommended the adoption of a new performance-based incentive system.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) required the Secretary, in consultation with State IV–D Program Directors, to recommend to Congress a new incentive funding system for State IV–D programs based on program performance. Section 341(a) of PRWORA required that: (1) the Secretary of Health and Human Services develop a new incentive funding system, in a revenue neutral manner; (2) the new system provide additional payments to any State based on that

State's performance; and (3) the Secretary report to Congress on the new system.

The Incentive Funding Workgroup was formed in October 1996. This group consisted of 15 State and local IV–D directors or their representatives and 11 Federal staff representatives from HHS. Earlier efforts of this State-Federal partnership produced the National Strategic Plan for the IV–D program and a set of outcome measures to indicate the program's success in achieving the goals and objectives of the plan. Using the same collaboration and consensus-building approach, State and Federal partners recommended a new incentive funding system based on the foundation of the National Strategic Plan.

Over a period of three months, recommendations for the new incentive funding system emerged. State partners consulted with State IV–D programs not represented directly on the Workgroup. The final recommendations represented a consensus among State and Federal partners on the new incentive funding system. The Secretary fully endorsed the incentive formula recommendations. The Secretary's report made recommendations to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

Most of the recommendations were included in Public Law 105–200, the Child Support Performance and Incentive Act of 1998. This proposed rule would implement that legislation. The legislative language is very explicit. Therefore, we are for the most part, merely repeating the language in these proposed rules. However, the proposed regulations add details or guidance on how to treat certain cases or actions and describe when it is permissible to exclude certain cases for purposes of calculating State performance. We developed the specific exclusions and definitions contained in the proposed regulations based on the work done by the Incentive Funding Workgroup. Any non-statutory proposed elements of this regulation are subject to public comment and may be changed based on comments received.

C. Audit and Penalties

Prior to enactment of PRWORA, the Federal statute at former section 452(a)(4) of the Act required periodic, comprehensive Federal audits of State IV–D programs to ensure substantial compliance with all Federal IV–D requirements. If the audit found that the State program was not in substantial compliance and if the deficiencies identified in an audit were not corrected, States faced a mandatory fiscal penalty of between 1 and 5 percent of the Federal share of the State's title IV–A program funding under section 403(h) of the Act. Once an audit determined compliance with identified deficiencies, the penalty was lifted or ceased.

Such a detailed, process-oriented audit was time-consuming and labor-intensive for both Federal auditors and the States. In addition, audit findings did not measure current State performance or current program requirements because of delays and the time it took to conduct audits. States contended that the audit system focused too much on administrative procedures and processes rather than performance outcome and results.

Notwithstanding these deficiencies, it is widely agreed that efforts to pass the Federal audit were a significant driving force behind States' improved program performance during the years that these audit and penalty provisions were in place prior to enactment of PRWORA. While two-thirds of the States failed the initial audit, three-fourths of these same States came into compliance after a corrective-action period and avoided the financial penalty.

Section 452(a)(4) of the Act, as amended by PRWORA, changed the Federal audit process to focus on measuring performance and program results, instead of process. Subsequently as part of technical amendments to PRWORA, the penalty provision under 409(a)(8) of the Act was modified to conform to the new audit approach under the IV–D program. The new approach to measuring program results changes the Federal audit focus to determining the reliability of program data used to measure performance and requires States to conduct self-reviews, similar to the former Federal process audits, to assess whether or not all required IV–D services are being provided. States have the opportunity to use these self-reviews (as the Office of Child Support Enforcement is publishing under a separate proposed rule) to find and correct deficiencies and avoid frequent Federal audits. Federal auditors will assess States' data used to compute performance outcome measures and determine if these data are complete and reliable. In addition, Federal auditors will conduct periodic financial and other audits, as necessary. The statute allows OCSE to make an annual determination on the completeness and reliability of State data used to compute performance measures. However, once a State's data has been determined to be complete and reliable, we plan to only audit the data every three years—unless there is a reason to believe it is needed more often.

The penalty system in this proposed rule would replace the previous penalty under former section 403(h) of the Act that focused on substantial compliance with prescriptive Federal IV–D requirements. However, sections 452(a)(4)(C) and 409(a)(8) continue to allow the Secretary discretion to determine substantial noncompliance with IV–D requirements and to assess a penalty under section 409(a)(8) of the Act, based on discretionary audits of State IV–D programs.

Federal auditors will work with States to assess the reliability of their data as well as to test State systems used to produce the data and the tools used to make the reliability determinations. Federal auditors' assessment of data reliability is a critical aspect of assuring that both incentives and penalties are based on accurate and reliable State-reported data. This is an important control, not only on the expenditure of Federal funds, but because it underpins the fairness of the incentive and penalty system and the resulting confidence that States have in rewards dispensed and penalties assessed nationwide.

State-reported, statistical and financial data taken from the new reporting forms, the OCSE–157, the OCSE–34A, and the OCSE–396A will be used in determining State performance levels. The OCSE–157 statistical report is, in part, the culmination of a Federal-State data improvement initiative that began in early 1992. That initiative, referred to as the Measuring Excellence Through Statistics (METS) initiative, developed clear reporting instructions and State reporting of data critical to measuring program results, which in turn will result in improved State program statistical and financial data. State data as reported on the OCSE–157, as well as on the expenditure reporting form (the OCSE–396A) and the support collection reporting form (the OCSE–34A), will be evaluated for completeness and reliability by Federal auditors. State-reported data that is determined to be incomplete or unreliable may cause reductions in the State's funding under the IV–A program and loss of Federal incentive payments under the IV–D program.

The performance measures and standards proposed in this regulation for penalty purposes reflect three objectives: (1) To insure consistency and integration with the proposed incentive system; (2) to neither reward nor penalize a State for certain levels of performance with no significant increase over the previous year; and (3) to assess a penalty for poor State

performance with no significant improvement over the previous year. While the specifics of performance measures for penalty purposes, with the exception of the Paternity Establishment Percentage (PEP) under section 452(g) of the Act, are left to the discretion of the Secretary, the approach to assessing penalties proposed in this regulation takes into consideration the results of work done by State and Federal partners during the development of the National Strategic Plan and the proposal for incentive measures, as well as consultations with a wide variety of other interested parties, including the Congress, State representatives, advocates, and national organizations.

D. Performance Measures

This section gives a description of each of the performance measures to be used for incentive and penalty purposes.

The new child support incentive system, in section 458A of the Act, as amended by the Child Support Performance and Incentive Act of 1998, measures State IV–D program performance in five major areas: (1) Paternity establishment; (2) cases with child support orders; (3) collections on current support; (4) cases with collections on arrears; and (5) cost-effectiveness.

The penalty system proposed in this regulation would measure State IV–D program performance in three areas: (1) Paternity establishment, (2) cases with child support orders, and (3) collections on current support. The first is required by the statute pursuant to 409(a)(8)(i) and the other two are measures being proposed by the Secretary.

1. Paternity Establishment

The measure for paternity establishment is that included by Congress for purposes of paternity establishment penalties under section 452(g) of the Act, as amended by PRWORA. It is also one of the performance measures for incentives purposes under section 458A(b)(6)(A)(i) of the Act. States may use either one of the following two measures set forth in 452(g)(2) of the Act:

(1) IV–D Paternity Establishment Percentage (PEP) is the ratio that the total number of children in the IV–D caseload in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out of wedlock.

(2) Statewide Paternity Establishment Percentage (PEP) is the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year.

Under section 452(g)(2) of the Act, the count of children will not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child), nor any child whose parent is found to have good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the appropriate State agency determines it is against the best interest of the child to pursue paternity issues.

2. Cases With Child Support Orders

This measure is found in section 458A(b)(6)(B)(i) of the Act and shows, for incentive purposes, the percentage of cases in the IV–D caseload in which there is a support order. This proposed regulation would apply the same measure for penalty purposes.

3. Collections on Current Support

The third measure is at section 458A(b)(6)(C)(i) of the Act for purposes of incentives, and is proposed as the measure for penalty purposes in this regulation. This measure focuses on the proportion of current support owed that is collected in IV–D cases during the fiscal year.

Another approach would be to look at cases with payments instead of actual collections. We invite comment on the use of ''Cases with Collections'' as an alternative to the ''Collections on Current Support'' penalty measure.

4. Collections on Arrears

The fourth measure, found in section 458A(b)(6)(D) of the Act for incentive purposes, measures the total number of cases under the IV–D program in which payments of past-due child support were received in the fiscal year and part or all of the payments were distributed to the family to whom the past-due child support was owed (or, if all past-due child support owed to the family was, at the time of receipt, subject to an assignment to the State under title IV–A of the Act, part or all of the payments were retained by the State) divided by the total number of IV–D cases in which there is past-due child support.

This measure includes those cases where, during the fiscal year, all of the past-due support collected was disbursed to the family, or was retained by the State because all the support was assigned to the State. If some of the past-due support owed in a IV–D case was assigned to the State and some was owed to the family, only those cases where some of the support actually went to the family can be included.

5. Cost-Effectiveness

The final measure for incentive purposes under section 458A(b)(6)(E)(i) of the Act, compares the total amount of support collected by the State's IV–D program during the fiscal year to the total amount expended during the fiscal year in the IV–D program.

E. Weighting the Measures

The statute requires some measures to get more weight than other measures. For incentive purposes under section 458A of the Act, each State would earn five scores based on performance on each of the five measures. The statute specifies that more emphasis should be placed on some of the measures, such as those that ensure timely and consistent support for children. Therefore, in accordance with section 458A(b)(5)(A) of the Act, we propose to weight the first three measures (paternity establishment, order establishment, and collections on current support) slightly more heavily than the last two (collections on arrears and cost effectiveness). The weighted scores are used to determine a State's maximum base amount.

F. Exclusion of Other Measures From Penalty Measures

While the incentives measures, formula, and process is laid out or cross referenced explicitly in section 458A of the Act, the penalty provisions in sections 409(a)(8) of the Act allow the Secretary to set the measures, performance standards (other than those for paternity establishment), and process that will be used to determine if State performance is sufficiently inadequate to warrant a financial penalty.

As noted earlier, we based these measures on the Strategic Plan. Under this proposed regulation, penalties would be based on a State's failure to meet minimum standards on paternity establishment, support order establishment and collection on current support performance measures, which are all in the strategic plan. The remaining measures—collections on arrears and cost-effectiveness are not included in the penalty system. We do not propose that these two measures be included for the following reasons:

(1) The Child Support Performance and Incentive Act of 1998 changed the recommended performance standard for

the number of cases paying arrears. The impact of this adjustment to the proposed standard may have the effect of reducing the number of cases for which past-due support is collected which may be counted for incentives purposes. If some past due support was assigned to the State and some due to the family, the case can only be included where some of the support actually went to the family. We do not believe a State should be measured, for penalty purposes, on collection of arrears cases at this time. This is a new area of reporting for states and the impact of the statutory adjustment to this standard is not clear.

(2) We also do not propose including the cost-effectiveness measure for penalty purposes. Including it might have discouraged States from investing in program improvements that might raise program costs and might reduce cost-effectiveness or might not yield results immediately. We believe that there are other, adequate mechanisms to address concerns for cost-shifting or improper use of IV–D funds (such as financial management and administrative cost audits). In addition, State automated IV–D systems costs are expected to remain high over the next few years due to continued development and modification of statewide-automated systems to meet the requirements of PRWORA, thus making such a measure less reflective of the actual cost-effectiveness of the program.

For these reasons, we propose to begin the new penalty system with just three penalty measures and intend to evaluate the possibility of including other measures at a later time when more is known about the impact of this penalty system. For example, we are in the process of developing a recommendation to the Congress on a medical support performance measure for incentive purposes, in accordance with section 201(d)(2) of the Child Support Performance and Incentive Act of 1998. The Secretary's report is due to the Congress on October 1, 1999, including recommendations for incorporation of a medical support measure in a revenue neutral manner in the incentive payments system established under section 458A of the Act. When changes are made to incorporate such a measure in the statutory incentives system, it would be appropriate to consider changes to the penalty measures presented in these regulations.

G. Interaction Between Incentives and Penalties

We believe there are levels of State performance that merit an incentive payment and there are levels that warrant a penalty. However, there are also levels of State performance that neither merit an incentive nor warrant a penalty.

There is an interaction between the incentive and penalty systems proposed in this regulation. States with certain levels performance on the three penalty measures would be able to avoid a penalty and qualify for an incentive payment if a significant increase over the previous year's performance is achieved in those measures (i.e., 10 percent on the PEP, 5 percent on support orders and current support collections). However, under this alternative improvement formula the incentive payment would never be more than half of the maximum incentive possible. As a result, those States with lower performance levels would at least receive some incentive provided the program is improving sufficiently and quickly. Penalties would be assessed against States with very poor performance and decreasing, static, or minimal increases in performance over the previous year.

While Congress was clear in setting a performance standard for the paternity establishment percentage, the statute provided the Secretary with discretion to set standards for performance in other areas. State and Federal partners strongly considered the mandated paternity establishment penalty model and determined that it would not work for the other measures. Setting such a high standard for order establishment and current support would be unrealistic and would cause almost every State to be penalized.

The order establishment and current support performance standards for determining at what level a penalty would be assessed against a State were set applying historical program data. Using this information, an analysis was done to determine the number of States that might receive incentive funding, the number that might receive neither incentive or penalty, and the number that would receive a penalty. The partners agreed that the resulting system would provide a graduated scale of punishment and rewards that would motivate States to improve from year to year. Under the proposed levels, the majority of States would not potentially be subject to penalties.

IV. Description of Regulatory Provisions—Incentives and Administrative Review

Parts 302, 303 and 304—State Plan Requirements, Standards for Program Operations, and Federal Financial Participation

The cross-references to existing regulations mentioned in this Description of Regulatory Provisions are as amended by the Interim Final Conforming Rule (64 FR 6237) published in the **Federal Register** February 9, 1999.

Sections 302.55 and 304.12—Regulations for Existing Incentives Process

Currently, under section 454(22) of the Act and 45 CFR 302.55, the only restriction on the use of incentive funds awarded to the State is that States must share incentives earned with any political subdivision that shares in funding the administrative cost of the program. The restriction to share funds with political subdivisions is not being changed. Although Section 454(22) does not refer to Section 458A, the restriction will be applicable when Section 458A is redesignated as Section 458. Thus, we believe it was Congress' intent to have this restriction apply continuously to the payment of incentives. Therefore, we propose adding reference to the proposed new part 305 in § 302.55 by adding the words ''and part 305'' after ''§ 304.12''.

Current 45 CFR 304.12(b)(1), as revised on 2/9/99 at 64 FR 6237, based on section 458 of the Act, computes incentive payments for States for a fiscal year as a percentage of the State's TANF collections, and a percentage of its non-TANF collections. The percentages are determined separately for TANF and non-TANF portions of the incentive. The percentages are based on the ratio of the State's TANF collections to the State's total administrative costs and the State's non-TANF collections to the State's total administrative costs. This is known as a State's cost-effectiveness ratio. The portion of the incentive payment paid to a State in recognition of its non-TANF collections is limited to 115 percent of the portion of the incentive payment paid in recognition of its TANF collections.

HHS estimates the total incentive payment that each State will receive for the upcoming fiscal year. Each State includes one-quarter of the estimated total payment in its quarterly collection report that will reduce the amount that would otherwise be paid to the Federal government. Following the end of a fiscal year, HHS calculates the actual

incentive payment the State should have received. If adjustments to the estimated amount are necessary, an additional positive or negative title IV–D grant award is issued. Under section 201(f) of the Child Support Performance and Incentive Act of 1998, effective October 1, 2001, current section 458 of the Act will be repealed and section 458A of the Act, will be redesignated as section 458. To implement this statutory provision, we propose to add a new paragraph (d) to § 304.12 under which § 304.12 would become obsolete on October 1, 2001.

A new paragraph (e) would be also added to reflect the phase-in of the new incentive system. In fiscal year 2000, the amount of incentives paid under § 304.12 would be reduced by one-third. In fiscal year 2001, the amount of incentives paid under § 304.12 would be reduced by two-thirds.

Section 303.35—Administrative Review Process

We are proposing an outcome-oriented approach to child support enforcement program accountability and responsibility. The proposed approach seeks to balance the Federal government's oversight responsibility with States' responsibilities for child support service delivery and fiscal accountability. One element of the proposal being implemented by these proposed regulations, is the focus on results-oriented performance measures for incentives and penalties purposes. A second aspect of the proposal replaces statutory and regulatory Federal audit requirements with States' responsibility for ensuring that their programs meet IV–D requirements. The requirement for these periodic State self-reviews, intended for management purposes to identify and resolve deficiencies in case processing, was also adopted under PRWORA as a State plan requirement at section 454(15)(A) of the Act. Procedures for State self-reviews are being implemented under a separate rulemaking.

Although Federal funding of administrative review processes has long been considered an allowable expenditure under the IV–D program, we believe it to be a key element to any IV–D program. In the era of our focus on program results, we believe it appropriate to ensure that these administrative review processes are available to recipients of IV–D services. Using the authority under section 1102 of the Act to publish regulations that the Secretary deems necessary for the efficient administration of the IV–D program, we propose to add a section to part 303 requiring States to provide for an administrative review.

Under proposed § 303.35, entitled Administrative Review Procedure, each State must have a procedure in place to allow individuals receiving IV–D services the opportunity to request a review of actions taken, or not taken when there is evidence that an action should have been taken, on a particular case. In addition, the State must have a procedure for reviewing the individual's complaint and resolving it where appropriate action was not taken and for notifying the individual of the results of the review and any actions taken.

Part 305—Program Performance Measures, Standards, Financial Incentives, and Penalties

We propose adding a new part 305 to implement the new incentive system under section 458A of the Act and certain audit and penalty provisions found in sections 409(a)(8), 452(a)(4)(C) and (g) of the Act. Former Part 305 was revoked on 2/9/99 at 64 FR 6237.

Section 305.0 Scope

Proposed § 305.0, Scope, explains what part 305 covers, including the statutory basis for the incentive and penalty systems, when the incentive and penalty systems, described above, are effective and a general description of the contents of part 305. Proposed § 305.1 contains definitions and proposed § 305.2 contains performance measures. Proposed §§ 305.31 through § 305.36 of part 305 would describe the incentive system. Proposed §§ 305.40 through § 305.42 and §§ 305.60 through § 305.66 would describe the grounds for penalties under section 409(a)(8), the procedures for imposing penalties, the types of audits, and set forth the standards for substantial compliance audits and certain audit procedures.

Section 305.1 Definitions

Under proposed § 305.1, Definitions, the definitions found in § 301.1 of program regulations would also apply to part 305. In addition, for purposes of part 305, § 305.1 would define the following terms:

The term IV–D case is a parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV–D program. In counting cases for the purposes of this part, States may exclude cases closed under § 303.11 and cases over which the State has no jurisdiction. Lack of jurisdiction cases are those in which a non-custodial parent resides in the civil jurisdictional boundaries of another country or Federally recognized Indian Tribe and no income or assets of this individual are located or derived from outside that jurisdiction, and the State has no other means through which to enforce the order.

