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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC64

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food and Nutrition Services and Administration Funding Formulas Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends both the food and the nutrition services and administration (NSA) funding formulas to improve the effectiveness of WIC funds distribution now that WIC is in a relatively stable funding environment. The amended food funding formula helps to ensure food funds are allocated to State agencies that can utilize the funds to maintain current participation as well as to direct funds, as available, to State agencies that are receiving a smaller portion of funding relative to their proportion of the WIC eligible population than other State agencies. The amended NSA funding formula simplifies the funding formula by deleting obsolete components and revising existing components to more equitably distribute funds among State agencies.

EFFECTIVE DATE: This rule is effective October 1, 1999.

SUPPLEMENTARY INFORMATION:

Background

Proposed Rule

The Food and Nutrition Service (FNS) published a proposed rule on October 13, 1998 in the **Federal Register** (63 FR 54629) outlining the revisions of the food and nutrition services and administration funding formulas for WIC. The proposed rule provided for a 90-day comment period, which ended on January 11, 1999. Two hundred twenty-two comment letters were received from a variety of sources, including State and local agencies, Members of Congress, advocacy groups and other public interest groups. FNS has given all comments careful consideration in the development of this final rule and would like to thank all commenters who responded to the proposal.

Need for Revisions to the WIC Funding Formulas

The WIC Program has consistently demonstrated its effectiveness in promoting the health and nutritional well being of low-income women, infants and children at nutritionally related medical or dietary risk. The WIC Program has grown and changed significantly during the past few years. However, as growth has plateaued, FNS believes that it is appropriate to change both the NSA and food funding formulas to enhance their effectiveness at distributing funds fairly and equitably among WIC State agencies in an environment in which appropriations are relatively stable.

The WIC Program is a fixed grant program, not a Federal entitlement program, and is not guaranteed unlimited funds. WIC State agencies must manage within a finite appropriation level. However, State agencies have considerable latitude to manage program costs to accommodate variable funding levels.

The formulas in this rule better provide State agencies with the equal opportunity to serve eligible persons who apply for benefits. Currently, State agency funding levels are not necessarily proportional to their WIC eligible population. The revised formulas are intended to allocate funds more fairly among State agencies under a relatively stable funding environment.

Nutrition Services and Administration (NSA) Funding Formula

The current WIC NSA funding formula became effective April 1, 1988. The objectives of the formula were to ensure a reasonable measure of funding stability while providing funding levels that enabled equivalent services to participants across State agencies and to promote incentives for reducing food costs so that more persons may be served.

The current NSA formula is, however, complicated and requires a tremendous amount of data collection—some of which may no longer be needed or has little impact on the actual allocation of funds. Further, some data are not available in time to permit issuance of final grants at the beginning of the fiscal year. As a result, FNS feels that the current NSA funding formula is no longer the most efficient and effective means of distributing NSA funds.

Current NSA Provisions—General

The WIC regulations at 7 CFR 246.16 (c)(2) set forth both the NSA funding requirements as established in Section 17 (h) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(h)) and the process by which NSA funds are allocated to State agencies. The current NSA funding formula meets the legislative requirements by: (1) Establishing a ''target'' NSA funding level, referred to as parity, that each State agency should receive as its fair share NSA grant; (2) preserving stability by guaranteeing, to the extent funds are available, the prior year NSA grant level, and then gradually moving State agencies to their parity target level; and (3) addressing the varying needs of each State agency by allocating regional discretionary funds based on regional and National priorities.

The following is a discussion of each provision, as proposed, comments received on the proposal, and an explanation of the provisions set forth in this final rule.

Current NSA Parity Component

The current parity target level is based primarily on the number of participants projected to be served by State agencies. Using food grant levels allocated for the current fiscal year, FNS projects the number of participants each State agency is expected to serve taking into consideration its State-reported per participant food costs and inflation. In addition to projected participation, three adjustments are made to this participation-based formula to recognize factors believed to affect the cost of Program administration. These include:

(a) *Economies of scale*—recognizes the higher per participant costs associated with smaller participation levels (currently an adjustment is made at three levels: 5,000 or fewer

participants; 5,001–15,000 participants; and more than 15,000 participants);

(b) *Salary differentials*—considers the differential salary levels paid within each State for employees in Public Administration, Health and Social Services; and

(c) *Targeting of benefits to high-risk participants*—considers the proportion of Priority I participants served by the State agency.