The definition of a IV–D case in proposed § 305.1 implements the requirement in section 458A(e) that the Secretary include in regulations directions for excluding from the incentive calculations certain closed cases and cases over which the States do not have jurisdiction. The definition itself was developed during the METS initiative and used in required Federal report forms and defines which cases may be excluded for purposes of calculating incentives, namely, IV–D cases meeting the conditions for case closure under § 303.11 and cases over which the State has no jurisdiction. This definition assures that workable cases are counted while those cases in which there is no possible action by the IV–D agency would be discounted. It is essential that we use consistent definitions for all data and we propose, therefore, that the definitions in § 305.1 apply equally for incentives and penalties purposes.

Under proposed paragraph (b), the term Current Assistance collections means collections received and distributed on behalf of individuals whose rights to support are required to be assigned to the State under title IV-A of the Act, under title IV–A of the Act, under title IV–E of the Act, or under title XIX of the Act. In addition, a referral to the State's IV–D agency must have been made. Current Assistance collections do not include assistance paid under Tribal TANF because the statute includes only those collections where there is an assignment to the State. Tribal TANF does not fall within that category.

Under proposed paragraph (c), the term Former Assistance collections means collections received and distributed on behalf of individuals whose rights to support were formerly required to be assigned to the State under either title IV–A (TANF or Aid to Families with Dependent Children, AFDC), title IV–E (Foster Care), or title XIX (Medicaid) of the Act.

Under proposed paragraph (d), the term Never Assistance/Other collections means all other collections received and distributed on behalf of individuals who are receiving child support enforcement services under title IV–D of the Act.

The definitions of various categories of collections proposed above reflect categories of collections described in section 458A(b)(5)(C) of the Act and used to calculate the State collections

base used for computing incentives. Current Assistance and Former Assistance are multiplied by 2 and added to Never Assistance/Other collections to determine the State's collections base. The current report that States use to report collection information to OCSE, the OCSE–34A, did not originally address how title XIX, Medicaid, collections should be reported. This was changed to be consistent with the definitions stated above, when the report was last submitted for clearance.

Under proposed paragraph (e), the term total IV–D administrative costs means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with § 305.32 of this part. Proposed § 305.32, addressed later, includes specific expenditures that are excluded when calculating a State's total IV–D administrative expenditures for calculation of the cost-effectiveness performance measure.

The term Consumer Price Index or CPI, in proposed paragraph (f), is taken from the definition in section 458A(b)(2)(B) of the Act, and means the last Consumer Price Index for all-urban consumers published by the Department of Labor. The CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year.

Under proposed paragraph (g), the term State incentive payment share for a fiscal year means the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year. This definition is found in section 458A(b)(3) of the Act.

Under proposed paragraph (h), the term State incentive base amount for a fiscal year means the sum of the State's performance level percentages (determined in accordance with § 305.33) multiplied by the State's corresponding maximum incentive base amount for each of the following measures: (1) The paternity establishment performance level; (2) the support order performance level; (3) the current collections performance level; (4) the arrears collection performance level; and (5) the cost-effectiveness performance level. This definition is found in section 458A(b)(4) of the Act.

Under proposed paragraph (i), the term reliable data includes the most recent data available which are found by the Secretary to be reliable for purposes of computing the paternity establishment percentage. In addition, we have gone beyond the legislative definition by adding that data for computing each of the measures must be found to be sufficiently complete and error free to be convincing for their purpose and context. This definition is based on § 452(g)(2)(C) of the Act and includes further elaboration of the circumstances under which the Secretary will consider data to be reliable. This is consistent with the recognition that data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion made based on the data. Part of this definition is lifted verbatim from the Chapter 1, Introduction of the U.S. General Accounting Office, Office of Policy Booklet (Standards) entitled, Assessing the Reliability of Computer-Processed Data, dated September 1990. The official designation of this booklet is GAO/OP–8.1.3. The Government Auditing Standards—generally referred to as the ''Yellow Book''—provide the standards and requirements for financial and performance audits. A key standard covers the steps to be taken when relying on computer-based evidence. This booklet from the Office of Policy is intended to help auditors meet the Yellow Book standard for ensuring that computer-based data are reliable.

Under proposed paragraph (j), the term complete means all reporting elements from OCSE OMB approved reporting forms that are necessary to compute a State's performance levels, incentive base amount, and maximum incentive base amount have been provided.

We believe the definitions in (i) and (j) are appropriate for purposes of Part 305 since State IV–D programs are required to have comprehensive statewide automated systems which, under section 454A(c) of the Act must enable the Secretary to determine the incentive payments and penalty adjustments required by sections 452(g) and 458 of the Act. In addition, under section 454(15)(A), States must have a process of extracting from the automated data processing system and transmitting to the Secretary, data and calculations concerning the levels of accomplishment and rates of improvement with respect to the applicable performance indicators for purposes of sections 452(g) and 458 of the Act. Finally, Federal auditors are required under section 452(a)(4)(C)(i) of the Act to conduct audits to assess the completeness, reliability, and security of the data, and the accuracy of the reporting systems used in calculating performance indicators. These provisions, taken together, require a clear, accepted and supportable definition of reliable data.

Reliable data on all the key data elements is critical for calculating accurate incentive payments. States must ensure that they will be able to accurately report this data. Federal auditors will determine the reliability of State data using commonly accepted standards. We invite comment on the definition of reliable data set forth at proposed section 305.1(i) and the methods for ensuring reliable data is reported. Specifically, we request alternate suggestions for methods or approaches which would address this issue within the context of the statutory requirement and the procedures of conducting the data reliability assessments.

Section 305.2 Performance Measures

This section describes the performance measures that will be used in the incentive and penalty systems. Proposed paragraph (a) of § 305.2, Performance measures, indicates the child support incentive system would measure State performance levels in five areas: (1) Paternity establishment; (2) child support order establishment (cases with orders); (3) collections on current support; (4) collections on arrears; and (5) cost-effectiveness. It also proposes that the penalty system measure State performance in three of these areas: (1) paternity establishment; (2) child support order establishment; and (3) collections on current support.

Proposed paragraph (a)(1), Paternity Establishment Performance Level, reflects the explicit statutory language in section 458A(b)(6)(A)(i) of the Act, which gives States the choice of being evaluated on one of the following two measures, discussed in detail later for their paternity establishment percentage (commonly known as the PEP). The statute and the proposed paragraph provide that the count of children shall not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child). It shall also not include any child with respect to whom there is a finding of good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the appropriate State agency determines it is against the best interest of the child to pursue paternity issues.

The IV–D paternity establishment percentage and statewide paternity establishment percentage definitions that follow are contained in subparagraphs (a)(1)(i) and (ii) are set forth in sections 452(g)(2)(A) and (B) of the Act:

IV–D Paternity Establishment Percentage means the ratio that the total number of children in the IV–D caseload

in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out-of-wedlock. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Children in IV-D Caseload in the Fiscal Year or, at the option of the State, as of the end of the Fiscal Year who were Born Out-of-Wedlock with Paternity Established or Acknowledged}}{\text{Total \# of Children in IV-D Caseload as of the end of the preceding Fiscal Year who were Born Out-of-Wedlock}}$$

Statewide Paternity Establishment Percentage is the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Minor Children who have been Born Out-of-Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out of Wedlock During the Preceding Fiscal Year}}$$

The IV–D PEP is a measure of children in the caseload at a point-in-time (i.e. the end of the fiscal year). The Statewide PEP is a measure of what happened during the fiscal year. Both counts include children in interstate cases.

As we propose the measure, paternities include those established by: (1) Voluntary acknowledgments; and (2) all types of orders, including court, administrative, and default. However, a paternity can only be counted once—either when a voluntary acknowledgment is completed or when an order determining paternity is established.

The second performance measure contained in proposed § 305.2(a)(2), Support Order Performance Level, requires a determination of whether or not there is a support order for each case. These support orders include all types of legally enforceable orders, including court, default, and administrative. Since the measure is a case count at a point-in-time, modifications to an order do not affect the count. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number of IV-D Cases with Child Support Orders}}{\text{Total Number of IV-D Cases}}$$

While the performance measure is defined in section 458A(b)(6)(B)(i) of the Act, paragraph (a)(2) provides guidance as to which orders are counted for calculation of performance measures. This is to ensure consistency across States and is consistent with reporting instructions for States.

The proposed performance measure in paragraph (a)(3) is Current Collections Performance Level. It measures the amount of current support collected as compared to the total amount owed. Current support is money applied to current support obligations and does not include payment plans for payment towards arrears. If included, voluntary collections must be included in both the numerator and the denominator. This measure would be computed monthly and the total of all months reported at the end of the year.

The equation to compute the measure would be as follows (expressed as a percent):

$$\frac{\text{Total Dollars Collected for Current Support in IV-D Cases}}{\text{Total Dollars Owed for Current Support in IV-D Cases}}$$

As with the other performance measures, this measure derives from section 458A(b)(6) of the Act. This approach and definition ensures a consistent interpretation across States and captures a true picture of payments made, voluntarily or under order, which families receive each month. Finally, as provided under section 458A(c), support collected by one State at the request of another State would be treated as having been collected in full by both States.

Section 458A(b)(6)(D)(i) of the Act sets forth the arrearage collection performance level included in proposed § 305.2(a)(4) Arrearage Collection Performance Level. This measure would include those cases where all of the past-due child support was disbursed to the family, or all of the past due child support was retained by the State because all the past due child support was assigned to the State. If some of the past due child support was assigned to the State and some was owed to the family, only those cases where some of the support actually was disbursed to the family would be included. The equation to compute the measure would be as follows (expressed as a percent):

$$\frac{\text{Total number of eligible IV-D cases paying toward arrears}}{\text{Total number of IV-D cases with arrears due}}$$

This measure, unlike the current collections measure, counts cases with child support arrearage collections, rather than the percentage of arrearages collected.

Because we recognize the confusion that may ensue from reporting, as required by section 452(a)(10)(C)(vi) of the Act, widely disparate levels of arrearage debts in States, any display of this data at the Federal level will be accompanied with a clear explanation of why State performance cannot be compared and circumstances that affect this measure. This would include such things as: (1) The optional charging and calculation of interest on arrearages, (2) cases entering the IV–D caseload with existing large arrearages, and (3) old arrearages set before Federal law mandated establishing support orders based on the obligor's income rather than based on the amount of public assistance paid to the obligor's family.

The final performance measure, reflecting section 458A(b)(6)(E)(i) of the Act, appears at proposed paragraph (a)(5) Cost-Effectiveness Performance Level. This measure compares the total amount of IV–D collections for the fiscal year to the total amount of IV–D expenditures the fiscal year. The equation to compute this measure is as follows (expressed as a ratio):

$$\frac{\text{Total IV-D Dollars Collected}}{\text{Total IV-D Dollars Expended}}$$

This indicator provides a basic cost-benefit analysis of a child support enforcement program. As provided under section 458A(c) of the Act, collections by one State at the request of another State will be counted as having been collected in full by both States and any amounts expended by a State in carrying out a special project under section 455(e) of the Act will be excluded.

Under proposed § 305.2(b), as specified in section 458A(b)(5) of the Act for incentive purposes, the 5 performance measures would be weighted in the following manner. Each State will earn five scores based on performance on each of the five measures. The first three measures (paternity establishment, order establishment, and current collections) percent score earn 100 percent of the collections base as defined in proposed § 305.31(e). The last two measures (collections on arrears and cost-effectiveness) earn a maximum of 0.75 percent of the collection base as defined in proposed § 305.31(e).

The weighting provision was recommended by State and Federal partners and included in the Secretary's report to Congress as an essential aspect of the incentive system, which would place extra emphasis on getting support to families each and every month.

Section 305.31 Amount of Incentive Payment

Under proposed paragraph (a) of § 305.31 (which addresses the contents of section 458A(b) of the Act), the incentive payment for a State for a fiscal year would be equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year. As specified in section 458A(b)(2) of the Act, proposed paragraph (b) would define the incentive payment pool as:

(1) $422,000,000 for fiscal year 2000;
(2) $429,000,000 for fiscal year 2001;
(3) $450,000,000 for fiscal year 2002;
(4) $461,000,000 for fiscal year 2003;
(5) $454,000,000 for fiscal year 2004;
(6) $446,000,000 for fiscal year 2005;
(7) $458,000,000 for fiscal year 2006;
(8) $471,000,000 for fiscal year 2007;
(9) $483,000,000 for fiscal year 2008; and

(10) For any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year. In other words, for each fiscal year following fiscal year 2008, the incentive payment pool would be multiplied by the percentage increase in the CPI between the two preceding years. For example for fiscal year 2009, if the CPI increases by 1 percent between fiscal years 2007 and 2008, then the incentive pool for fiscal year 2009 would be a 1 percent increase over the $483,000,000 incentive payment pool for fiscal year 2008, or $487,830,000.

Proposed paragraph (c) defines, in accordance with section 458A(b)(3), the State incentive payment share for a fiscal year to be the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

Under proposed paragraph (d), a State's maximum incentive base amount for a fiscal year would be the combined sum of: the State's collections base for the fiscal year for each of the paternity establishment, support order, and current collections performance measures; and 75 percent of the State's collections base for the fiscal year for the arrearage payment and cost-effectiveness performance measures. This is specified in section 458A(b)(5) of the Act.

Under proposed paragraph (e), a State's maximum incentive base amount for a fiscal year would be zero, unless a Federal audit performed under proposed § 305.60 (described later in this preamble) determined that the data which the State submitted for the fiscal year and which would be used to determine the performance level involved are complete and reliable. This provision is required by section 458A(b)(5)(B) of the Act. It is essential to ensure the integrity of the incentive system and the timeliness of the determinations. States are accountable for providing reliable data or they receive no incentives. This would prevent a State from being able to submit repeated adjusted data, should data used to compute incentives and penalties be determined unreliable.

Finally, under proposed paragraph (f), a State's collections base for a fiscal year, as provided in section 458A(b)(5)(C) of the Act, would be equal to: 2 times the sum of the total amount of support collected for Current Assistance cases plus two times the total amount of support collected in Former Assistance cases, plus the total amount of support collected in all other cases during the fiscal year, that is:

2(Current Assistance collections + Former Assistance collections) + all other collections.

This double-weighting of collections in Current Assistance and Former

Assistance cases when calculating the collection base is another key component of the new incentives system. As with the emphasis placed on the current collections performance measure to ensure consistent and timely support to families, the calculation of the State's collection base also emphasizes the goal of helping families become and remain self-sufficient. Under the current incentive system, States lose incentives when families leave the State assistance rolls because collections in non-assistance cases are capped at 115 percent of collections in assistance cases. However, under section 458A of the Act and these proposed regulations, collections in Former Assistance cases, as well as collections in Current Assistance cases will count double, while collections in all other cases (often seen as requiring less work by IV–D programs) will only be counted once. We would note that current assistance cases do not include cases in which assistance is paid under a Tribal TANF program because the statutory language covers only cases where an assignment to the State is required by the Act. Tribal TANF cases have no such required assignment to the State. Tribal TANF cases will be included in Former Assistance cases to the extent that the individuals formerly were required to assign support rights to the State.

Section 305.32 Requirements Applicable to Calculations

Proposed § 305.32 would establish certain special provisions applicable to calculating the amount of incentives and penalties. Some are derived from current incentive rules and practice and some are based on explicit rules in section 458A of the Act. They are also applied to penalty calculations because we are using the same measures. Under this section the following conditions would apply:

Paragraph 305.32(a) specifies that each measure would be based on data relating to the Federal fiscal year (FY). The Federal fiscal year runs from October 1st of one year through September 30th of the following year. This is consistent with current practice and reference to the fiscal year in section 458A of the Act.

Paragraph 302.32(b) specifies that only collections disbursed or retained, as applicable, and only those expenditures made by the State, in the fiscal year would be used to determine the incentive payment payable for that fiscal year. This is consistent with the way collections have always been counted on Federal reporting forms.

Paragraph 305.32(c) specifies that support collected by one State at the request of another State would be treated as having been collected in full by each State. Required by section 458A(c) of the Act, this implements for the new incentive system the same practice that exists under the current incentive system.

Paragraph 305.32(d) specifies that amounts expended by the State in carrying out a special project under section 455(e) of the Act would be excluded from the State's total IV–D administrative costs in computing incentive payments. This implements section 458A(c) of the Act, and also appears in section 458 of the Act.

Paragraph 305.32(e) specifies that fees paid by individuals, recovered costs, and program income such as interest earned on collections would be deducted from total IV–D administrative costs. This is consistent with § 304.12(b)(4)(iii) which is applicable to the current incentive system under section 458 and the requirement under § 304.50 that States exclude from quarterly expenditure claims an amount equal to all fees, interest and other income earned from services provided under the State IV–D plan.

Paragraph 305.32(f) specifies that States would be required to submit data used to determine incentives following instructions and formats required by HHS and on Office of Management and Budget (OMB) approved reporting instruments. This is consistent with the requirement in § 302.15 under which States must maintain statistical, fiscal and other records necessary for reporting and accountability required by the Secretary and make such reports in the form and containing information the Secretary requires.

Section 305.33 Determination of Applicable Percentages Based on Performance Levels

This proposed section sets forth the explicit requirements in section 458A(b)(6) of the Act for determining the applicable percentages used to calculate incentives based on a State's performance levels in the five performance measures.

Paternity Establishment Percentage

Under proposed paragraph (a), a State's paternity establishment performance level for a fiscal year would be, at the option of the State, the IV–D paternity establishment percentage or the Statewide paternity establishment percentage determined under proposed § 305.2 of this part. The applicable percentage for each level of a State's paternity establishment performance would be set forth in table 1, except as provided in paragraph (b).

Under proposed paragraph (b), if the State's paternity establishment performance level for a fiscal year is less than 50 percent, but exceeds its paternity establishment performance level for the immediately preceding fiscal year by at least 10 percentage points, then the State's applicable percentage for the paternity establishment performance level would be 50 percent.

Support Order

Under proposed paragraph (c), a State's support order performance level for a fiscal year would be the percentage of the total number of IV–D cases where there is a support order determined under § 305.2 and § 305.32. The applicable percentage for each level of a State's support order performance would be found on table 1, except as provided in paragraph (d).

Under proposed paragraph (d), if the State's support order performance level for fiscal year is less than 50 percent, but exceeds the State's support order performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage would be 50 percent.

TABLE 1

[Use this table to determine the maximum incentive levels for the paternity establishment and support order performance measures.]

If the paternity establishment or support order performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
80		100	64	65	74

TABLE 1—Continued

[Use this table to determine the maximum incentive levels for the paternity establishment and support order performance measures.]

If the paternity establishment or support order performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
79	80	98	63	64	73
78	79	96	62	63	72
77	78	94	61	62	71
76	77	92	60	61	70
75	76	90	59	60	69
74	75	88	58	59	68
73	74	86	57	58	67
72	73	84	56	57	66
71	72	82	55	56	65
70	71	80	54	55	64
69	70	79	53	54	63
68	69	78	52	53	62
67	68	77	51	52	61
66	67	76	50	51	60
65	66	75	0	50	0

Current Support Collections

Under proposed paragraph (e), a State's current collections performance level for a fiscal year would be equal to the total amount of current support collected during the fiscal year divided by the total amount of current support owed during the fiscal year in all IV–D cases, as determined under § 305.32. The applicable percentage with respect to a State's current collections performance level would be found on table 2, except as provided in paragraph (f).

Under proposed paragraph (f), if the State's current collections performance level for a fiscal year is less than 40 percent but exceeds the current collections performance level of the State for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage would be 50 percent.

Arrearage Collections

Under proposed paragraph (g), a State's arrearage collections performance level for a fiscal year would be equal to the total number of IV–D cases in which payments of past-due child support were received and disbursed during the fiscal year, divided by the total number of IV–D cases in which there was past-due child support owed, as determined under § 305.32 of this part. The applicable percentage with respect to a State's arrearage collections performance level would be found on table 2, except as provided in paragraph (h).

Under proposed paragraph (h), if the State's arrearage collections performance level for a fiscal year is less than 40 percent but exceeds the arrearage collections performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage would be 50 percent.

TABLE 2

[Use this table to determine the maximum incentive levels for the current and arrearage support collections performance measures]

If the current collections or arrearage collections performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable (percentage is:
80	.....	100	59	60	69
79	80	98	58	59	68
78	79	96	57	58	67
77	78	94	56	57	66
76	77	92	55	56	65
75	76	90	54	55	64
74	75	88	53	54	63
73	74	86	52	53	62
72	73	84	51	52	61
71	72	82	50	51	60
70	71	80	49	50	59
69	70	79	48	49	58
68	69	78	47	48	57
67	68	77	46	47	56
66	67	76	45	46	55
65	66	75	44	45	54
64	65	74	43	55	53
63	64	73	42	43	52
62	63	72	41	42	51

TABLE 2—Continued

[Use this table to determine the maximum incentive levels for the current and arrearage support collections performance measures]

If the current collections or arrearage collections performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable (percentage is:
61	62	71	40	41	50
60	61	70	0	40	0

Under proposed paragraph (i), a State's cost-effectiveness performance level for a fiscal year would be equal to the total amount of IV–D support collected and disbursed or retained, as applicable during the fiscal year, divided by the total amount expended during the fiscal year, as determined under § 305.32 of this part. The applicable percentage with respect to a State's cost-effectiveness performance level would be found on table 3.

TABLE 3

[Use this table to determine the maximum incentive level for the cost-effectiveness performance measure.]

If the cost-effectiveness performance level is:		
At least:	But less than:	The applicable percentage:
5.00	.....	100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0

Because of the complexity of the incentives formula set forth in section 458A of the Act and implemented by these proposed regulations, we have included an example of how the system would work in a particular year for State A under proposed paragraph (j):

Let's make the following assumptions regarding State A (See table A):

- State A's paternity performance level is 54 percent, making its applicable percent 64 percent (see table 1)
- State A's order establishment performance level is 79 percent, making its applicable percent 98 percent (see table 1)
- State A's current support collections performance level is 41 percent, making its applicable percent 51 percent (see table 2)
- State A's arrearage support collections performance level is 40 percent, making its applicable percent 50 percent (see table 2)
- State A's cost-effectiveness ratio is 3.00, making its applicable percent 60 percent (see table 3)
- State A's collections base is $50 million (determined by 2 times the collections for Current Assistance and Former Assistance cases plus collections for other cases)
- The maximum incentive is:

—$32 million collections base for paternity ($50 mil. times 0.64), plus

—$49 million collections base for orders ($50 mil. times 0.98), plus

—$25.5 million collections base for current collections ($50 mil. times 0.51), plus

—$18.8 million collections base for arrearage collections ($50 million times 0.75 times 0.50) plus

—$22.5 million collections base for cost-effectiveness ($50 million times 0.75 times 0.60) equals

—Resulting in a maximum incentive base amount of $147.8 million for State A.

TABLE A

Measure	State A's performance level (percent)	Applicable percent based on performance	Weight	State A's collection base (in millions) (assumed to be $50.0 million)
Paternity Establishment	54	64	1.00	$32.0
Order Establishment	79	98	1.00	49.0
Current Collections	41	51	1.00	25.5
Arrearage Collections	40	50	0.75	18.8
Cost-Effectiveness	(*)	60	0.75	22.5
State A's Maximum Incentive Base Amount	.....	.....	.....	147.8

* $3.00

- We must now make some assumptions regarding the other States. Let's assume that there are only two other States in our country—and the maximum incentive base amount is $82 million for State B and $52 million for State C, making the total maximum incentive base amount $281.8 million for all three States (See table B).
- We must now determine what State A's share of the $281.8 million is. It is 52 percent ($147.8 divided by $281.8)

TABLE B

State	Maximum incentive base amounts	State's share of $281.8 million	Incentive payment pool $422 million (in millions)
A	$147.8	0.52	$219.4
B	82.0	0.34	143.5
C	52.0	0.14	59.1
Totals	281.8	1.00	422.0

- Let us assume the incentive payment pool for the FY is $422 million.
- Since State A's share is 0.52, this State has earned 52 percent of the $422 million incentive payment pool that Congress is allowing, or $219.4 ($422 mil. times 0.52) million incentive payment for this particular fiscal year.

Section 305.34 Payment of Incentives

Section 458A(d) of the Act includes administrative provisions for estimating and paying incentives. Proposed § 305.34 implements those provisions. Under proposed paragraph (a), each State must claim/include one-fourth of its estimated annual incentive payment on each of its four quarterly expenditure reports for a fiscal year. When combined with the other amounts reported on each of the State's four quarterly expenditure reports, the portion of the annual incentive payment as reported each quarter would be included as in the calculation of the next quarterly grant awarded to the State under title IV–D of the Act.

We have not specified any procedures for determining how States should calculate their estimated payments. We invite comment on whether we should specify a methodology in the regulations or merely provide guidance to States. We also invite comment on appropriate methods for determining the amount of estimated payments to be paid. We believe it is in the interest of States to avoid estimates that result in significant additional payments to States or significant repayments when final incentive amounts are determined.

Under proposed paragraph (b), following the end of each fiscal year, HHS would calculate the State's annual incentive payment, using the actual collection and expenditure data and the performance data submitted by the State and other States for that fiscal year. A positive or negative grant would then be awarded to the State under title IV–D of the Act to reconcile an actual annual incentive payment that has been calculated to be greater or lesser, respectively, than the annual incentive payment estimated prior to the beginning of the fiscal year.

Under proposed paragraph (c), payment of incentives would be contingent on a State's data being determined reliable data by Federal auditors, consistent with the requirement for complete and reliable data set forth in section 458A(b)(5)(B) of the Act.

Section 305.35 Reinvestment

Section 458A(f) of the Act requires a State to use incentive payments to supplement and not supplant other funds used by the State in its IV–D program, or otherwise with approval of the Secretary. Under proposed § 305.35, which implements this requirement, proposed paragraph (a) would require a State to expend the full amount of incentive payments received under the IV–D program to supplement, and not supplant other funds used by the States to carry out IV–D program activities; or funds for other activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the State's IV–D program, including cost-effective contracts with local agencies, whether or not the expenditures for the activity are eligible for reimbursement under title IV–D of the Act.

Under proposed paragraph (b), in those States in which incentive payments are passed through to political subdivisions or localities, in accordance with section 454(22) of the Act and § 302.55, such payments must be used in accordance with this section.

Under proposed paragraph (c), State IV–D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

In order to determine if incentive payments are used to supplement rather than supplant other amounts used by the State to fund the IV–D program, a base year level of program expenditures is necessary. Therefore, under proposed paragraph (d), a base amount would be determined by subtracting the amount of actual incentives paid to the State invested in the IV–D program for fiscal year 1998 from the total amount expended by the State in the IV–D program during the same period. The proposal would also allow States, in the alternative, to use the average of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending would have to be maintained in future years. Incentive payments under this part would be used in addition to, and not in lieu of, the base amount.

We selected fiscal year 1998 rather than fiscal year 1999 because we believe that the total for fiscal year 1999 may not be available until some time in fiscal year 2000 and we want States to know what their base amount that must be maintained is in advance of receiving any incentive payments under section 458A. Additionally, we allow the States the alternative of computing a 3-year average. We propose this alternative because we believe it might more closely approximate the amount a State has been spending on its IV–D program and will not give undue weight to any extraordinary or non-recurring expenditures that the State may have made in fiscal year 1998.

We also considered and rejected using a changing base year, i.e. the year immediately preceding the year for which incentives are paid. We believe that such an approach would penalize States for, or discourage them from, making large one time expenditures for improvements to their programs because they would have to maintain their program expenditures at that artificially high level. However, we recognize concerns that a fixed base year could possibly penalize States that improve the cost-effectiveness of their program.

We invite comment on the method we have chosen and other alternative ways of ensuring that incentive funds are used to supplement and not supplant State expenditures.

Again, based on the complexity of the statute, we believe an example would be helpful and have included one under proposed paragraph (e). Therefore,

(1) State A expended $15 million in FY1998 to conduct IV–D activities and used incentive payments received by the State as general revenues to fund an

assortment of non–IV–D State and local programs or activities. If State A receives incentives, it must continue to expend at least $15 million of its money annually to conduct IV–D activities, not including incentive money. In addition, State A must henceforth expend any incentive payments received pursuant to section 458A of the Act and this part for IV–D activities, or other activities approved by the Secretary. These incentive payments will be expended in addition to, and not in lieu of, the current $15 million expended;

(2) State B expended $20 million in FY1998 in its IV–D program and, of the $20 million, $5 million represents incentive funds that the State received and reinvested in its IV–D program. If State B receives incentive payments, it must continue to spend at least $15 million in State money (not including incentive money) annually. Incentive payments received by the State must continue to be used in addition to, and not in lieu of, this $15 million base amount.

Under proposed paragraph (f), requests for approval of expending incentives on activities not currently eligible for funding under the IV–D program, but which would benefit the IV–D program (e.g., work programs for noncustodial parents), must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement. We will develop and disseminate by Action Transmittal instructions for States seeking approval to expend incentives on activities that would benefit the IV–D program.

Section 305.36 Incentive Phase-in

Section 201(b) of the Child Support Performance and Incentive Act of 1998 establishes a transition period which phases in the new incentives system under section 458A of the Act. Under proposed § 305.36, the incentive system under part 305 would be phased-in over a three-year period during which both the current system and the new system would be used to determine the amount a State will receive. For fiscal year 2000, a State would receive two-thirds of what it would have received under the incentive formula set forth in § 304.12, and one-third of what it would received under the formula set forth under part 305. In fiscal year 2001, a State would receive one-third of what it would have received under the incentive formula set forth under § 304.12 and two-thirds of what it would received under the formula under part 305. In fiscal year 2002, the formula set forth under part 305 would be fully implemented and would be used to determine all incentive amounts.

V. Description of Regulatory Provisions-Penalties and Audit

Former Audit and Penalty Process

In implementing the former requirement at section 452(a)(4) of the Act, the former regulations at part 305 required HHS to conduct an audit at least once every three years, to evaluate the effectiveness of each State's program in carrying out the purposes of title IV–D of the Act and to determine that the program met the title IV–D requirements. These audits were the sole basis for imposing a penalty under former section 403 (h) of the Act.

The audits were a comprehensive review which used the criteria prescribed in the regulations, including requirements governing: statewide operations; reports and maintenance of records; separation of cash handling and accounting functions; notice of collection of assigned support; case closure criteria; collection and distribution of support payments; establishment of paternity; establishment, review and adjustment of orders for maintenance and medical support using mandatory guidelines and expedited processes; location of non-custodial parents; enforcement of support obligations through State and Federal income tax refund offset and income withholding; and case processing timeframes. There were numerical standards that the State had to meet for each category.

A penalty was assessed in accordance with section 403(a) of the Act when the State failed the audit, but it was suspended during the period the State was under a corrective action plan. If the State passed the follow-up review, the penalty was not applied. In addition, HHS then conducted the comprehensive audit on an annual basis in the case of a State that was subject to a penalty. For a State operating under a corrective action plan, the review at the end of the corrective action period covered only the criteria specified in the notice of non-compliance.

Part 305 of the regulations were removed as part of an omnibus clean-up regulation designed to conform existing program regulations to mandatory changes, made by PRWORA and subsequent enactments. Since PRWORA and P.L. 105–200 significantly changed audit and penalty provisions of the statute, we removed all of part 305. The clean-up regulation was published February 9, 1999 (64 FR 6237). We include this summary of the former Federal process, however, because under the revised audit and penalty provisions in sections 409(a)(8) and 452(a)(4) and (g) of the Act, the Secretary is required to assess a penalty if a State IV–D program is determined not to be in substantial compliance with IV–D requirements. As explained in greater detail later in this preamble, the proposed process for making such a determination is based largely on the former audit and penalty standards and procedures.

Proposed Regulations

Under section 409(a)(8) of the Act, if, based on the data submitted by the State or a review, the State program fails to achieve the paternity establishment or other performance standards set by the Secretary; or if an audit finds that the State data is incomplete or unreliable; or the State failed to substantially comply with one or more IV–D requirements, and the State fails to correct the deficiencies in the following year, then the amounts otherwise payable to the State under title IV–A will be reduced.

However, a State will be determined to be in substantial compliance with IV–D requirements if the Secretary determines that the noncompliance is of a technical nature which does not adversely affect the performance of the State's IV–D program, or will be determined to have submitted accurate data where the incompleteness or unreliability of the data is of a technical nature which does not affect the determination of the State's performance on the performance standards.

In these proposed regulations, we have relied heavily on the well-established, tested and experienced Federal audit process, which was used for penalties, assessed under the former section 403(h) of the Act and former part 305 to establish the new audit regulations. In fact, much of our proposed language governing the audit process is taken almost verbatim from former part 305, particularly in sections dealing with the audit process, State responsibilities, definition of substantial compliance and notice and assessment of the penalty.

Section 305.40 Penalty Performance Measures, and Levels

Proposed § 305.40 would establish the performance measures to be used to determine whether a State IV–D program is performing adequately to avoid a financial penalty under section 409(a)(8)(A)(i)(I) of the Act. As discussed earlier in this preamble, under proposed paragraph (a), there would be three performance measures for which States would have to achieve

certain levels of performance in order to avoid being penalized for poor performance. These measures are paternity establishment, order establishment, and collection of current support set forth in § 305.2 of these proposed regulations.

The proposed levels of performance that would determine whether or not a State would be subject to a penalty were established based on analysis of historical statistical and financial program data submitted by States. This program data was used to set the expected levels of performance and improvements, which are based on past State performance, and reasonable expectations of improved performance. The expectations of performance in this proposed rule were set taking into consideration State concerns, prior work done by State and Federal partners to develop the incentive system, and consultations with State partners about what constituted reasonable performance levels supported by historical data.

The proposed measures and levels of performance would be:

(1) The paternity establishment percentage which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV–D paternity establishment percentage or the statewide paternity establishment percentage defined in proposed § 305.2. However, as stated on the OCSE–157 form that States will use to report incentive information, ''the option can be changed at a later date, however, for calculation purposes, like data must be compared from year-to-year.'' Table 4 shows at which level of performance the State would be subject to a penalty under the paternity establishment measure. For example, if State A earned a paternity establishment percent of 34 percent and only improved by 3 percentage points over the previous fiscal year, then State A would be subject to a penalty of 1–2 percent of TANF funds, for the first finding.

TABLE 4

[Use this table to determine the level of performance for the paternity establishment measure that would incur a penalty]

Statutory penalty performance standards for paternity establishment		
PEP (percent)	Increase required over previous year's PEP (percent)	Penalty FOR FIRST FAILURE if increase not met
90 or more	None	No Penalty.
75 to 89	2	1–2% TANF Funds.
50 to 74	3	1–2% TANF Funds.
45 to 49	4	1–2% TANF Funds.
40 to 44	5	1–2% TANF Funds.
39 or less	6	1–2% TANF Funds.

(2) The *order establishment* performance measure to be used for penalty purposes is the measure defined in proposed § 305.2. For purposes of the penalty with respect to this measure, there would be a threshold of 40 percent, below which a State would be penalized unless an increase of 5 percent over the previous year is achieved—which would qualify it for an incentive. Performance in the 40 percent to 49 percent range with no significant increase would not be penalized, but neither would it qualify for an incentive payment. Table 5 shows at which level of performance a State would incur a penalty under the order establishment measure.

TABLE 5

[Use this table to determine the level of performance for the order establishment measure that would incur a penalty]

Performance standards for order establishment		
Performance level	Increase over previous year	Incentive/penalty
50% or more	no increase over previous year required	Incentive.
40% to 49%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 40%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) For the *current collections performance* measure, there would be a threshold of 35 percent below which a State would be penalized unless an increase of 5 percent over the previous year is achieved (that would qualify it for an incentive). Performance in the 35 percent to 40 percent range with no significant increase would not be penalized but neither would it qualify for an incentive payment. Table 6 shows at which level of performance the State would incur a penalty under the current collections measure.

TABLE 6

[Use this table to determine the level of performance for the current collections measure that would incur a penalty]

Performance standards for current collections		
Performance level	Increase over previous year	Incentive/penalty
40% or more	no increase over previous year required	Incentive.
35% to 40%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 35%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

Under proposed paragraph (b), the provisions applicable to calculations listed under § 305.32, would apply to the calculation of performance levels for penalty purposes, for e.g., counting only disbursed collections, and double-counting interstate collections.

Section 305.42 Penalty Phase-in

Proposed § 305.42 sets a schedule for phasing in the new penalty provisions which relates to the incentive phase-in under § 305.36. Penalties would be measured for the first full fiscal year beginning after the publication of final rules. We expect this will be fiscal year 2001. States would be subject to the performance penalties based on data reported for FY 2001. Data reported for FY 2000 would be used as a base year to determine improvements in performance during FY 2001. There would be a statutory corrective action period of one year before any penalty would be assessed. The penalties would be assessed and then suspended during the corrective action period.

Section 305.60 Timing and Scope of Federal Audits

Based on explicit statutory requirements at sections 452(a)(4)(C) and 409(a)(8)(A)(i)(II) of the Act, under proposed § 305.60, OCSE would conduct audits, in accordance with the Government auditing standards of the Comptroller General of the United States—

(1) At least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under part 305;

(2) To determine the adequacy of financial management of the State IV–D program, including assessments of:

(i) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(ii) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for; and

(3) For such other purposes as the Secretary may find necessary, including audits to determine if the State is substantially complying with one or more of the requirements of the IV–D program (with the exception of the requirements of section 454(24) of the Act relating to statewide-automated systems). Substantial compliance audits are defined in § 305.63 and are discussed later in this preamble.

Under the proposed rules the substantial compliance audits would be conducted at the discretion of the Secretary, and would be triggered based on substantiated evidence of a failure by the State to meet IV–D program requirements. We propose that evidence that might warrant such an audit to determine substantial compliance would include:

(i) The results of 2 or more sequential State self-reviews conducted under section 454(15)(A) of the Act which: show evidence of sustained poor performance, or indicate that the State has not corrected deficiencies identified in previous self-assessments and that these deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

While we recognize the advantage and responsibility to maintain the authority to conduct audits similar to those which resulted in improved State performance in years past, we are committed to the philosophy which focuses on measuring program results, and allowing States the flexibility and responsibility to manage their own programs, while assuring that Federal requirements are met. We expect States to take both the self-reviews to determine compliance with IV–D requirements and the proposed requirements for administrative review procedures in § 303.35 seriously and to use those processes to continually critique and adjust their programs to ensure that children and families are adequately served. These discretionary Federal process audits authorized under section 452(a)(4)(C) provide a fall back measure for the Secretary's use should systemic or serious problems with IV–D programs become apparent.