Currently, eighty percent of funds available for allocation through the parity component are allocated in accordance with projected participation, adjusted by the economy of scale factor. This is done on the basis of administrative grant per participant (AGP) rates that are adjusted for the higher per participant costs associated with smaller participation levels (15,000 or fewer participants per month). Twenty percent of funds available for the parity grant component are allocated on the basis of differential salary levels and service to Priority I participants.

Proposed ''Fair Share'' Component

Renaming the Parity Component. The term ''parity'' is used to describe the basic concept of gradually moving State agencies to a funding level that represents their respective ''fair share'' of available funds. FNS believes that the term ''fair share'' better describes the purpose and intent of this component and, therefore, proposed that the current ''parity'' component be renamed the ''NSA fair share'' component. This change would also provide continuity with terminology used in the food funding formula.

The majority of commenters addressing this issue agreed to change the term ''parity'' to ''fair share''—only two commenters disagreed with the change. The provision remains unchanged from the proposed rule.

Food Cost Data Used in Calculating Projected Participation. The NSA funding formula projects the number of participants to be served by each State agency by dividing the current year food grant level by the State-reported per participant food cost, adjusted for inflation. Prior to fiscal year 1999, the data used was the closed-out per participant food cost data for the 12-month period beginning in July and ending in June prior to the fiscal year for which the grants are being calculated. Closed-out food cost data is usually available 150 days after the report month. Therefore, the closed-out food cost data for June is not available to FNS until late November, at which time the final grants could be calculated for release on January 1.

To allow for the calculation of final WIC grants at the beginning of the fiscal year, FNS proposed that April through March closed-out food cost data be used. As is currently done, an inflation adjustment would be applied to the food cost data to more accurately project actual food costs and to adjust for inflationary increases that may occur during the remainder of the fiscal year. While other time frames were considered for use, it was felt that a 12-month base of food cost data was necessary to take into consideration seasonal fluctuations of food prices. While the current regulations do not address the specific months of food cost data used in the calculations, FNS wanted to obtain comments concerning the change in the time frames.

Based on lengthy deliberations, it was concluded that we had the statutory authority to use April through March closed out food cost data for the calculation of fiscal year 1999 grants. WIC State agencies were very supportive of this change, which allowed final grants to be issued on October 1, 1998.

This change was further supported in the comments received on this provision in the proposed rule. Although the time frame for the closed-out food costs will now be April through March, the final rule will continue to be silent on the actual dates used in the calculation for the funding formula.

Economy of Scale/Bands. As noted above, NSA costs are affected by economy of scale. There are certain fixed administrative costs in the delivery of program benefits incurred by a State agency that do not vary regardless of the size of the caseload. Therefore, State agencies with larger participation levels are able to realize reductions in administrative expenditures per person (AEP) as these fixed costs are spread among more participants. Smaller State agencies, particularly Indian Tribal Organizations (ITOs), have comparatively higher costs per participant. Although the current NSA funding formula includes a size-adjusted cost factor, other alternatives and adjustment factors were examined to determine if the current adjustments adequately recognize the various range of administrative expenditures for State agencies of differing sizes.

The proposed rule recommended retention of the current bands until updated NSA cost information needed to determine new band sizes is available. It was felt that the data upon which the AEP bands are currently based remains the best available. However, more research and analysis is needed to understand how economies of scale actually affect WIC NSA costs, what specific costs are most influenced, the participation level(s) at which economies of scale vary and how much allowance should be made at each of those levels.

Commenters were asked to provide suggestions as to how economies of scale can be objectively and fairly determined for future consideration. While no commenters provided concrete suggestions, the majority of commenters were in agreement that the current bands should be retained until further analysis could be conducted. FNS will study the economies of scale (bands) as part of its commitment to improve the data used in the funding formulas. Additionally, the General Accounting Office (GAO) is conducting a three-year study on WIC NSA costs which may provide additional data that can be utilized in determining appropriate band sizes and adjustment factors. Therefore, until FNS' further analysis is completed and appropriate baseline data is available, we will continue to use the current bands of 5,000 or fewer; 5,001 to 15,000; and over 15,000. The corresponding percent adjustment between bands will also be retained.