The Child Support Performance and Incentive Act of 1998 established a specific financial penalty for a State's failure to meet statewide-automated systems requirements in section 454(24) of the Act. As a conforming amendment, section 409(a)(8) of the Act was amended to preclude a financial penalty under that section for failing to meet automated systems requirements under section 454(24). While compliance with particular system's requirements will be excluded from any Federal audit to determine substantive compliance with IV–D requirements, States must still meet the individual IV–D program requirements being audited, as defined in proposed § 305.63, in order to avoid a financial penalty under § 305.61. These program requirements exist independently from the systems requirements under section 454(24) of the Act and, therefore, States will be held accountable for compliance with them.

Under proposed paragraph (b), as with past audits, during the course of the audit, OCSE would make a critical investigation of the State's IV–D program through inspection, inquiries, observation, and confirmation and use the audit standards promulgated by the Comptroller General of the United States in ''Government Auditing Standards.''

Section 305.61 Penalty for Failure to Meet IV–D Requirements

To implement the requirements of section 409(a)(8) of the Act, under proposed paragraph (a) of § 305.61, a State would be subject to a financial penalty and the amounts otherwise

payable to the State under title IV–A of the Act would be reduced:

If, on the basis of:

(i) Data submitted by the State or the results of an audit conducted under proposed § 305.60, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and proposed section § 305.40, or to meet the support order and current collections performance measures set forth in proposed § 305.40; or

(ii) The results of an audit under proposed § 305.60, the State did not submit complete and reliable data, as defined in proposed § 305.1; or

(iii) The results of an audit under proposed § 305.60, the State failed to substantially comply with 1 or more of the requirements of the IV–D program, as defined in proposed § 305.63;

And, with respect to the following fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data submitted by the State are still incomplete or unreliable.

A penalty would be applied when a State was determined not to meet a requirement, but the penalty would be suspended during the following year and applied only if the State failed to correct any identified deficiencies by the end of this corrective action year.

Under proposed paragraph (b) of § 305.61, the penalty reductions described under proposed § 305.61(c) (discussed below) would be made for quarters following the end of the fiscal year following the fiscal year in which the determination under § 305.61(a)(1) is made that the State is subject to a penalty and would continue until the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures defined in § 305.40; or

(2) Is in substantial compliance with the IV–D requirements audited for substantial compliance, as defined in § 305.63; or

(3) Has submitted data that is complete and reliable.

It is important to note that the statute at section 409(a)(8)(A) of the Act and these proposed regulations clearly require States to submit complete and reliable data or face financial penalties. However, unlike other penalty circumstances, penalties for incomplete or unreliable data may also trigger potential penalties for failure to meet performance standards. This is because when data is incomplete or unreliable, it may be impossible to accurately determine the State's level of performance on one or more of the performance measures. In such cases, a State would have one year following a determination that its data was incomplete or unreliable, to submit complete and reliable data, and demonstrate that the submitted data meets the performance measures in order to avoid the imposition of a penalty. Correcting incomplete or unreliable data within the one-year period would not be enough; the data must also show that the State performed at a high enough level to avoid a financial penalty.

Proposed paragraph (c) sets forth the penalty levels from section 408(a)(8)(B) of the Act under which, the payments for a fiscal year under title IV–A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding;

(2) Two to three percent for the second such finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

These section 409(a)(8) penalties, which increase with each subsequent finding, are identical to the level and source of penalties assessed under the former audit and penalty process in former section 403(h) of the Act. In actual practice, OCSE has used the lower amount for each situation. Thus, under past practice, while the penalty imposed for the first failure would be 1 percent of a State's TANF block grant, if a State fails to meet the appropriate standard on one or all of the three performance measures two years in a row, the penalty would be 2 percent of TANF funds. Three years of failure would garner a 3 percent penalty against TANF funds and so forth, up to a maximum of 5 percent of TANF funds. The maximum penalty that would be imposed would be 5 percent regardless of the number of different grounds for which a State would be subject to a penalty. However, OCSE reserves the right to impose the higher range of the amount allowed under the statute in the case of multiple penalty grounds or if the State's failures are willful or egregious .

Because the penalty is taken against a State's TANF block grant, certain provisions applicable to other TANF penalties also apply to this penalty. The provisions in section 409(d) of the Act which provide that the total penalties that may be taken may not exceed 25 percent of the TANF grant would apply. In addition, section 410 of the Act provides for appeals when penalties are taken pursuant to section 409 of the Act.

Finally, section 409(a) (12) of the Act which requires that a State spend additional funds to replace the reductions in funds resulting from the imposition of a penalty, would apply. The TANF regulations published April 12, 1999 at 64 FR 17720 and effective October 1, 1999, contain provisions in new 45 CFR Part 262 which address and implement these statutory provisions. We incorporate those provisions by cross reference.

Section 305.62 Disregard of a Failure Which is of a Technical Nature

Section 409(a)(8)(C) of the Act, like the former section 403(h) of the Act, recognizes that certain noncompliance may be insufficient to significantly impact a State's performance or data reliability. Under proposed § 305.62, we implement this concept by proposing that a State subject to a penalty under § 305.61(a)(1)(ii) or (iii) may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV–D requirements, as defined in § 305.63 (discussed below), if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or more of the IV–D requirements, are of a technical nature which does not adversely affect the performance of the State's IV–D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

§ 305.63 Definition of Substantial Compliance With IV–D Requirements

Because section 409(a)(8) of the Act requires the assessment of a penalty should a State be found, as a result of an audit, to have failed to substantially comply with one or more IV–D requirements which it fails to correct in the subsequent year, we must provide a definition of substantial compliance that will be used by the auditors to measure State compliance with IV–D requirements. Fortunately, it is not necessary to reinvent the wheel because of the existence of a previously established and tested definition of substantial compliance from former section § 305.20. That section established for purposes of the former Federal audit and penalty process, the definition of an effective program in substantial compliance with the requirements of title IV–D of the Act. Therefore, we propose under § 305.63 to use the definition under former § 305.20 as the basis for a determination that a State failed to achieve substantial

compliance with one or more IV-D requirements.

However, there is one significant difference between the proposed and former audit and penalty process which deals with the required scope of the audit. Under the former statute and regulations, a penalty was based on a complete audit of a State's program for substantial compliance with all of the applicable IV–D requirements. Under section 408(a)(9) of the Act and these proposed regulations, a State may be audited on one, some or all of the requirements and may be assessed a penalty, if it is found not to comply with one or more IV–D requirements. Assessment of a penalty could be based, therefore, on a targeted audit of specific IV–D requirements. Specifically, for the purposes of a determination under § 305.61(a)(1)(iii), in order to be determined in substantial compliance with one or more of the IV–D requirements as a result of an audit conducted under § 305.60, a State would be required to meet the specific IV–D State plan requirement or requirements that was audited. The IV–D requirements subject to audit are contained in part 302 of this chapter, and are measured as described in the following paragraphs.

Under proposed paragraph (a), the State would have to meet all the requirements under any of the following areas being audited:

Statewide operations, § 302.10;
Reports and maintenance of records, § 302.15(a);
Separation of cash handling and accounting functions, § 302.20; and
Notice of collection of assigned support, § 302.54.

These areas are identical to those in former § 305.20, which measured management and accountability of the program.

Under proposed paragraph (b), the State would be required to meet the requirements under the following areas in at least 90 percent of the cases reviewed for each criterion being audited, consistent with the requirement used under the former § 305.20:

Establishment of cases, § 303.2(a); and
Case closure criteria, § 303.11.

We believe these criteria should continue to be met in 90 percent of cases reviewed because of their critical nature. They are intended to ensure that cases are opened and closed appropriately.

Under proposed paragraph (c), States would be held to the same test they have been held to under former audit and penalty requirements in place and used since the early to mid-1990s. Under the proposed paragraph, the State would be required to meet the following areas in at least 75 percent of the cases reviewed for each area being audited:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV–D agency under § 302.32(b); distribution of support collections under § 302.51; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52;

(2) Establishment of paternity and support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under § 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4(d), (e) and (f);

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6 and State laws enacted in accordance with section 466 of the Act, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b) of this chapter;

(4) Review and adjustment of child support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8;

(5) Medical support, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a) (1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b) and (c)(1) through (6) and (8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31; and.

(6) Disbursement of support payments in accordance with the timeframes in section 454B of the Act or the regulation at § 302.32.

Except for the last requirement for disbursement of support collected within the timeframe set forth in requirements for a State Disbursement Unit in section 454B of the Act, the provisions are taken from the former § 305.20. We have proposed to use those standards because we still consider them to represent the critical aspects of IV–D program requirements and believe they are essential to any determination of substantial compliance with any of the requirements being audited for that purpose. The subparagraphs, as written, are broad and are intended to incorporate revised provisions of title IV–D of the Act, such as any changes in distribution, additional enforcement techniques, revised review and adjustment procedures and evolving medical support expectations that are indicated in the statute or regulations. We do not believe it is necessary to include an explicit reference to each and every aspect of the program.

The timeframe for disbursement of support collections by the State Disbursement Unit under section 454B of the Act is included because it is one of the essential case processing timeframes added by PRWORA. Other explicit requirements of PRWORA are included by reference to laws enacted under section 466 of the Act and still others, for example, the State Directory of New Hires and other new locate sources, will be evaluated as part of the State's automated system certification.

It is not our intention to include every aspect of IV–D case processing or every State responsibility under this definition of substantial compliance. There are a number of means of carrying out Federal oversight responsibilities and ensuring State accountability and provision of services to those in need of them without including every IV–D requirement under this definition. We intend to use the Secretary's discretion to conduct process audits only in

egregious situations. Other processes, including penalties for failure to meet performance standards, Federal audits to ensure appropriate financial management of program funds and general Federal review and oversight of State programs, together with State self-reviews and the availability of administrative review procedures for recipients of IV–D services, should work together to ensure successful IV–D programs.

As with the former audit process which recognized that citing States for each failure to meet a specific timeframe could remove a State's motivation to move forward in such a case, we propose to adopt the provisions from former § 305.20 under which States can receive credit for a case being reviewed if they accomplish the necessary action within the audit period, despite having missed an interim timeframe. We remain committed to this concept in these proposed regulations and have incorporated it into proposed paragraph (d).

Finally, as under the former audit standards in § 305.20, proposed paragraph (e) would require a State to meet the requirements for expedited processes under § 303.101(b)(2) (i) and (iii), and (e).

Under the new penalty standards in section 409(a)(8) and the new audit responsibilities under section 452(a)(4) of the Act, the Federal audit and subsequent penalty can cover simply one, or a number of IV–D requirements. Using the definition of substantial compliance proposed above, Federal auditors, States and other interested parties would be aware of the expected level of State performance with respect to any particular requirement being audited.

Section 305.64 Audit procedures and State comments

This proposed section would adopt the same procedures as were in effect under former § 305.12. Under proposed paragraph (a), prior to the start of the actual audit, Federal auditors would hold an audit entrance conference with the State IV–D agency. At that conference, the auditors would explain how the audit will be performed and make any necessary arrangements.

Under proposed paragraph (b), at the conclusion of audit fieldwork, Federal auditors would afford the State IV–D agency an opportunity to have an audit exit conference at which time preliminary audit findings would be discussed and the State IV–D agency may present any additional matter it believes should be considered in the audit findings.

Under proposed paragraph (c), after the exit conference, Federal auditors would prepare and send to the State IV–D agency, a copy of an interim report on the results of the audit. Within 45 days from the date the report was sent by certified mail, the State IV–D agency would be able to submit written comments on any part of the report that the State IV–D agency believes is in error. The auditors would note such comments and incorporate any response into the final audit report.

Section 305.65 State cooperation in audit

Also consistent with historic State responsibilities with respect to Federal audits, we propose to incorporate former § 305.13 and require that each State make available to the Federal Auditors such records or other supporting documentation (electronic and manual) as the audit staff may request, including records to support the data as submitted on the Federal statistical and financial reports that will be used to calculate the State's performance. We have included specific reference to the data States must submit because it is essential to the auditors' work. States would also be required to make available personnel associated with the State's IV–D program to provide information that the audit staff may find necessary in order to conduct or complete the audit.

We also propose to require, under paragraph (b), that States provide evidence to OCSE that their data are complete and reliable. This ensures the responsibility for maintaining and providing reliable data is the State's responsibility.

As was the case under former audit regulations at § 305.13, we propose in paragraph (c), that failure to comply with the requirements of this section with respect to audits conducted under proposed § 305.64 may necessitate a finding that the State has failed to comply with the particular criteria being audited. State cooperation with the audit is essential to assess performance.

§ 305.66 Notice, corrective action year, and imposition of penalty for failure to meet requirements

Proposed § 305.66 addresses notice to the State of any deficiency or deficiencies identified. Similar to the notice aspects of the former audit process at former § 305.99, the proposed paragraph (a) would require that, if the Secretary, on the basis of the results of an audit or review, finds a State to be subject to a penalty, OCSE would notify the State in writing of such finding.

Under proposed paragraph (b), the notice would:

(1) Explain the deficiency or deficiencies which result in the State being subject to a penalty, indicate the amount of the potential penalty, and give reasons for the Secretary's finding; and

(2) Specify that the penalty would be assessed if the State fails to correct the deficiency or deficiencies cited in the notice during the subsequent fiscal year, referred to as the ''corrective action'' year.

As discussed earlier in the preamble, the imposition of a penalty is subject to certain limitations, appeals and replacement of funds requirements specified in sections 409 and 410 of the Act. We incorporate those statutory requirements in paragraph (b)(2) by cross reference to the specific TANF regulatory provisions in 45 CFR Part 262 that implement those requirements.

Under proposed paragraph (c), the penalty would be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies cited in the notice by the end of the corrective action year. This determination would be made as of the first full three-month period beginning after the end of corrective action year.

We propose, as supported by the language of section 409(a)(8) of the Act, under paragraph (d), that only one corrective action period be provided to a State in relation to a given deficiency when consecutive findings of noncompliance are made on that deficiency. In the case of a State in which the penalty is accessed and which failed to correct the deficiency or deficiencies cited in the notice by the end of the corrective action year, the penalty would be applied for any quarter that ends after the end of the corrective action year and until the first quarter throughout which the State is determined to have corrected the deficiency or deficiencies cited in the notice.

Under proposed paragraph (e), a consecutive finding would occur only when the State does not meet or achieve substantial compliance with the same criterion or criteria cited in the notice.

VI. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), the Regulatory Flexibility Act (Pub. L. 96–354), that these proposed regulations will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

VII. Executive Order 12866

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed rule implements the statutory provisions by specifying the performance-based incentive and penalty systems.

VIII. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rules will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. The reports necessary to implement this proposed rule have received OMB approvals. They are the OCSE–157, OMB No. 0970–0177; the OCSE–34A, OMB No. 0970–0181; and the OCSE–396A, OMB No. 0970–0181. This proposed rule requires no other reporting or recordkeeping requirements.

X. Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

XI. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These proposed regulations will not have an impact on family well-being as defined in the legislation.

List of Subjects

45 CFR Parts 302 and 303

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 304

Child support, Grant programs/social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation.

45 CFR Part 305

Child support, Grant programs/social programs, Accounting.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: April 29, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: June 21, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons discussed above, we propose to amend title 45 CFR Chapter III of the Code of Federal Regulations as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658A, 660, 664, 666, 667, 1302, 1396(a)(25), 1396B(d)(2), 1396b(o), 1396(p), 1396(k).

2. Section 302.55 is amended by adding the words ''and part 305'' after ''§ 304.12''.

PART 303—STANDARDS FOR PROGRAM OPERATIONS

3. The authority section for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. A new § 303.35 is added to read as follows:

§ 303.35 Administrative complaint procedure.

(a) Each State must have an administrative complaint procedure in place to allow individuals the opportunity to request a review of actions taken, or not taken when there is evidence that an action should have been taken, on a particular case. In addition, the State must have a procedure for reviewing the individual's complaint and resolving it where appropriate action was not taken.

(b) A State need not establish a formal hearing process but must have clear procedures in place and available for recipients of IV–D services to use when requesting such a review and for notifying them of the results of the review and any actions taken.

PART 304—FEDERAL FINANCIAL PARTICIPATION

5. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 658, 1302, 1396(a)(25), 1396b(d)(2), 1396b(o), 1396(p), and 1396(k).

6. Section 304.12 is amended by adding new paragraphs (d) and (e) to read as follows:

§ 304.12 Incentive payments.

* * * * *

(d) This section is in effect only through 9/30/01.

(e) The amounts payable under this section will be reduced by one-third for fiscal year 2000 and two-thirds for fiscal year 2001.

7. A new part 305 is added to read as follows:

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

Sec.

305.0 Scope.
305.1 Definitions.
305.2 Performance measures.
305.31 Amount of incentive payment.
305.32 Requirements applicable to calculations.
305.33 Determination of applicable percentages based on performance levels.
305.34 Payment of incentives.
305.35 Reinvestment.
305.36 Incentive phase-in.
305.40 Penalty performance measures and levels.
305.42 Penalty phase-in.
305.60 Types and scope of Federal audits.

305.61 Penalty for failure to meet IV–D requirements.
305.62 Disregard of noncompliance which is of a technical nature.
305.63 Standards for determining substantial compliance with IV–D requirements.
305.64 Audit procedures and State comments.
305.65 State cooperation in the audit.
305.66 Notice, corrective action year, and imposition of penalty.

42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658A and 1302.

§ 305.0 Scope.

This part implements the incentive system requirements as described in section 458A (to be redesignated as section 458 effective October 1, 2001) of the Act and the penalty provisions as required in sections 409(a)(8) and 452(g) of the Act. This part also implements Federal audit requirements under sections 409(a)(8) and 452(a)(4) of the Act. Sections 305.0 through 305.2 contain general provisions applicable to this part. Sections 305.31 through 305.36 of this part describe the incentive system. Sections 305.40 through 305.42 and §§ 305.60 through 305.66 describe the penalty and audit processes.

§ 305.1 Definitions.

The definitions found in § 301.1 of this chapter are also applicable to this part. In addition, for purposes of this part:

(a) The term *IV–D case* means a parent (mother, father, or putative father) who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV–D program. In counting cases for the purposes of this part, States may exclude cases closed under § 303.11 of this chapter and cases over which the State has no jurisdiction. Lack of jurisdiction cases are those in which a non-custodial parent resides in the civil jurisdictional boundaries of another country or Federally recognized Indian Tribe and no income or assets of this individual are located or derived from outside that jurisdiction and the State has no other means through which to enforce the order.

(b) The term *Current Assistance collections* means collections received and distributed on behalf of individuals whose rights to support are required to be assigned to the State under title IV–A of the Act, under title IV–E of the Act, or under title XIX of the Act. In addition, a referral to the State's IV–D agency must have been made.

(c) The term *Former Assistance collections* means collections received and distributed on behalf of individuals whose rights to support were formerly required to be assigned to the State under title IV–A (TANF or Aid to Families with Dependent Children, AFDC), title IV–E (Foster Care), or title XIX (Medicaid) of the Act.

(d) The term *Never Assistance/Other collections* means all other collections received and distributed on behalf of individuals who are receiving child support enforcement services under title IV–D of the Act.

(e) The term *total IV–D administrative costs* means total IV–D administrative expenditures claimed by a State in a specified fiscal year adjusted in accordance with § 305.32 of this part.

(f) The term *Consumer Price Index or CPI* means the last Consumer Price Index for all-urban consumers published by the Department of Labor. The CPI for a fiscal year is the average of the Consumer Price Index for the 12-month period ending on September 30 of the fiscal year.

(g) The term *State incentive payment share* for a fiscal year means the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

(h) The term *incentive base amount* for a fiscal year means the sum of the State's performance level percentages (determined in accordance with § 305.33 of this part) multiplied by the State's corresponding maximum incentive base on each of the following measures:

(1) The paternity establishment performance level;

(2) The support order performance level;

(3) The current collections performance level;

(4) The arrears collections performance level; and

(5) The cost-effectiveness performance level.

(i) The term *reliable data* means the most recent data available which are found by the Secretary to be reliable and is a state that exists when data are sufficiently complete and error free to be convincing for their purpose and context. This is with the recognition that data may contain errors as long as they are not of a magnitude that would cause a reasonable person, aware of the errors, to doubt a finding or conclusion based on the data.

(j) The term *complete data* means all reporting elements from OCSE OMB approved reporting forms, necessary to compute a State's performance levels, incentive base amount, and maximum incentive base amount, have been provided.

§ 305.2 Performance measures.

(a) The child support incentive system measures State performance levels in five program areas: paternity establishment; support order establishment; current collections; arrearage collections; and cost-effectiveness. The penalty system measures State performance in three of these areas: paternity establishment; establishment of support orders; and current collections.

(1) Paternity establishment performance level. States have the choice of being evaluated on one of the following two measures for their paternity establishment percentage (commonly known as the PEP). The count of children shall not include any child who is a dependent by reason of the death of a parent (unless paternity is established for that child). It shall also not include any child whose parent is found to have good cause for refusing to cooperate with the State agency in establishing paternity, or for whom the State agency determines it is against the best interest of the child to pursue paternity issues.

(i) IV–D paternity establishment percentage means the ratio that the total number of children in the IV–D caseload in the fiscal year (or, at the option of the State, as of the end of the fiscal year) who have been born out-of-wedlock and for whom paternity has been established or acknowledged, bears to the total number of children in the IV–D caseload as of the end of the preceding fiscal year who were born out-of-wedlock. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Children in IV-D Caseload in the Fiscal Year or, at the option of the State, as of the end of the Fiscal Year who were Born Out-of-Wedlock with Paternity Established or Acknowledged}}{\text{Total \# of Children in IV-D Caseload as of the end of the preceding Fiscal Year who were Born Out-of-Wedlock}}$$

(ii) Statewide paternity establishment percentage means the ratio that the total number of minor children who have been born out-of-wedlock and for whom paternity has been established or acknowledged during the fiscal year, bears to the total number of children born out-of-wedlock during the preceding fiscal year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total \# of Minor Children who have been Born Out-of-Wedlock and for Whom Paternity has been Established or Acknowledged During the Fiscal Year}}{\text{Total \# of Children Born Out-of-Wedlock During the Preceding Fiscal Year}}$$

(2) Support order establishment performance level. This measure requires a determination of whether or not there is a support order for each case. These support orders include all types of legally enforceable orders, such as court, default, and administrative. Since the measure is a case count at a point-in-time, modifications to an order do not affect the count. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Number of IV-D Cases with Support Orders During the Fiscal Year}}{\text{Total Number of IV-D Cases During the Fiscal Year}}$$

(3) Current collections performance level. Current support is money applied to current support obligations and does not include payment plans for payment towards arrears. If included, voluntary collections must be included in both the numerator and the denominator. This measure is computed monthly and the total of all months is reported at the end of the year. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total Dollars Collected for Current Support in IV-D Cases}}{\text{Total Dollars Owed for Current Support in IV-D Cases}}$$

(4) Arrearage collection performance level. This measure includes those cases where all of the past-due support was disbursed to the family, or retained by the State because all the support was assigned to the State. If some of the past-due support was assigned to the State and some was to be disbursed to the family, only those cases where some of the support actually went to the family can be included. The equation to compute the measure is as follows (expressed as a percent):

$$\frac{\text{Total number of eligible IV-D cases paying toward arrears}}{\text{Total number of IV-D cases with arrears due}}$$

(5) Cost-effectiveness performance level. Interstate incoming and outgoing distributed collections will be included for both the initiating and the responding State in this measure. The equation to compute this measure is as follows (expressed as a ratio):

$$\frac{\text{Total IV-D Dollars Collected}}{\text{Total IV-D Dollars Expended}}$$

(b) For incentive purposes, the measures will be weighted in the following manner. Each State will earn five scores based on performance on each of the five measures. Each of the first three measures (paternity establishment, order establishment, and current collections) earn 100 percent of the collections base as defined in § 305.31(e) of this part. The last two measures (collections on arrears and cost-effectiveness) earn a maximum of 0.75 percent of the collections base as defined in § 305.31(e) of this part.

§ 305.31 Amount of incentive payment.

(a) The incentive payment for a State for a fiscal year is equal to the incentive payment pool for the fiscal year, multiplied by the State incentive payment share for the fiscal year.

(b) The incentive payment pool is:

(1) $422,000,000 for fiscal year 2000;
(2) $429,000,000 for fiscal year 2001;
(3) $450,000,000 for fiscal year 2002;
(4) $461,000,000 for fiscal year 2003;
(5) $454,000,000 for fiscal year 2004;
(6) $446,000,000 for fiscal year 2005;
(7) $458,000,000 for fiscal year 2006;
(8) $471,000,000 for fiscal year 2007;
(9) $483,000,000 for fiscal year 2008; and

(10) For any succeeding fiscal year, the amount of the incentive payment pool for the fiscal year that precedes such succeeding fiscal year multiplied by the percentage (if any) by which the CPI for such preceding fiscal year exceeds the CPI for the second preceding fiscal year. In other words, for each fiscal year following fiscal year 2008, the incentive payment pool will be multiplied by the percentage increase in the CPI between the two preceding years. For example, if the CPI increases by 1 percent between fiscal years 2007 and 2008, then the incentive pool for fiscal year 2009 would be a 1 percent increase over the $483,000,000 incentive payment pool for fiscal year 2008, or $487,830,000.

(c) The State incentive payment share for a fiscal year is the incentive base amount for the State for the fiscal year divided by the sum of the incentive base amounts for all of the States for the fiscal year.

(d) A State's maximum incentive base amount for a fiscal year is the State's collections base for the fiscal year for the paternity establishment, support order, and current collections performance measures and 75 percent of the State's collections base for the fiscal year for the arrearage collections and

cost-effectiveness performance measures.

(e) A State's maximum incentive base amount for a State for a fiscal year is zero, unless a Federal audit performed under § 305.60 of this part determines that the data which the State submitted for the fiscal year and which are used to determine the performance level involved are complete and reliable.

(f) A State's collections base for a fiscal year is equal to: 2 times the sum of the total amount of support collected for Current Assistance cases plus two times the total amount of support collected in Former Assistance cases, plus the total amount of support collected in Never Assistance/other cases during the fiscal year, that is:

2(Current Assistance collections + Former Assistance collections) + all other collections.

§ 305.32 Requirements applicable to calculations.

In calculating the amount of incentive payments or penalties, the following conditions apply:

(a) Each measure is based on data submitted for the Federal fiscal year. The Federal fiscal year runs from October 1st of one year through September 30th of the following year.

(b) Only those Current Assistance, Former Assistance and Never Assistance/other collections disbursed and those expenditures claimed by the State in the fiscal year will be used to determine the incentive payment payable for that fiscal year;

(c) Support collected by one State at the request of another State will be treated as having been collected in full by each State;

(d) Amounts expended by the State in carrying out a special project under section 455(e) of the Act will be excluded from the State's total IV–D administrative costs in computing incentive payments;

(e) Fees paid by individuals, recovered costs, and program income such as interest earned on collections will be deducted from total IV–D administrative costs; and

(f) States must submit data used to determine incentives and penalties following instructions and formats as required by HHS on Office of Management and Budget (OMB) approved reporting instruments. If not submitted within the timeframes specified in the instructions to the OMB approved reporting instruments, we may consider the data to be incomplete.

§ 305.33 Determination of applicable percentages based on performance levels.

(a) A State's paternity establishment performance level for a fiscal year is, at the option of the State, the IV–D paternity establishment percentage or the Statewide paternity establishment percentage determined under § 305.2 of this part. The applicable percentage for each level of a State's paternity establishment performance can be found in table 1 of this part, except as provided in paragraph (b) of this section.

(b) If the State's paternity establishment performance level for a fiscal year is less than 50 percent, but exceeds its paternity establishment performance level for the immediately preceding fiscal year by at least 10 percentage points, then the State's applicable percentage for the paternity establishment performance level is 50 percent.

(c) A State's support order establishment performance level for a fiscal year is the percentage of the total number of cases where there is a support order determined under §§ 305.2 and 305.32 of this part. The applicable percentage for each level of a State's support order establishment performance can be found in table 1 of this part, except as provided in paragraph (d) of this section.

(d) If the State's support order establishment performance level for a fiscal year is less than 50 percent, but exceeds the State's support order establishment performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 1 TO PART 305

[Use this table to determine the applicable percentage levels for the paternity establishment and support order establishment performance measures.]

If the paternity establishment or support order establishment performance level is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
80	.....	100	64	65	74
79	80	98	63	64	73
78	79	96	62	63	72
77	78	94	61	62	71
76	77	92	60	61	70
75	76	90	59	60	69
74	75	88	58	59	68
73	74	86	57	58	67
72	73	84	56	57	66
71	72	82	55	56	65
70	71	80	54	55	64
69	70	79	53	54	63
68	69	78	52	53	62
67	68	77	51	52	61
66	67	76	50	51	60
65	66	75	0	50	0

(e) A State's current collections performance level for a fiscal year would be equal to the total amount of current support collected during the fiscal year divided by the total amount of current support owed during the fiscal year in all IV–D cases, determined under § 305.32 of this part. The applicable percentage with respect to a State's current collections performance level can be found in table 2 of this part, except as provided in paragraph (f) of this section.

(f) If the State's current collections performance level for a fiscal year is less

than 40 percent but exceeds the current collections performance level of the State for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

(g) A State's arrearage collections performance level for a fiscal year is equal to the total number of IV–D cases in which payments of past-due child support were received and distributed during the fiscal year, divided by the total number of IV–D cases in which there was past-due child support owed, as determined under § 305.32 of this part. The applicable percentage with respect to a State's arrearage collections performance level can be found in table 2 of this part, except as provided in paragraph (h) of this section.

(h) If the State's arrearage collections performance level for a fiscal year is less than 40 percent but exceeds the arrearage collections performance level for the immediately preceding fiscal year by at least 5 percentage points, then the State's applicable percentage is 50 percent.

TABLE 2 TO PART 305

[Use this table to determine the percentage levels for the current collections and arrearage collections performance measures]

If the Current Collections or Arrearage Collections Performance Level Is:					
At least: (percent)	But less than: (percent)	The applicable percentage is:	At least: (percent)	But less than: (percent)	The applicable percentage is:
80	.....	100	59	60	69
79	80	98	58	59	68
78	79	96	57	58	67
77	78	94	56	57	66
76	77	92	55	56	65
75	76	90	54	55	64
74	75	88	53	54	63
73	74	86	52	53	62
72	73	84	51	52	61
71	72	82	50	51	60
70	71	80	49	50	59
69	70	79	48	49	58
68	69	78	47	48	57
67	68	77	46	47	56
66	67	76	45	46	55
65	66	75	44	45	54
64	65	74	43	55	53
63	64	73	42	43	52
62	63	72	41	42	51
61	62	71	40	41	50
60	61	70	0	40	0

(i) A State's cost-effectiveness performance level for a fiscal year is equal to the total amount of IV–D support collected and disbursed or retained, as applicable during the fiscal year, divided by the total amount expended during the fiscal year, as determined under § 305.32 of this part. The applicable percentage with respect to a State's cost-effectiveness performance level can be found in table 3 of this part.

TABLE 3 TO PART 305 [USE THIS TABLE TO DETERMINE THE PERCENTAGE LEVEL FOR THE COST-EFFECTIVENESS PERFORMANCE MEASURE.]

If the cost-effectiveness performance level is:		
At least:	But less than:	The applicable percentage
5.00	.....	100
4.50	4.99	90
4.00	4.50	80
3.50	4.00	70
3.00	3.50	60
2.50	3.00	50
2.00	2.50	40
0.00	2.00	0

(j) The following example shows how an incentive payment would be determined for State A. Let's make the following assumptions regarding State A (see table A of this paragraph):

State A's paternity performance level is 54 percent, making its applicable percent 64 percent (see table 1 of this part).

State A's order establishment performance level is 79 percent, making its applicable percent 98 percent (see table 1).

State A's current support collections performance level is 41 percent, making its applicable percent 51 percent (see table 2 of this part).

State A's arrearage collections performance level is 40 percent, making its applicable percent 50 percent (see table 2).

State A's cost-effectiveness ratio is 3.00, making its applicable percent 60 percent (see table 3 of this part).

State A's collections base is $50 million (determined by 2 times the collections for current assistance and Former Assistance cases, plus collections for other cases).

The maximum incentive base is:

$32 million collections base for paternity ($50 million times .64), plus

$49 million collections base for orders ($50 million times .98), plus

$25.5 million collections base for current collections ($50 million times .51), plus

$18.8 million collections base for arrearage collections ($50 million times .75 times .50) plus

$22.5 million collections base for cost-effectiveness ($50 million times .75 times .60) equals

Resulting in a maximum incentive base amount of $147.8 million for State A.

TABLE A TO PARAGRAPH (j)

Measure	State A's performance level (percent)	Applicable percent based on performance	Weight	State A's collection base (in millions) (assumed to be $50.0 million)
Paternity Establishment	54	64	1.00	$32.0
Order Establishment	79	98	1.00	49.0
Current Collections	41	51	1.00	25.5
Arrearage Collections	40	50	0.75	18.8
Cost-Effectiveness	*	60	0.75	22.5
State A's Maximum Incentive Base Amount	.....	.....	.....	147.8 million

*$3.00.

We must now make some assumptions regarding the other States. Let's assume that there are only two other States in our country—and the maximum incentive base amount is $82 million for State B and $52 million for State C, making the total maximum incentive base amount $281.8 million for all three States (See table B of this paragraph).

We must now determine what State A's share of the $281.8 million is. It is 52 percent ($147.8 divided by $281.8).

TABLE B TO PARAGRAPH (j)

State	Maximum incentive base amounts	State's share of $281.8 million	Incentive payment pool $422 million (in millions)
A	$147.8	.52	$219.4
B	82.0	.34	143.5
C	52.0	.14	59.1
Totals	281.8	1.00	.....

Let us assume the incentive payment pool for the FY is $422 million.

Since State A's share is .52, this State has earned 52 percent of the $422 million incentive payment pool that Congress is allowing or a $219.4 ($422 million times .52) million incentive payment for this particular fiscal year.

§ 305.34 Payment of incentives.

(a) Each State must report one-fourth of its estimated annual incentive payment on each of its four quarterly collections' reports for a fiscal year. When combined with the amounts claimed on each of the State's four quarterly expenditure reports, the portion of the annual incentive payment as reported each quarter will be included in the calculation of the next quarterly grant awarded to the State under title IV–D of the Act.

(b) Following the end of each fiscal year, HHS will calculate the State's annual incentive payment, using the actual collection and expenditure data and the performance data submitted by the State and other States for that fiscal year. A positive or negative grant will then be awarded to the State under title IV–D of the Act to reconcile an actual annual incentive payment that has been calculated to be greater or lesser, respectively, than the annual incentive payment estimated prior to the beginning of the fiscal year.

(c) Payment of incentives is contingent on a State's data being determined complete and reliable by Federal auditors.

§ 305.35 Reinvestment.

(a) A State must expend the full amount of incentive payments received under this part to supplement, and not supplant other funds used by the State to carry out IV–D program activities; or funds for other activities approved by the Secretary which may contribute to improving the effectiveness or efficiency of the State's IV–D program, including cost-effective contracts with local agencies, whether or not the expenditures for the activity are eligible for reimbursement under this part.

(b) In those States in which incentive payments are passed through to political subdivisions or localities, such payments must be used in accordance with this section.

(c) State IV–D expenditures may not be reduced as a result of the receipt and reinvestment of incentive payments.

(d) A base amount will be determined by subtracting the amount of incentive funds received by the State IV–D program for fiscal year 1998 from the total amount expended by the State in the IV–D program during the same period. Alternatively, States have an option of using the average amount of the previous three fiscal years (1996, 1997, and 1998) as a base amount. This base amount of State spending must be maintained in future years. Incentive payments under this part must be used in addition to, and not in lieu of, the base amount.

(e) For example: (1) State A expended $15 million in FY1998 to conduct IV–D activities and used incentive payments received by the State as general revenues to fund an assortment of non-IV–D State and local programs or activities. If State A receives incentives, it must continue to expend at least $15 million of its money annually to conduct IV–D activities (not including incentive money). In addition, State A must henceforth expend any incentive payments received pursuant to section 458A of the Act and this part for IV–D activities, or other activities approved by the Secretary. These incentive payments will be expended in addition to, and not in lieu of, the current $15 million expended;

(2) State B expended a total of $20 million in FY 1998 in its IV–D program and, of the $20 million, $5 million

represented incentive funds, which the State received and reinvested in its IV–D program. If State B receives incentive payments, it must continue to spend at least $15 million in State money (not including incentive money) annually. Incentive payments received by the State must continue to be used in addition to, and not in lieu of, this $15 million base amount.

(f) Requests for approval of expending incentives on activities not currently eligible for funding under the IV–D program, but which would benefit the IV–D program, must be submitted in accordance with instructions issued by the Commissioner of the Office of Child Support Enforcement.

§ 305.36 Incentive phase-in.

The incentive system under this part will be phased-in over a three-year period during which both the old system and the new system would be used to determine the amount a State will recieve. For fiscal year 2000, a State will receive two-thirds of what it would have received under the incentive formula set forth in § 304.12 of this chapter, and one-third of what it would receive under the formula set forth under this part. In fiscal year 2001, a State will receive one-third of what it would have received under the incentive formula set forth under § 304.12 of this chapter and two-thirds of what it would receive under the formula under this part. In fiscal year 2002, the formula set forth under this part will be fully implemented and would be used to determine all incentive amounts.

§ 305.40 Penalty performance measures and levels.

(a) There are three performance measures for which States must achieve certain levels of performance in order to avoid being penalized for poor performance. These measures are the paternity establishment, support order establishment, and current collections measures set forth in § 305.2 of this part. The levels the State must meet are:

(1) The paternity establishment percentage which is required under section 452(g) of the Act for penalty purposes. States have the option of using either the IV–D paternity establishment percentage or the statewide paternity establishment percentage defined in § 305.2 of this part. Table 4 of this part shows the level of performance at which a State will be subject to a penalty under the paternity establishment measure.