Salary and Priority I Participant Targeting Component. The combined salary and targeting component determines 20 percent of a State agency's NSA fair share target level. In an effort to simplify the funding formula and to delete obsolete components, both the salary and targeting components were analyzed to determine whether they have a significant and appropriate impact on the final NSA grant allocations.

Salary Component. Salary data were incorporated into the current funding formula in recognition that salary costs represent by far the most significant contributor to WIC NSA costs. Additionally, due to regional variations in labor costs, similar levels of service have different salary costs. The salary data used to compute differential salary levels for State agencies includes average annual salaries for government workers provided by the Bureau of Labor Statistics (BLS). As previously determined by FNS, the salary level for a GS–9, step I in the Federal Government's General Schedule pay scale is used for those State agencies and territories for which BLS data is unavailable. The most current data available from BLS usually reflects average salary levels paid two years prior to the applicable fiscal year for which funds are allocated.

FNS recognizes that the salary component is a controversial area and that there are strong opinions and arguments supporting both the inclusion and deletion of the salary component in the NSA funding formula. The proposed rule retained the current salary component, which would continue to equal 10 percent of the NSA fair share component of the NSA funding formula. However, comments on whether the current salary factor contributes to an appropriate and fair allocation of NSA funds were welcomed.

As anticipated, there were many comments on this provision. The majority of the commenters thought this provision should be retained. These commenters generally stated that the salary component is needed due to their States' higher cost of living and that salaries constitute the largest component of administrative budgets. However, States opposing the provision argued that the BLS data does not accurately reflect the cost of salaries paid to WIC staff and that many other factors, such as a state's geography or multilingual needs, affect the cost of providing services. Therefore, they believe it would be more appropriate to make grant adjustments based on these other factors when determining NSA funding needs.

After much consideration of this provision, FNS has decided to retain the current salary component. The salary component would continue to equal 10 percent of the NSA fair share component of the NSA funding formula. The provision is reflected at revised § 246.16(c)(2)(i) of program regulations.

Targeting Component. The targeting component was originally designed to provide an incentive for targeting benefits to the highest risk participants, Priority I women and infants, as defined in current program regulations at § 246.7 (e)(4)(i). At the time it was incorporated into the NSA funding formula in 1988, the food funding formula also included a targeting component. In a time when WIC was not able to meet the need for program benefits of the highest risk individuals, targeting funds to those State agencies that were serving a greater proportion of high-risk individuals was a necessary objective. Now, however, based on estimates derived from State-reported participation data, nationwide, virtually all fully eligible infants are receiving services through the WIC Program and most fully eligible women are participating at some point during their pregnancies. Therefore, FNS proposed that the targeting component be deleted since it is no longer needed to encourage and support service to Priority I participants.

The majority of commenters supported the deletion of the targeting component. Reasons cited by the commenters to support deletion included simplification, the effect on the overall NSA grant is negligible, and that it would promote consistency with the food funding formula, which deleted its targeting component in 1994. Therefore, the final rule retains the provision to delete the targeting component. This deletion is reflected at revised § 246.16(c)(2)(i) of program regulations. The deletion of the targeting components allows 100 percent of the NSA fair share funds to be allocated based on projected participation levels, adjusted for State agency size and salaries (90 percent) and salary differentials (10 percent).

NSA Stability Funds

Throughout the deliberations on the possible revisions to the NSA funding formula, it was recognized that a critical aspect of NSA funding is the stability component. The stability grant helps to guarantee, to the extent funds are available, some measure of funding continuity that acknowledges that State agencies have fixed NSA costs that are relatively stable from year to year and are necessary for continued Program operations. In the event that available funding is insufficient to fund State agencies at their stability funding level, each State agency experiences a pro-rata reduction to its grant, as is done with the food funding formula.