TABLE 4 TO PART 305

[Use this table to determine the level of performance for the paternity establishment measure that will incur a penalty]

Statutory Penalty Performance Standards for Paternity Establishment		
PEP	Increase required over previous year's PEP (percent)	Penalty FOR FIRST FAILURE if increase not met
90% or more	None	No Penalty.
75% to 89%	2	1–2% TANF Funds.
50% to 74%	3	1–2% TANF Funds.
45% to 49%	4	1–2% TANF Funds.
40% to 44%	5	1–2% TANF Funds.
39% or less	6	1–2% TANF Funds.

(2) The support order establishment performance measure is set forth in § 305.2 of this part. For purposes of the penalty with respect to this measure, there is a threshold of 40 percent, below which a State will be penalized unless an increase of 5 percent over the previous year is achieved—which would qualify it for an incentive. Performance in the 40 percent to 49 percent range with no significant increase would not be penalized but neither would it qualify for an incentive payment. Table 5 of this part shows at which level of performance a State will incur a penalty under the child support order establishment measure.

TABLE 5 TO PART 305

[Use this table to determine the level of performance for the order establishment measure that will incur a penalty]

Performance Standards for Order Establishment		
Performance level	Increase over previous year	Incentive/penalty
50% or more	no increase over previous year required	Incentive.
40% to 49%	w/5% increase over previous year	Incentive.
	w/out 5% increase	No Incentive/No Penalty.
Less than 40%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(3) The current collections performance measure is set forth in § 305.2 of this part. There is a threshold of 35 percent below which a State will be penalized unless an increase of 5 percent over the previous year is achieved (that would qualify it for an incentive). Performance in the 35 percent to 40 percent range with no significant increase would not be penalized but neither would it qualify for an incentive payment. Table 6 of this part shows at which level of performance the State will incur a penalty under the current collections measure.

TABLE 6 TO PART 305

[Use this table to determine the level of performance for the current collections measure that will incur a penalty]

Performance Standards for Current Collections		
Performance level	Increase over previous year	Incentive/penalty
40% or more	no increase over previous year required	Incentive.
35% to 40%	w/5% increase over previous year	Incentive.
	w/out 5%	No Incentive/No Penalty.
Less than 35%	w/5% increase over previous year	Incentive.
	w/out 5% increase	Penalty equal to 1–2% of TANF funds for the first failure, 2–3% for second failure, and so forth, up to a maximum of 5% of TANF funds.

(b) The provisions listed under § 305.32 of this part also apply to the penalty performance measures.

§ 305.42 Penalty phase-in.

States are subject to the performance penalties based on data reported for FY 2001. Data reported for FY 2000 will be used as a base year to determine improvements in performance during FY 2001. There will be a statutory one-year corrective action period before any penalty is assessed. The penalties will be assessed and then suspended during the corrective action period.

§ 305.60 Types and scope of Federal audits.

(a) OCSE will conduct audits, at least once every three years (or more frequently if the State fails to meet performance standards and reliability of data requirements) to assess the completeness, authenticity, reliability, accuracy and security of data and the systems used to process the data in calculating performance indicators under this part.

(b) OCSE will conduct audits to determine the adequacy of financial management of the State IV–D program, including assessments of:

(1) Whether funds to carry out the State program are being appropriately expended, and are properly and fully accounted for; and

(2) Whether collections and disbursements of support payments are carried out correctly and are fully accounted for.

(c) OCSE will conduct audits for such other purposes as OCSE may find necessary.

(1) These audits include audits to determine if the State is substantially complying with one or more of the requirements of the IV–D program (with the exception of the requirement of section 454(24) of the Act relating to statewide-automated systems) as defined in § 305.63 of this part. Other audits will be conducted at the discretion of OCSE.

(2) Audits to determine substantial compliance will be initiated based on substantiated evidence of a failure by the State to meet IV–D program requirements. Evidence, which could warrant an audit to determine substantial compliance, includes:

(i) The results of 2 or more State self-reviews conducted under section 454(15)(A) of the Act which: show evidence of sustained poor performance; or indicate that the State has not corrected deficiencies identified in previous self-assessments, or that those deficiencies are determined to seriously impact the performance of the State's program; or

(ii) Evidence of a State program's systemic failure to provide adequate services under the program through a pattern of non-compliance over time.

(d) OCSE will conduct audits of the State's IV–D program through inspection, inquiries, observation, and confirmation and in accordance with standards promulgated by the Comptroller General of the United States in ''Government Auditing Standards.''

§ 305.61 Penalty for failure to meet IV–D requirements.

(a) A State will be subject to a financial penalty and the amounts otherwise payable to the State under title IV–A of the Act will be reduced in accordance with § 305.66 of this part:

(1) If on the basis of:

(i) Data submitted by the State or the results of an audit conducted under § 305.60 of this part, the State's program failed to achieve the paternity establishment percentages, as defined in section 452(g)(2) of the Act and § 305.40 of this part, or to meet the support order establishment and current collections performance measures as set forth in § 305.40 of this part; or

(ii) The results of an audit under § 305.60 of this part, the State did not submit complete and reliable data, as defined in § 305.1 of the part; or

(iii) The results of an audit under § 305.60 of this part, the State failed to substantially comply with 1 or more of the requirements of the IV–D program, as defined in § 305.63 of this part; and

(2) With respect to the following fiscal year, the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance or the data submitted by the State are still incomplete and unreliable.

(b) The reductions under paragraph (c) of this section will be made for quarters following the end of the fiscal year following the fiscal year in which the determination under paragraph (a)(1) of this section is made that the State is subject to a penalty and continues until the State, as appropriate:

(1) Has achieved the paternity establishment percentages, the order establishment or the current collections performance measures set forth in § 305.40 of this part; or

(2) Is in substantial compliance with IV–D requirements as defined in § 305.63 of this part; or

(3) Has submitted data that are determined to be complete and reliable.

(c) The payments for a fiscal year under title IV–A of the Act will be reduced by the following percentages:

(1) One to two percent for the first finding under paragraph (a) of this section;

(2) Two to three percent for the second such finding; and

(3) Not less than three percent and not more than 5 percent for the third or a subsequent consecutive finding.

(d) The reduction will be made in accordance with the provisions of 45 CFR 262.1 (b) through (e) and 262.7.

§ 305.62 Disregard of noncompliance which is of a technical nature.

A State subject to a penalty under § 305.61(a)(1)(ii) or (iii) of this part may be determined, as appropriate, to have submitted adequate data or to have achieved substantial compliance with one or more IV–D requirements, as defined in § 305.63 of this part, if the Secretary determines that the incompleteness or unreliability of the data, or the noncompliance with one or

more of the IV–D requirements, is of a technical nature which does not adversely affect the performance of the State's IV–D program or does not adversely affect the determination of the level of the State's paternity establishment or other performance measures percentages.

§ 305.63 Standards for determining substantial compliance with IV–D requirements.

For the purposes of a determination under § 305.62(a)(1)(iii) of this part, in order to be found to be in substantial compliance with 1 or more of the IV–D requirements as a result of an audit conducted under § 305.60 of this part, a State must meet the standards set forth in this section for each specific IV–D State plan requirement or requirements being audited and contained in parts 302 and 303 of this chapter, measured as follows:

(a) The State must meet the requirements under the following areas:

(1) Statewide operations, § 302.10;
(2) Reports and maintenance of records, § 302.15(a);
(3) Separation of cash handling and accounting functions, § 302.20; and
(4) Notice of collection of assigned support, § 302.54.

(b) The State must provide services required under the following areas in at least 90 percent of the cases reviewed:

(1) Establishment of cases, § 303.2(a); and

(2) Case closure criteria, § 303.11.

(c) The State must provide services required under the following areas in at least 75 percent of the cases reviewed:

(1) Collection and distribution of support payments, including: collection and distribution of support payments by the IV–D agency under § 302.32(b); distribution of support collections under § 302.51; and distribution of support collected in title IV–E foster care maintenance cases under § 302.52;

(2) Establishment of paternity and support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; establishment of paternity under § 303.5(a) and (f); guidelines for setting child support awards under § 302.56; and establishment of support obligations under § 303.4(d), (e) and (f);

(3) Enforcement of support obligations, including, in all appropriate cases: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; enforcement of support obligations under § 303.6 and State laws enacted under section 466 of the Act, including submitting once a year all appropriate cases in accordance with § 303.6(c)(3) to State and Federal income tax refund offset; and wage withholding under § 303.100. In cases in which wage withholding cannot be implemented or is not available and the non-custodial parent has been located, States must use or attempt to use at least one enforcement technique available under State law in addition to Federal and State tax refund offset, in accordance with State laws and procedures and applicable State guidelines developed under § 302.70(b).

(4) Review and adjustment of child support orders, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; guidelines for setting child support awards under § 302.56; and review and adjustment of support obligations under § 303.8; and

(5) Medical support, including: establishment of a case under § 303.2(b); services to individuals not receiving TANF or title IV–E foster care assistance, under § 302.33(a)(1) through (4); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(1) through (6), and (c)(8) through (10); location of non-custodial parents under § 303.3; securing medical support information under § 303.30; and securing and enforcing medical support obligations under § 303.31; and

(6) Disbursement of support payments in accordance with the timeframes in section 454B of the Act and § 302.32.

(d) With respect to the 75 percent standard in paragraph (b) of this section:

(1) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); location and support order establishment under § 303.3(b)(3) and (5), and § 303.4(d), if a support order needs to be established in a case and an order is established during the audit period in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(2) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); and location and review and adjustment of support orders contained in § 303.3(b)(3) and (5), and § 303.8, if a particular case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8, and the order is adjusted, or a determination is made, as a result of a review, during the audit period, that an adjustment is not needed, in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case for audit purposes.

(3) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); and location and wage withholding in § 303.3(b)(3) and (5), and § 303.100, if wage withholding is appropriate in a particular case and wage withholding is implemented and wages are withheld during the audit period, the State will be considered to have taken appropriate action in that case for audit purposes.

(4) Notwithstanding timeframes for establishment of cases in § 303.2(b); provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9); and location and enforcement of support obligations in § 303.3(b)(3) and (5), and § 303.6, if wage withholding is not appropriate in a particular case, and the State uses at least one enforcement technique available under State law, in addition to Federal and State income tax refund offset, which results in a collection received during the audit period, the State will be considered to have taken appropriate action in the case for audit purposes.

(e) The State must meet the requirements for expedited processes under § 303.101(b)(2)(i) and (iii), and (e).

§ 305.64 Audit procedures and State comments.

(a) Prior to the start of the actual audit, Federal auditors will hold an audit entrance conference with the IV–D agency. At that conference, the auditors will explain how the audit will be performed and make any necessary arrangements.

(b) At the conclusion of audit fieldwork, Federal auditors will afford the State IV–D agency an opportunity for an audit exit conference at which

time preliminary audit findings will be discussed and the IV–D agency may present any additional matter it believes should be considered in the audit findings.

(c) After the exit conference, Federal auditors will prepare and send to the IV–D agency a copy of their interim report on the results of the audit. Within 45 days from the date the report was sent by certified mail, the IV–D agency may submit written comments on any part of the report which the IV–D agency believes is in error. The auditors will note such comments and incorporate any response into the final audit report.

§ 305.65 State cooperation in the audit.

(a) Each State shall make available to the Federal auditors such records or other supporting documentation (electronic and manual) as the audit staff may request, including records to support the data as submitted on the Federal statistical and financial reports that will be used to calculate the State's performance. The State shall also make available personnel associated with the State's IV–D program to provide information that the audit staff may find necessary in order to conduct or complete the audit.

(b) States must provide evidence to OCSE that their data are complete and reliable as defined in § 305.2 of this part.

(c) Failure to comply with the requirements of this section with respect to audits conducted to determine compliance with IV–D requirements under § 305.60 of this part, may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.66 Notice, corrective action year, and imposition of penalty.

(a) If a State is found by the Secretary to be subject to a penalty as described in § 305.61 of this part, the Office will notify the State in writing of such finding.

(b) The notice will:

(1) Explain the deficiency or deficiencies which result in the State being subject to a penalty, indicate the amount of the potential penalty, and give reasons for the Secretary's finding; and

(2) Specify that the penalty will be assessed in accordance with the provisions of 45 CFR 262.1(b) through (e) and 262.7 if the State fails to correct the deficiency or deficiencies cited in the notice during the subsequent fiscal year (corrective action year).

(c) The penalty under § 305.61 will be assessed if the Secretary determines that the State has not corrected the deficiency or deficiencies cited in the notice by the end of the corrective action year. This determination will be made as of the first full three-month period beginning after the end of the corrective action year.

(d) Only one corrective action period is provided to a State with respect to a given deficiency where consecutive findings of noncompliance are made with respect to that deficiency. In the case of a State against which the penalty is assessed and which failed to correct the deficiency or deficiencies cited in the notice by the end of the corrective action year, the penalty will be effective for any quarter after the end of the corrective action year and ends for the first full quarter throughout which the State IV–D program is determined to have corrected the deficiency or deficiencies cited in the notice.

(e) A consecutive finding occurs only when the State does not meet the same criterion or criteria cited in the notice in paragraph (a) of this section.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 308

RIN 0970–AB96

State Self-Assessment Review and Report

AGENCY: Office of Child Support Enforcement (OCSE), ACF, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would implement a provision of the Social Security Act added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which requires each State to annually assess the performance of its own child support enforcement program and to provide a report of the findings to the Secretary of the Department of Health and Human Services (DHHS).

DATES: Consideration will be given to written comments received by December 7, 1999.

ADDRESSES: Send comments to: Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, S.W., Washington D.C. 20447. Attention: Division of Policy and Planning, Office of Child Support Enforcement. Comments will be available for public inspection Monday through Friday, 8:00 a.m. to 4:30 p.m. on the fourth floor of the Department's offices at the address mentioned above.

You may also transmit written comments electronically via the Internet. To transmit comments electronically, or download an electronic version of the proposed rule, you should access the Administration for Children and Families Welfare Reform Home Page at ''http://www.acf.dhhs.gov/hypernews/'' and follow the instructions provided.

FOR FURTHER INFORMATION CONTACT: Jan Rothstein, Division of Policy & Planning, OCSE, telephone number: (202) 401–5073, fax: (202) 401–3444, e-mail: jrothstein@acf.dhhs.gov.

SUPPLEMENTARY INFORMATION:

State Self-Assessment Review and Report

Statutory Authority

These proposed regulations are published under the authority of the Social Security Act (the Act), as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). Section 454(15)(A) of the Act (42 U.S.C. 654(15)(A)) contains a requirement for each State to annually assess the performance of the State's child support enforcement program under title IV–D of the Act in accordance with standards specified by the Secretary, and to provide a report of the findings to the Secretary.

These proposed regulations are also published under the general authority of section 1102 of the Act (42 U.S.C. 1302) authorizing the Secretary to publish regulations necessary for the efficient administration of the title IV–D program.

Background

Prior to PRWORA, Federal law specified that States that had been audited and found not to be in substantial compliance with Federal requirements were subject to a financial penalty of between 1 and 5 percent of the State's funding under the title IV–A program. These audits were performed every 3 years. The penalty could be held in abeyance for up to one year to allow States the opportunity to implement corrective actions to remedy the program deficiency. At the end of the corrective action period, a follow-up audit was conducted. If the follow-up audit showed that the deficiency had been corrected, the penalty was rescinded. Section 342(b) of PRWORA revised section 452(a)(4) of the Act, and

Federal audit requirements were changed to focus on data reliability and to assess performance outcomes instead of determining compliance with process steps.

At the same time, section 342(a) of PRWORA amended the Act by adding a new section 454(15)(A) of the Act to require each State to conduct an annual review of its Child Support Enforcement (IV–D) program to determine if Federal requirements are being met and to provide an annual report to the Secretary of DHHS on the findings. The changes to sections 452 and 454(a)(15) mean that the Federal government's audit responsibilities now focus primarily on results and fiscal accountability while States are to focus on the responsibilities for child support service delivery in accordance with Federal mandates. The annual self-assessment's purpose is to give a State the opportunity to assess whether it is meeting Federal requirements for providing child support services and providing the best services possible to those in need of them. It is to be used as a management tool, to help a State evaluate its program and assess its performance. These self reviews are not tied to fiscal sanctions. Financial penalties, like incentive rewards, will be based on program results.

Section 454(15)(A) of the Act also requires the Secretary to establish standards and procedures for the State to use in conducting the annual review. These proposed rules convey the Secretary's standards and procedures for the States' self-assessment reviews.

The requirements in this proposed rule would be effective prospectively from the effective date of the final rule. The review period for the first self-assessment would end no later than 12 months after the effective date of the final regulations. Subsequent annual review periods would end every 12 months thereafter. The first self-assessment report would be due no later than six months after the end of the review period and each 12-month review period thereafter. If a State fails to submit a self-assessment report, the DHHS Office of Child Support Enforcement (OCSE) would work with that State to try to resolve any issues that might be preventing the State from submitting a self-assessment report. However, if a State fails to make a good faith effort to resolve any barriers and submit a self-assessment report, we would begin taking the steps necessary to disapprove the State plan pursuant to sections 452(a)(3) and 455(a) of the Act and sections 301.10 and 301.13 of this chapter.

In the development of this Notice of Proposed Rulemaking, OCSE used as its starting point the objectives outlined in the OCSE strategic plan, which was endorsed by the States on February 28, 1995. The strategic plan is available at www.acf.dhhs.gov/programs/cse/new/spwith.htm. The three goals in the strategic plan and their corresponding objectives are as follows:

- All children have parentage established—to increase establishment of paternities, particularly those established within one year of birth;
- All children in IV–D cases have financial and medical support orders—to increase the percentage of IV–D cases with orders for financial support, and to increase the percentage of cases with orders for medical support; and
- All children in IV–D cases receive financial and medical support from both parents—to increase the collection rate, to increase the percentage of cases where health insurance coverage is obtained after being ordered, to increase the percentage of cases with appropriate and up-to-date support orders, and to make the process more efficient and responsive.

This approach is useful because it guarantees that all States have the same goals and objectives for their self-assessment reviews and that those goals and objectives are all focused on improving the lot of America's children.

OCSE also believes that the self-assessment process should not duplicate Federal audits that will be conducted by the OCSE Division of Audit (i.e., data reliability reviews, limited cost reviews and administrative cost audits) and should focus on agreed-upon goals. Similarly, the self-assessment reviews should not duplicate other types of program reviews such as automated systems certification reviews.

Following the enactment of PRWORA and to ensure broad input, OCSE consulted with a wide variety of program stakeholders to get recommendations on how to proceed. These recommendations addressed: the criteria to be covered in annual reports to the Secretary; the methodology for reviewing the criteria; and an approach for reporting the results of these reviews. OCSE considered these recommendations in developing these proposed rules.

OCSE received suggestions on self-assessment reviews at national and regional meetings, including the American Public Human Services Association, formerly known as the American Public Welfare Association (APWA) and the National Child Support Enforcement Association (NCSEA). In addition, several child support advocacy groups informally provided comments. Comments were also solicited from State IV–D directors and incorporated as deemed appropriate.

In addition, OCSE contracted with BDM, Inc., a consulting group, to survey existing self-assessment efforts in selected States and make recommendations for developing and implementing self-assessment reviews. OCSE also took these recommendations into consideration in the development of these proposed rules.