The stability component was continued in the proposed rule, with modification. The modification concerned the use of discretionary funding decisions when calculating the State agency's NSA stability grant level. Currently, discretionary funds become a permanent part of a State agency's stability grant the following year. Over time, discretionary funding decisions made by FNS may have unnecessarily inflated the grant allocations provided to particular States due to additional funding allocated for large one-time capital expenditures. Therefore, FNS proposed changes to the stability, or base, grant calculation to eliminate consideration of discretionary funding (or, as described below, ''operational adjustment'' funding) allocations made in the prior fiscal year.

The majority of the commenters agreed that the NSA base funding level should be the prior year formula calculated grant prior to any discretionary funding adjustments. Commenters agreed that this change would eliminate the impact of large discretionary allocations made to States for one-time capital expenditures. Revised § 246.16(c)(2)(ii) reflects the provision as proposed, which provides each State agency a base funding level equal to its NSA grant from the previous year prior to any operational adjustment funding allocations for that year. As is currently the case, each State agency's base funding level would be reduced by a pro-rata share if insufficient funds were available.

As a result of this change in the calculation of the NSA base funding level, we believe the term stability no longer accurately reflects this component of the NSA funding formula. Therefore, the term NSA base funding level will be used, and represents the State agency's prior year formula calculated grant before any operational adjustment funding allocations are made. This change is reflected in the final rule in § 246.2 of program regulations, from which is deleted the definition of stability funds, and also in § 246.16 (c)(2) from which are deleted references to the term stability and the concept of stability funding.

NSA Residual Funds

Currently, after NSA stability grants are determined, any remaining funds available for allocation are referred to as residual funds and are distributed according to § 246.16(c)(2)(ii) of current program regulations. Residual funds represent funding that either: (1) Helps to cover NSA costs associated with increases in projected participation, or (2) moves State agencies closer to their parity, or, under the revised regulations, their fair share target funding level. The fair share for NSA funds is an administrative grant per person (AGP) for each projected participant, adjusted for factors that affect NSA costs.

FNS proposed that priority for residual funds should be given only to State agencies below their NSA fair share target funding level. The fair share principle, which is participant-based, represents the amount of NSA funds needed by a State agency to support current participation projections based on the food grant the State agency will receive. The part of the current regulatory provision that provides funds on the basis of increased participation countervails the fair share objective by allocating funds to State agencies that are already over their fair share funding level.

Therefore, FNS proposed that the NSA formula grant for each State agency be calculated based on each State agency's fair share target funding level, which considers the difference between the estimated cost of projected

participation (NSA fair share target level) and the prior year NSA base funding level. If a State agency's NSA fair share target funding level is greater than its base funding level, the State agency would be eligible to receive additional NSA funds proportionate to their respective shortfall from the fair share target funding level.

Only 15 comments were received with respect to this provision. Over half the commenters supported the deletion of the component of the NSA funding formula regulations that distributes NSA funding based on increases in projected participation. Those in support of deletion cited simplification as the primary justification. Therefore, FNS retains the provision as proposed as reflected in revised § 246.16(c)(2)(iii). As a result of this deletion, the term ''residual funds'' is deleted from § 246.2—Definitions.

Discretionary Funds

The success of the WIC Program is due in large part to the flexibility of the program to accommodate individual State needs and initiatives. As the WIC Program continues to change and mature, the responsiveness of the Program to meet State agencies' varying needs and provide for program innovation becomes more critical.

Section 246.16(c)(2)(iii) currently requires that ten percent of each State agency's total NSA grant level be subtracted and aggregated by FNS region to form FNS regional discretionary funding pools. In FY 1999, these pools amounted to over $100 million nationally. Each FNS regional office then allocates the discretionary funds back to State agencies within the region on the basis of the varying needs of State agencies and national guidelines. Through the regional allocation of discretionary administrative funds, the funding process can satisfy many of the administrative and structural needs not accounted for in the NSA funding formula (e.g., one-time acquisition costs for management information systems).