On March 31, 1998, OCSE issued Action Transmittal–98–12 to provide the States preliminary guidance on the self-assessment review process pending publication of this proposed rule. This action transmittal: provides a practical methodology for implementing the self-assessment process, covers required and optional program compliance criteria, presents the Federal role in the process as required by the statute, and suggests a reporting format. OCSE has appointed Amy Guzierjka to an Intergovernmental Personnel Act (IPA) assignment from the State of Massachusetts, to serve as the audit liaison to assist States in complying with the self-assessment requirements. Ms. Guzierjka has extensive experience in this area at the State level.

These proposed rules would promulgate the Secretary's requirements for State self-assessment reviews and annual reports. We invite public comment concerning the proposed standards and procedures required of States in conducting the reviews and reporting to the Secretary.

Overview of the Self-Assessment Review

The self-assessment review process proposed in this rule would consist of an annual State-conducted self-assessment of its IV–D program, and annual reporting of the results to the Commissioner, OCSE and Regional Offices as designees of the Secretary. Staff in the Regional Offices will review the self-assessment reports and work with the States if corrective action is necessary.

OCSE proposes that the State self-assessment review consist of three categories: Required Program Compliance Criteria, Program Direction, and Program Service Enhancements. The first category would be mandatory for inclusion in a State's annual self-assessment review and report. The second and third categories would be optional for inclusion in a State's self-assessment review and report.

The Required Program Compliance category draws upon selected areas of the child support program that have previously been covered by Federal

audits and which are addressed in regulations in Parts 302 and 303. These criteria represent the current program requirements that most directly relate to the major child support functions and which must be monitored to assess program performance. These criteria also bear a direct correlation to the goals and objectives set forth in OCSE's strategic plan and the 15 outcome measurements in that plan. These criteria would represent the minimum that States would be required to include in their self-assessment reviews and in their reports to the Secretary. A State would be able to modify the review requirements by imposing higher standards on itself or evaluating additional Federal or State requirements; however, a State would be required to document its review scope in its annual report. Nothing precludes States from expanding their reviews to include other program areas. A State may wish to expand the review to accommodate its specific management needs. Again, we envision these reviews as serving as management tools for the States. A State should feel free to modify them to best suit its program needs.

Federal financial participation (FFP) would be available to reimburse States for the cost of carrying out all three categories of self-assessment. States may add additional optional information to the information listed in categories 1, 2, and 3. FFP would also be available for gathering and reporting this additional optional information.

Federal Role

The Federal role in the self-assessment review process would be to receive reports submitted pursuant to section 452(a)(4)(B) of the Act and, as appropriate, provide to the States comments, recommendations for additional or alternative corrective action, and provide any technical assistance that a State may need. We propose that the Federal involvement include, but not be limited to: approving IV–D State plan amendments certifying that the State has a self-assessment review process; providing review requirements, guidelines, instructions and methodologies for the review to the State; responding to requests for help from the State; providing interpretation of compliance standards; developing continuing partnerships; reviewing and providing appropriate comments on self-assessment reports; developing a self-assessment review module; overseeing the implementation of the self-assessment process in the States; periodically analyzing self-assessment reports to identify 'best practices' to be shared with other States and providing comments and recommendations regarding the appropriateness of proposed corrective action or alternative correction action.

The Office of Child Support Enforcement is publishing a separate proposed rule regarding performance incentives and penalties. As indicated in that rule, results from State self-assessments may serve as a basis for more in-depth audits.

Description of Regulatory Provisions

We are proposing to implement the statutory requirement that a State annually assess the performance of its IV–D program and submit a report of the findings to the Secretary by adding a new Part 308, ''Annual State Self-Assessment Review and Report'' to existing rules in Chapter III governing the child support enforcement program under title IV–D of the Act.

Proposed section 308.0 sets the scope of the regulation and specifies it is applicable only to the annual State self-assessment review and report process.

Proposed section 308.1 provides the components of the self-assessment implementation methodology that States must use including organizational placement, sampling, scope of review, the review period, and reporting.

Proposed section 308.1(a) addresses options for the organizational placement of the self-assessment function. Ideally, the organizational placement would be within the IV–D agency. This would enable the agency to draw on the experience of IV–D staff who have the skills and qualifications needed to analyze the program, an important element of a meaningful self-assessment of the program. However, we recognize that this is not always possible. Therefore, the proposed regulations allow the self-assessment unit to be placed within the title IV–D agency's umbrella agency, or another State agency. Alternatively, a State may consider privatizing or contracting out the self-assessment function. However, regardless of the location of this function, the IV–D agency must maintain the responsibility and control for all reviews, review findings and the content of the annual report.

Proposed section 308.1(b) specifies that a State must either review all of its cases or conduct sampling which meets the criteria specified. Due to the differences in administrative structures in States, we believe it would be inappropriate for OCSE to prescribe a single sampling formula for universal use by all States. Instead, under proposed paragraph (b), a State would have discretion in designing its own sampling methodologies that could be tailored to meet individual State needs. However, under proposed paragraphs (b)(2) and (3), each State must maintain a minimum confidence level of 90 percent for each criterion, select statistically valid samples, and assure that there are no portions of the IV–D case universe omitted from the sample selection process.

The following checklist has been developed to provide guidance in the form of a series of steps that should be taken during the development and application of a sampling methodology. This checklist is not intended as a definitive pronouncement or mandate from OCSE, but only as a guide outlining a generic sampling approach. We provide it for reference and guidance only.

1. Define the reason(s) for collecting and evaluating the data: i.e. each State must evaluate its performance with regard to each required program compliance criterion set forth in proposed section 308.2.

2. Plan the data collection method(s):

a. Identify the criteria to be evaluated (refer to proposed section 308.2).

b. Select a method of data collection/evaluation.

c. Establish a minimally acceptable level of performance.

d. Set a desired confidence level.

e. Choose a method of random selection (e.g., simple random selection or systematic random selection).

3. Collect required data: After selecting the sample cases, obtain the case files and/or the pertinent computer records or data elements.

4. Process the collected data: Evaluate each case for each criterion to determine if the desired action was taken. Tabulate the results of the sample or samples.

5. Analyze the data. Quantify results and statistically evaluate the results obtained.

6. Present the results for each criterion in a tabular format and provide a narrative explanation of the results obtained.

Proposed section 308.1(c) relates to the scope of the self-assessment review. This paragraph would require a State to review all required criteria articulated in section 308.2 on a yearly basis. We considered accommodating some States who have not had the experience in conducting these types of reviews by allowing reviews for some of the criteria on a rotational basis rather than annual reviews on all required criteria by all States. We decided that if we permitted reviews of some of the required criteria on a rotational basis, the results would lose meaning and not be comparable to prior years. Therefore, we propose that

each State would be required to review all criteria under section 308.2 on a yearly basis.

Proposed section 308.1(d) would provide for a 12-month review period, ending no later than 12 months after the effective date of this final rule and each 12 month period thereafter. We believe the proposed 12-month review period is consistent with prior audit review periods and allows enough time to evaluate the case processing timeframes in Part 303. We also believe that it is not necessary for all States to match each other's review periods, provided that the case samples selected are from the period that will be reviewed and reflected in the report. Self-assessment reviews can be conducted in one of two ways: historically or incrementally. Using the historical approach, a State would not begin its self-assessment review until the end of the period to be reviewed.

Using the incremental approach, a State would select cases from several periods during the review period and add the results to provide a picture of performance for the entire period. The State should draw a separate sample for each incremental review period. The incremental approach would enable the State to spread its review effort over time and make more efficient use of available resources because the sample size could be smaller, while allowing the State to identify problem areas and take corrective action prior to the end of the review period. For those States who review their case samples incrementally, the cases selected must be reviewed and evaluated for the actions required at the beginning of the review period.

Proposed section 308.1(e) would address the contents of the annual reports and require copies to be sent to the Commissioner, OCSE and applicable Regional Offices. We propose that the State submit its written report no later than 6 months after the end of the review period. For example, if the review period ends September 30, 2000, the first report would be due by March 31, 2001.

Proposed section 308.2 lists and provides descriptions of the required program compliance criteria. In all cases, States must have the required procedures specified in the regulations. In this section we are also proposing to require States to use benchmarks for performance that are identical to those that were required when previous Federal audit standards were in place. The benchmarks for determining the adequacy of performance are still, we believe, appropriate under the new system of self-assessment reviews. States can use the benchmarks to determine if corrective action is necessary if they fail to meet one or more benchmarks. We propose that reviews of closed cases should demonstrate that appropriate action was taken in 90 percent of the cases reviewed. We further propose that reviews of the other required program criteria should show that appropriate action was taken in 75 percent of the cases reviewed.

Proposed section 308.2(a) would require reviews of closed IV–D cases to determine whether the case met one or more Federal case closure criteria under section 303.11.

Proposed section 308.2(b)(1) would require the review of State actions to establish paternity and support orders. A case would meet the review requirement if an order for support was required and established during the review period, notwithstanding the relevant timeframes. Section 308.2(b)(2) addresses the necessary procedures to follow when an order was required but not established during the review period.

Proposed section 308.2(c) would require the review of State actions to enforce child support orders. If income withholding was appropriate, a case would meet the review requirement if it was received during the review period, notwithstanding the mandatory timeframes. A review of the enforcement of orders would include all cases in which an ongoing income withholding is in place, as well as those cases in which new or repeated enforcement actions were required during the review period.

Proposed section 308.2(d) describes reviews of the disbursement of collections, requiring the implementation of a State Disbursement Unit (SDU) effective October 1, 1998, or on October 1, 1999, for those States in which the local courts are disbursing collections. This review would include a determination of whether States are complying with the 2-day requirement for disbursing certain collections. The statute had two effective dates but we anticipate that final rulemaking would be published after October 1, 1999, the date on which all States have to have an SDU in effect and therefore, we have not included any reference to the effective dates in the proposed rule.

Proposed section 308.2(e) would require reviews of securing and enforcing medical support orders. This would include measuring whether the requirements were met for: including a medical support provision in all new orders; taking steps to determine whether reasonable health insurance is available when health insurance is included in the order; informing the Medicaid agency when coverage was obtained; determining whether the custodial parent was informed of policy information when coverage has been obtained; determining whether employers are informing the State of lapses in coverage; and determining whether the State transferred notice of the health care provision to a new employer when a noncustodial parent changed employment. The forthcoming national medical support notice has the potential to vastly improve establishing and enforcing medical support orders. Once it becomes available, States should be using it and reviewing for its application in appropriate cases.

Proposed section 308.2(f) addresses the review and adjustment of orders. A case would meet the review requirement if it was reviewed and met the conditions for adjustment notwithstanding the applicable timeframes. An examination of the review and adjustment criterion would include reviews of assistance cases, review of cases where adjustments were not necessary, quarterly repeated location efforts, notices to the custodial and non-custodial parents informing them of their rights to request reviews within 180 days of determining that a review should be conducted, and reviews of whether both parties were given 30 days to contest adjustments if the cost-of-living or automated methods had been utilized.

Proposed section 308.2(g) addresses the interstate services. The review criterion would include the initiating State's responsibility to refer cases to the responding State within 20 days of determining that the noncustodial parent is in another State pursuant to section 303.7(b)(2); providing responses to the responding State with requested additional information within 30 calendar days of the request pursuant to section 303.7(b)(4); notifying the responding State of new information within 10 working days pursuant to section 303.7(b)(5); and sending a request for review of a child support order within 20 calendar days after receiving a request for review and adjustment under the Uniform Interstate Family Support Act (UIFSA) pursuant to section 303.7(b)(6).

Reviews would also include determining compliance with responsibilities of the responding State in interstate cases, including central registry requirements for review of submitted documentation for completeness, forwarding the case to the State Parent Locator Service for locate services, acknowledgment of the receipt

of the case and request for missing documentation from the initiating State, and whether the IV–D agency in the initiating State was informed of where the case was sent for action. The review would also determine whether the central registry responded to inquiries from other States within 5 working days of receipt of a request for a case status review pursuant to section 303.7(a)(4).

Section 308.2(b), (c), and (f) contain language that previously appeared in former section 305.20(d) relative to certain missed timeframes. As we stated in the preamble to the final rule revising Federal audit regulations in child support (59 FR 66204), the State should not be penalized when timeframes are missed in a case if a successful result is achieved (paternity or a support order is established, an order is adjusted, income is withheld, or a collection is made), since these results are the main goals of the child support enforcement program. We emphasize that all timeframes, including those for paternity establishment, support order establishment, review and adjustment, and income withholding, are still Federal requirements that States must meet.

Other timeframes that would actually be reviewed for compliance would include: 10 days to forward the case upon locating the non-custodial parent in a different jurisdiction pursuant to section 303.7(c)(5) and (6); 2 business days to forward any support payments collected to the initiating State pursuant to section 303.7(c)(7)(iv); and 10 working days to notify the initiating State upon receipt of new information pursuant to section 303.7(c)(9).

Proposed section 308.2(h) addresses the proposed timeframes applicable to the expedited processes criterion pursuant to section 303.101(b)(2)(i) and in keeping with previous definitions of substantial compliance in former section 305.20, we are proposing a benchmark of 75 percent for the number of cases to be completed within 6 months and a benchmark of 90 percent for the number of cases to be completed within one year. The 75 and 90 percent benchmark standards would apply to the establishment of orders from the date of service of process to the time of disposition.

Proposed section 308.3 lists and describes the proposed optional program areas of review, which would include program direction and program service enhancements. Proposed section 308.3(a) pertains to the review of State program direction.

The first optional category, Program Direction, is envisioned as an analysis of the relationships between case results relating to program compliance areas, and performance and program outcome indicators. While this review category is optional, by including the information, States have the opportunity to demonstrate how they are trying to manage their resources to achieve the best performance possible. This evaluation should explain the data and how the State adjusted its resources and processes to meet goals and improve performance. In this section, States are encouraged to discuss new laws and enforcement techniques, etc., that are contributing to increased performance. Barriers to success, such as State statutes, may also be discussed in this section.

Proposed section 308.3(b) pertaining to the optional review of State program service enhancements is envisioned as a report of practices initiated by the State that are contributing to improving program performance and customer service.

Examples would include improvement of client services through the use of expanded office hours, kiosks, internet, and voice response systems. This is an opportunity for a State to promote its programs and innovative practices. Some examples of innovative activities that a State may elect to discuss in the report include such things as: steps taken to make the program more efficient and effective; efforts to improve client services; demonstration projects testing creative new ways of doing business; collaborative efforts being taken with partners and customers; innovative practices which have resulted in improved program performance; actions taken to improve public image; and access/visitation projects initiated to improve non-custodial parents' involvement with the children. A State should also discuss in this review area whether the State has a process for timely dissemination of applications for IV–D services in cases that are not receiving public assistance, when requested, and child support program information to recipients referred to the IV–D program, as required by section 303.2(a).

Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this proposed rule is consistent with these priorities and principles. The proposed changes in this rule contain the Secretary's standards for State self-assessment reviews that largely replace previously required mandatory Federal audits.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's conclusion is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These proposed regulations will not have an impact on family well-being as defined in the legislation.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small entities. The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities because the primary impact of these regulations is on State governments.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these reporting requirements as described below. This NPRM contains reporting requirements in Part 308, which the Department has submitted, to OMB for its review.

Section 308.1(e) contains a requirement that a State report the results of annual self-assessment reviews to the appropriate OCSE Regional Office and to the Commissioner of OCSE. The information submitted must be sufficient to measure State compliance with Federal requirements for expedited procedures and to determine whether the program is in compliance with title IV–D requirements and case processing timeframes. The results of the report will be disseminated via ''best practices'' to other States and also be used to determine if technical assistance is needed and the use of resources to meet goals. The State plan preprint page for this requirement (page 2.15, Federal and State Reviews and Audits) was approved by OMB July 7, 1997 under OMB Number 0970–0017.

Respondents: State child support enforcement agencies of the 50 States,

the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

This information collection requirement will impose the estimated total annual burden on the States described in the table below:

Information collection	Number of respondents	Responses per respondent	Average burden hours per response	Total annual burden hours
Section 308.1	54	1	3,866	208,764

The Administration for Children and Families (ACF) will consider comments by the public on the proposed information collection in order to evaluate the accuracy of ACF's estimate of the burden of the proposed collection of information. Comments by the public on this proposed collection of information will be considered in the following areas:

- Evaluating the accuracy of the ACF's estimate of the burden of the proposed collection[s] of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Desk Officer for the Administration for Children and Families.

Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that the proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

Congressional Review

This proposed rule is not a major rule as defined in 5 U.S.C., Chapter 8.

List of Subjects in Part 308

Auditing, Child support, Grant programs—social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.563, Child Support Enforcement Program)

Dated: April 20, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: June 14, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, we propose to amend 45 CFR Chapter III by adding a new part 308 as set forth below:

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

Sec.

308.0 Scope.
308.1 Self-assessment implementation methodology.
308.2 Required program compliance criteria.
308.3 Optional program areas of review.

Authority: 42 U.S.C. 654 (15)(a) and 1302.

§ 308.0 Scope.

This part establishes standards and criteria for the State self-assessment review and report process required under section 454(15)(A) of the Act.

§ 308.1 Self-assessment implementation methodology.

(a) *Organizational placement.* A State must:

(1) Establish a self-assessment unit within the title IV–D agency, another State agency, or within the umbrella agency containing the IV–D agency; or

(2) Privatize the self-assessment functions provided that the IV–D agency maintains responsibility for and control of the results produced and contents of the annual report.

(b) *Sampling.* A State must either review all of its cases or conduct sampling which meets the following conditions:

(1) The sampling methodology maintains a minimum confidence level of 90 percent for each criterion;

(2) The State selects statistically valid samples of cases from the IV–D program universe of cases; and

(3) The State establishes procedures for the design of samples and assures that no portions of the IV–D case universe are omitted from the sample selection process.

(c) *Scope of review.* A State must conduct an annual review covering all of the required criteria in § 308.2.

(d) *Review period.* Each review period must cover a 12-month period. The first review period shall end no later than 12 months after the effective date of the final rule, and subsequent reviews shall cover each 12-month period thereafter.

(e) *Reporting.* (1) The State must provide a report of the results of the self-assessment review to the appropriate OCSE Regional Office, with a copy to the Commissioner of OCSE, no later than 6 months after the end of the review period.

(2) The report must include, but is not limited to:

(i) An executive summary, including a summary of the mandatory program criteria findings;

(ii) A description of optional program areas covered by the review;

(iii) A description of sampling methodology used, if applicable;

(iv) The results of the self-assessment reviews; and

(v) Any corrective actions proposed and/or taken.

§ 308.2 Required program compliance criteria.

(a) *Case closure.* (1) The State must have and use procedures for case closure pursuant to § 303.11 of this chapter in at least 90 percent of the closed cases reviewed.

(2) If a IV–D case was closed during the review period, the State must determine whether the case met requirements pursuant to § 303.11 of this chapter.

(b) *Establishment of paternity and support order.* The State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed.

(1) If an order for support is required and established during the review period, the case meets the requirements, notwithstanding the timeframes for: establishment of cases as specified in § 303.2(b) of this chapter; provision of services in interstate IV–D cases per § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and support order establishment under §§ 303.3(b)(3) and (5), and 303.4(d) of this chapter.

(2) If an order was required, but not established during the review period, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last actions:

(i) Opening a case within 20 days pursuant to § 303.2(b) of this chapter;

(ii) If location activities are necessary, using all appropriate sources within 75 days pursuant to § 303.3(b)(3) of this chapter. This includes all the following locate sources as appropriate: custodial parent, Federal Parent Locator Service, U.S. Postal Service, State employment security agency, employment data, Department of Motor Vehicles, and credit bureaus;

(iii) Repeating location attempts quarterly and when new information is received in accordance with § 303.3(b)(5) of this chapter;

(iv) Establishing an order or completing service of process necessary to commence proceedings to establish a support order, or if applicable, paternity, within 90 days of locating the non-custodial parent, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts pursuant to §§ 303.3(c) and 303.4(d) of this chapter.

(c) *Enforcement of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. Enforcement cases include cases in which ongoing income withholding is in place as well as cases in which new or repeated enforcement actions were required during the review period.

(1) If income withholding was appropriate and a withholding collection was received during the last quarter of the review period and the case was submitted for Federal and State income tax refund offset, if appropriate, the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c) (8) and (9) of this chapter; and location and income withholding in §§ 303.3(b)(3) and (5), and 303.100 of this chapter.

(2) If income withholding was not appropriate, and an enforcement collection was received during the review period, and the case was submitted for Federal and State income tax refund offset, if appropriate, then the case meets the requirements of § 303.6(c)(3) of this chapter, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6) and (c) (8) and (9) of this chapter; and location and enforcement of support obligations in §§ 303.3(b)(3) and (5), and 303.6 of this chapter.

(3) If an order needed enforcement during the review period, but income was not withheld or other collections were not received (when income withholding could not be implemented), the State must determine the last required action and determine whether the action was taken within the appropriate timeframes. The following is a list of possible last required actions:

(i) If location activities are necessary, using all appropriate location sources within 75 days pursuant to § 303.3(b)(3) of this chapter. This includes, at a minimum, all of the following locate sources as appropriate: custodial parent, Federal Parent Locator Service (FPLS), State employment security agency, Department of motor vehicles, and credit bureaus;

(ii) Repeating attempts to locate quarterly and when new information is received pursuant to § 303.3(b)(5) of this chapter;

(iii) If there is no immediate income withholding order, initiating income withholding upon identifying a delinquency equal to one month's arrears, in accordance with § 303.100(c) of this chapter;

(iv) If immediate income withholding is ordered, sending a notice to the employer within 15 calendar days of the date the support order was entered, if the employer was known, or within 2 business days after the date information regarding a newly hired employee is entered into the State Directory of New Hires, whichever occurs later in accordance with § 303.100(e)(2) of this chapter and section 453A(g)(1) of the Act;

(v) If income withholding is not appropriate or cannot be implemented, taking an appropriate enforcement action (other than Federal and State income tax refund offset), unless service of process is necessary, within no more than 30 days of identifying a delinquency or identifying the location the non-custodial parent, whichever occurs later in accordance with § 303.6(c)(2) of this chapter;

(vi) If income withholding is not appropriate or cannot be implemented and service of process is needed, taking an appropriate enforcement action (other than Federal and State income tax refund offset), within no more than 60 days of identifying a delinquency or locating the non-custodial parent, whichever occurs later, or documenting unsuccessful attempts to serve process in accordance with the State's guidelines for defining diligent efforts and § 303.6(c)(2)of this chapter;

(vii) If the case has arrearages, submitting the case for Federal and State income tax refund offset during the review period, if appropriate, in accordance with § § 303.72, 303.102 and 303.6(c)(3) of this chapter.

(d) *Disbursement of collections.* A State must have and use procedures required in this paragraph in at least 75 percent of the cases reviewed.

(1) States must implement a State Disbursement Unit by the statutory deadline applicable to that State.

(2) States must determine whether disbursements of collections received in the previous quarter were made within 2 business days after receipt by the State Disbursement Unit from the employer or other source of periodic income in accordance with section 457(a) of the Act, if sufficient information identifying the payee is provided pursuant to section 454B(c) of the Act.

(3) States may delay the distribution of collections toward arrearages until resolution of any timely appeals with respect to such arrearages pursuant to section 454B(c)(2) of the Act.

(e) *Securing and enforcing medical support orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. A State must:

(1) Determine whether all support orders established during the review period included medical support. If not,

determine whether medical support was included in the petition for support to the court or administrative authority pursuant to § 466(a)(19) of the Act and § 303.31(b)(1) of this chapter.

(2) If a requirement for medical support is included in the order, determine whether steps were taken to determine if reasonable health insurance was available pursuant to § 303.31(a)(1) and (b)(7) of this chapter.

(3) If reasonable health insurance was available, but not obtained, determine whether steps were taken to enforce the order pursuant to § 303.31(b)(7) of this chapter.

(4) Determine whether the IV–D agency informed the Medicaid agency that coverage had been obtained when health insurance was obtained during the review period pursuant to § 303.31(b)(6) of this chapter.

(5) Determine whether the custodial parent was provided with information regarding the policy when health insurance was obtained pursuant to § 303.31(b)(5) of this chapter.

(6) Determine whether the State requested employers providing health coverage to inform the State of lapses in coverage pursuant to § 303.31(b)(9) of this chapter.

(7) Determine whether the State transferred notice of the health care provision to a new employer when a noncustodial parent was ordered to provide health insurance coverage and changed employment and the new employer provides health care coverage.

(f) *Review and adjustment of orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed.

(1) If a case has been reviewed and meets the conditions for adjustment under State laws and procedures and § 303.8 of this chapter and the order is adjusted or a determination is made as a result of a review during the self-assessment period that an adjustment is not needed in accordance with the State's guidelines for setting child support awards, the State will be considered to have taken appropriate action in that case, notwithstanding the timeframes for: establishment of cases in § 303.2(b) of this chapter; provision of services in interstate IV–D cases under § 303.7(a), (b), (c)(4) through (6), and (c)(8) and (9) of this chapter; and location and review and adjustment of support orders contained in §§ 303.3(b)(3) and (5), and 303.8 of this chapter.

(2) If a case has not been reviewed, the State must determine the last required action and determine whether the action was taken within the appropriate timeframe. The following is a list of possible last actions:

(i) If locate is necessary to conduct a review, using all appropriate location sources within 75 days of opening the case pursuant to § 303.3(b)(3) of this chapter. This includes all the following locate sources as appropriate: custodial parent, FPLS, U.S. Postal Service, State employment security agency, unemployment data, Department of Motor Vehicles, and credit bureaus;

(ii) Repeating location attempts quarterly and when new information is received pursuant to § 303.3(b)(5) of this chapter;

(iii) Providing the custodial and non-custodial parents notices, not less often then once every three years, informing them of their right to request the State to review and, if appropriate, adjust the order;

(iv) The first notice may be included in the order pursuant to § 466(a)(10)(C) of the Act. After the initial notice, the State must periodically (at least once every 3 years) send notices to both parents;

(v) Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, conducting a review of the order and adjusting the order or determining that the order should not be adjusted pursuant to § 303.8(e) of this chapter;

(vi) If an adjustment was made during the review period using cost of living or automated methods, giving both parties 30 days to contest any adjustment to that support order pursuant to § 466(a)(10)(A)(ii) of the Act.

(g) *Interstate services.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. For all interstate cases requiring services during the review period, determine the last required action and determine whether the action was taken during the appropriate timeframe:

(1) Initiating interstate cases:

(i) Except when using the State's long-arm statute for establishing paternity, within 20 calendar days of determining that the non-custodial parent is in another State and, if appropriate, receipt of any necessary information needed to process the case, referring that case to the responding State's interstate central registry for action pursuant to § 303.7(b)(2) of this chapter.

(ii) If additional information is requested, providing the responding State's central registry with requested additional information within 30 calendar days of the request pursuant to § 303.7(b)(4) of this chapter.

(iii) Upon receipt of new information on a case, notifying the responding State of that information within 10 working days pursuant to § 303.7(b)(5) of this chapter.

(iv) Within 20 calendar days after receiving a request for review and adjustment) pursuant to § 303.7(b)(6) of this chapter.

(2) Responding interstate cases:

(i) Within 10 working days of receipt of an interstate IV–D case, the central registry reviewing submitted documentation for completeness, forwarding the case to the State Parent Locator Service (PLS) for locate or to the appropriate agency for processing, acknowledging receipt of the case and requesting any missing documentation from the initiating State, and informing the IV–D agency in the initiating State where the case was sent for action, pursuant to § 303.7(a)(2) of this chapter.

(ii) The Central registry responding to inquiries from other States within 5 working days of a receipt of request for case status review pursuant to § 303.7(a)(4) of this chapter.

(iii) Within 10 days of locating the non-custodial parent in a different jurisdiction or State, forwarding the case in accordance with Federal requirements pursuant to § 303.7(c)(5) and (6) of this chapter.

(iv) Within 2 business days of receipt of collections, forwarding any support payments to the initiating State pursuant to § 454B(c)(1) of the Act.

(v) Within 10 working days of receipt of new information notifying the initiating State of that new information pursuant to § 303.7(c)(9) of this chapter.

(h) *Expedited processes.* The State must have and use procedures required under this paragraph in the amounts specified in this paragraph in the cases reviewed for the expedited processes criterion.

(1) In IV–D cases needing support orders established, regardless of whether paternity has been established, action to establish support orders must be completed from the date of service of process to the time of disposition within the following timeframes pursuant to § 303.101(b)(2)(i) of this chapter:

(i) 75 percent in 6 months; and

(ii) 90 percent in 12 months.

(2) States may count as a success for the 6-month standard cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 12 months of service of process on the alleged father or non-custodial parent.

§ 308.3 Optional program areas of review.

(a) *Program direction.* A State may include a program direction review in its self-assessment for the purpose of analyzing the relationships between case results relating to program compliance areas, and performance and

program outcome indicators. This review is an opportunity for States to demonstrate how they are trying to manage their resources to achieve the best performance possible. A program direction analysis could describe the following:

(1) Initiatives that resulted in improved and achievable performance accompanied with supporting data;

(2) Barriers impeding progress; and

(3) Efforts to improve performance.

(b) *Program service enhancement.* A State may include a program service enhancement report in its self-assessment that describes initiatives put into practice that improved program performance and customer service. This is an opportunity for States to promote their programs and innovative practices. Some examples of innovative activities that States may elect to discuss in the report include:

(1) Steps taken to make the program more efficient and effective;

(2) Efforts to improve client services;

(3) Demonstration projects testing creative new ways of doing business;

(4) Collaborative efforts being taken with partners and customers;

(5) Innovative practices which have resulted in improved program performance;

(6) Actions taken to improve public image; and

(7) Access/visitation projects initiated to improve non-custodial parents' involvement with the children.

(c) A State may provide any of the optional information in paragraphs (a) and (b) of this section in narrative form.

[FR Doc. 99–25901 Filed 10–7–99; 8:45 am]

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Friday
October 8, 1999

Part IV

Department of State

Office of the Coordinator for Counterterrorism; Designation of Foreign Terrorist Organizations; Notice

DEPARTMENT OF STATE

[Public Notice 3130]

Office of the Coordinator For Counterterrorism; Designation of Foreign Terrorist Organizations

AGENCY: Department of State.

ACTION: Designation of Foreign Terrorist Organizations.

Pursuant to Section 219 of the Immigration and Nationality Act (''INA''), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996), I hereby designate, effective October 8, 1999, the following organization as a foreign terrorist organization:

al Qa'ida
also known as al Qaeda, also known as ''the Base,'' also known as the Islamic Army, also known as the World Islamic Front for Jihad Against Jews and Crusaders, also known as the Islamic Army for the Liberation of the Holy Places, also known as the Usama Bin Laden Network, also known as the Usama Bin Laden Organization, also known as Islamic Salvation Foundation, also known as The Group for the Preservation of the Holy Sites

Pursuant to Section 219 of the Immigration and Nationality Act (''INA''), as added by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104–132, § 302, 110 Stat. 1214, 1248 (1996), and amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104–208, 110 Stat. 3009 (1996), I hereby redesignate, effective October 8, 1999, the following organizations as foreign terrorist organizations:

Abu Nidal Organization
also known as ANO, also known as Black September, also known as the Fatah Revolutionary Council, also known as the Arab Revolutionary Council, also known as the Arab Revolutionary Brigades, also known as the Revolutionary Organization of Socialist Muslims

Abu Sayyaf Group
also known as Al Harakat Al Islamiyya

Armed Islamic Group
also known as GIA, also known as Groupement Islamique Arme, also known as AIG, also known as Al-Jama'ah al-Islamiyah al-Musallah

Aum Shinrikyo
also known as Aum Supreme Truth, also known as A.I.C. Sogo Kenkyusho, also known as A.I.C. Comprehensive Research Institute

Basque Fatherland and Liberty
also known as Euzkadi Ta Askatasuna, also known as ETA

Gama'a al-Islamiyya
also known as the Islamic Group, also known as IG, also known as al-Gama'at, also known as Islamic Gama'at, also known as Egyptian al-Gama'at al-Islamiyya, also known as GI

HAMAS
also known as the Islamic Resistance Movement, also known as Harakat al-Muqawama al-Islamiya, also known as Students of Ayyash, also known as Students of the Engineer, also known as Yahya Ayyash Units, also known as Izz Al-Din Al-Qassim Brigades, also known as Izz Al-Din Al-Qassim Forces, also known as Izz Al-Din Al-Qassim Battalions, also known as Izz al-Din Al Qassam Brigades, also known as Izz al-Din Al Qassam Forces, also known as Izz al-Din Al Qassam Battalions

Harakat ul-Mujahideen
also known as HUM, also known as Harakat ul-Ansar, also known as HUA, also known as Al-Hadid, also known as Al-Hadith, also known as Al-Faran

Hizballah
also known as the Party of God, also known as Islamic Jihad, also known as Islamic Jihad Organization, also known as Revolutionary Justice Organization, also known as Organization of the Oppressed on Earth, also known as Islamic Jihad for the Liberation of Palestine, also known as Organization of Right Against Wrong, also known as Ansar Allah, also known as Followers of the Prophet Muhammed

Japanese Red Army
also known as Nippon Sekigun, also known as Nihon Sekigun, also known as the Anti-Imperialist International Brigade, also known as the Holy War Brigade, also known as the Anti-War Democratic Front, also known as the JRA, also known as the AIIB

al-Jihad
also known as Egyptian al-Jihad, also known as New Jihad, also known as Egyptian Islamic Jihad, also known as Jihad Group

Kach
also known as the Repression of Traitors, also known as Dikuy Bogdim, also known as DOV, also known as the State of Judea, also known as the Committee for the Safety of the Roads, also known as the Sword of David, also known as Judea Police, also known as Forefront of the Idea, also known as The Qomemiyut Movement, also known as The Yeshiva of the Jewish Idea

Kahane Chai
also known as Kahane Lives, also known as the Kfar Tapuah Fund, also known as The Judean Voice, also known as The Judean Legion, also known as The Way of the Torah, also known as The Yeshiva of the Jewish Idea, also known as KOACH

Kurdistan Workers' Party
also known as the PKK, also known as Partiya Karkeran Kurdistan

Liberation Tigers of Tamil Eelam
also known as LTTE, also known as Tamil Tigers, also known as Ellalan Force

Mujahedin-e Khalq Organization
also known as MEK, also known as MKO, also known as Mujahedin-e Khalq, also known as People's Mujahedin Organization of Iran, also known as PMOI, also known as Organization of the People's Holy Warriors of Iran, also known as Sazeman-e Mujahedin-e Khalq-e Iran, also known as National Council of Resistance, also known as NCR, also known as the National Liberation Army of Iran, also known as NLA

National Liberation Army
also known as the ELN, also known as the Ejercito de Liberacion Nacional

Palestine Islamic Jihad-Shaqaqi Faction
also known as PIJ-Shaqaqi Faction, also known as PIJ-Shallah Faction, also known as Palestinian Islamic Jihad, also known as PIJ, also known as Islamic Jihad of Palestine, also known as Islamic Jihad in Palestine, also known as Abu Ghunaym Squad of the Hizballah Bayt Al-Maqdis

Palestine Liberation Front-Abu Abbas Faction
also known as the Palestine Liberation Front, also known as the PLF, also known as the PLF-Abu Abbas

Popular Front for the Liberation of Palestine
also known as the PFLP, also known as the Red Eagles, also known as the Red Eagle Group, also known as the Red Eagle Gang, also known as the Halhul Gang, also known as the Halhul Squad

Popular Front for the Liberation of Palestine-General Command
also known as PFLP-GC

Revolutionary Armed Forces of Colombia

also known as FARC, also known as Fuerzas Armadas Revolucionarias de Colombia

Revolutionary Organization 17 November

also known as 17 November, also known as Epanastatiki Organosi 17 Noemvri

Revolutionary People's Liberation Party/Front

also known as Devrimci Halk Kurtulus Partisi-Cephesi, also known as the DHKP/C, also known as Devrimci Sol, also known as Revolutionary Left, also known as Dev Sol, also known as Dev Sol Silahli Devrimci Birlikleri, also known as Dev Sol SDB, also known as Dev Sol Armed Revolutionary Units

Revolutionary People's Struggle

also known as Epanastatikos Laikos Agonas, also known as ELA, also known as Revolutionary Popular Struggle, also known as Popular Revolutionary Struggle, also known as June 78, also known as Organization of Revolutionary Internationalist Solidarity, also known as Revolutionary Nuclei, also known as Revolutionary Cells, also known as Liberation Struggle

Shining Path

also known in Spanish as Sendero Luminoso, also known as SL, also known as the Partido Comunista del Peru en el Sendero Luminoso de Jose Carlos Mariategui (Communist Party of Peru on the Shining Path of Jose Carlos Mariategui), also known as Partido Comunista del Peru (Communist Party of Peru), also known as PCP, also known as Socorro Popular del Peru (People's Aid of Peru), also known as SPP, also known as Ejercito Guerrillero Popular (People's Guerrilla Army), also known as EGP, also known as Ejercito Popular de Liberacion (People's Liberation Army), also known as the EPL

Tupac Amaru Revolutionary Movement

also known as MRTA, also known as the Movimiento Revolucionario Tupac Amaru

I further direct that these designations be published in the **Federal Register** on October 8, 1999, as required by section 219(a)(2)(A)(ii) of the INA.

Dated: October 6, 1999.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 99–26565 Filed 10–7–99; 5:00 pm]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 2981/P.L. 106–64

To extend energy conservation programs under the Energy Policy and Conservation Act through March 31, 2000. (Oct. 5, 1999; 113 Stat. 511)

S. 1059/P.L. 106–65

National Defense Authorization Act for Fiscal Year 2000 (Oct. 5, 1999; 113 Stat. 512)

S. 293/P.L. 106–66

To direct the Secretaries of Agriculture and Interior to convey certain lands in San Juan County, New Mexico, to San Juan College. (Oct. 6, 1999; 113 Stat. 977)

S. 944/P.L. 106–67

To amend Public Law 105-188 to provide for the mineral leasing of certain Indian lands in Oklahoma. (Oct. 6, 1999; 113 Stat. 979)

S. 1072/P.L. 106–68

To make certain technical and other corrections relating to the Centennial of Flight Commemoration Act (36 U.S.C. 143 note; 112 Stat. 3486 et seq.). (Oct. 6, 1999; 113 Stat. 981)

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