FNS considered the discretionary funding allocation process and the actual use of these funds. As a result of these considerations, it was determined that the term ''discretionary'' does not fully represent or accurately describe the use of these funds, and that many State agencies must use these funds for operational costs. Therefore, FNS proposed to change the name ''discretionary'' funds to ''operational adjustment'' (OA) funds. It was felt that this change will help clarify that the use of the funds are for both capital investments as well as operational activities, and that, in many cases, the funds are a critical part of a State agency's WIC grant and are needed to support ongoing operations.

All commenters on this proposal agreed to change the name ''discretionary'' funds to ''operational adjustment'' funds. The commenters felt that the new term better describes how the funds are used. Therefore, this provision of the final rule will stand as proposed.

The degree to which FNS regions have been inconsistent in the methodology used to award discretionary fund allocations and the adherence to national guidelines was also considered. While some regions have used a competitive process to award the majority of available discretionary funds, other regions simply returned a large portion of the available discretionary funds to the State agencies in their region according to the distribution allocated through the funding formula. This inconsistency has caused concern as funding for projects becomes more competitive and funding levels for the program are being scrutinized. Further, FNS regions that include large State agencies that contribute significant amounts of funding to the regional fund have more flexibility than regions with smaller State agencies. FNS recognizes that regions have various funding resources and needs and, for most regions, the process employed for discretionary funds allocation is a mutually acceptable one in which the State agencies and the regions are satisfied with the process. These views were reflected in the proposed rule, which allowed up to 10 percent of the total regional NSA funds to be used for OA funding (formerly discretionary fund) allocations. However, regions would be given the authority to withhold less than 10 percent of the total regional NSA funds available if deemed appropriate for that region's needs.

The majority of commenters agreed with the proposal that OA allocations should be equal to up to 10 percent of the total regional NSA funds and that regions should be given the authority to withhold less than ten percent if deemed appropriate. Commenters believe that this allows the FNS regions to make decisions based on the needs of WIC State agencies. The final provision will stand as proposed and is reflected in revised § 246.16(c)(2)(iv) of program regulations.

Food Funding Formula

Current Food Funding Provisions—General

The current food funding formula, finalized on October 6, 1994, was developed for use during a time of participation growth and annual increases in WIC appropriations. The primary objectives were to: (1) Provide a greater share of funds to State agencies receiving comparatively less than their fair share of funds; (2) simplify the food funding formula and delete obsolete components; and (3) provide for a level of stability for State agencies. While the current food funding formula has met those objectives, WIC has now entered a time in which, at least for the foreseeable future, significant increases in appropriations are not likely. The emphasis must now be placed on shifting available funds among State agencies to reflect changes in distribution of the eligible population and to reach the maximum number of participants possible with available program resources.

The following is a discussion of each provision, as proposed, and an explanation of the provisions set forth in this final rule:

Current Food Stability Component

The stability component of the current food funding formula provides that each State agency receive its prior year food grant, adjusted for full inflation, contingent on available resources. If funding is inadequate to fund all State agencies at this level, each State agency would receive a reduced stability grant based on a pro-rata reduction of funds.

The current stability component, in a stable funding environment, results in little if any additional funding to assist State agencies that, for historical reasons or due to demographic shifts, do not have a share of WIC funding proportionate to their share of the eligible WIC population. These State agencies are considered to be ''under fair share''. Therefore, FNS proposed that the stability component of the food funding formula be modified to allow some funds to be available to allocate to under fair share State agencies to further the objective of funding equity among State agencies. In a relatively stable funding environment, mechanisms must be in place to allow for some movement of funds to correspond to shifts in eligible populations, and the ability of State agencies to fully utilize available funding to maximize participation.

Proposed Stability Component

Long consideration was given to stability food funding and whether full inflation should be guaranteed. Concerns were raised that if State agencies were not funded with full inflation, prior fiscal year participation levels may not be sustained, thereby forcing some State agencies to cut caseload. This concern, however, was countered by the objective of making available, to the extent possible, additional funding to under-fair-share State agencies. This would provide those States the opportunity to add participants to bring them closer to the level of service provided by State agencies that have received allocations at or above their fair share.

After exploring options available, FNS proposed to modify § 246.16(c)(3)(ii) to redefine stability as the prior-year food grant level, without any initial adjustments for inflation. Any funds remaining after guaranteeing prior year-end grant levels would be split. Fifty percent of the remaining funding would be provided for an inflation allowance based on the fair share funding level allocated with the new year appropriation instead of the prior year grant levels currently used in the formula. The remaining 50 percent would be allocated to under-fair-share State agencies to bring them closer to their fair share level. The funds subject to the 50/50 split would include current year appropriated funds and unspent recoverable funds from the prior fiscal year.

These changes to the stability component would help to ensure that even in a funding environment in which the program receives only a modest increase above prior year grant levels, State agencies with less than their fair share of funds would continue to receive a greater increase in funding relative to over fair share State agencies.

To determine the amount of funds allocated to each State agency, FNS proposed that State agencies would initially receive their prior year end food grant as their stability grant. As is currently done, if funds are insufficient to fund all State agencies at the prior year end grant level, each State agency would receive a pro-rata reduction to its grant. If funds are available in excess of prior year-end grant levels, 50 percent of such funds would be made available to each State agency for inflation. FNS proposed that an inflation allowance be calculated based on the difference between each State agency's inflated appropriated fair share grant level and their appropriated fair share grant level. The remaining 50 percent of available funds would be allocated to under-fair-share State agencies proportionate to their shortfall from their fair share target funding level. Once all State agencies have received their target food inflation level, 100 percent of all available funds would be allocated to under fair share State agencies. If sufficient funding is available to fund inflation and all under fair share State agencies up to their fair share target levels of funding, additional funds would be allocated according to § 246.16 (c)(3)(iii)(B) to any State agency requesting additional food funds.

Approximately 99 percent of the 194 commenters on this provision were strongly opposed to the 50/50 split. The majority of commenters felt the 50/50 split was seriously flawed and strongly supported the original 80/20 split, *i.e.*, 80 percent for inflation, 20 percent for under fair share State agencies, that was discussed during meetings between FNS and its State and local partners. Only two commenters favored the 50/50 split and one commenter suggested a 60/40 split of the remaining funds. Additionally, approximately 99 percent of the commenters opposed the calculation of inflation based on the fair share target funding level. The commenters were in support of calculating inflation based on prior year grants.

The primary reason cited by the commenters supporting the 80/20 split was that the 50/50 split would provide too few funds to State agencies for inflation. Commenters felt strongly that the 50/50 distribution of funds could lead to reductions in current participation levels in over-fair-share State agencies.

The commenters were equally concerned with the methodology used to calculate inflation. Of those responding to this provision, it was unanimously agreed upon that basing inflation levels on each State agency's fair share target grant level would further threaten to reduce the funds to over-fair-share States and would jeopardize current participation levels.

FNS is persuaded by the concerns raised by commenters on this aspect of the proposed rule. Therefore, this final rule provides at § 246.16(c)(3)(iii) that if funds are available in excess of prior year-end grant levels, 80 percent of such funds would be made available to each State agency for inflation. An inflation allowance will be calculated based on the prior year-end grant. The remaining 20 percent of available funds would be allocated to under-fair-share State agencies proportionate to their shortfall from their fair share target funding level.

Many commenters recommended that the term ''prior year grant'' be used instead of ''stability'' funding. It was felt that the term ''stability'' connotes ''adequate'' funding, which may not be the case. Commenters also felt for clarity we should identify this funding level as what it is, which is the prior year grant.

FNS concurs with this suggestion. Therefore, the final rule uses the term ''prior year grant'' instead of ''stability funding'' and §§ 246.2 and 246.16(c)(3)(iii) are modified accordingly.

Adjustments for Higher Cost Areas

In calculating the fair share target food level for State agencies, current regulations permit an adjustment for the higher cost of food for State agencies located outside of the 48 contiguous States and the District of Columbia. This adjustment is done to ensure that the share of funds received by these State agencies is adequate to serve their share of the eligible population given their higher costs. Currently, five State agencies receive this adjustment. Current regulations allow for these adjustments after a State agency demonstrates that it has successfully implemented voluntary cost containment measures, such as improved vendor management practices, participation in multi-state agency infant formula rebate contracts or other cost containment efforts.

FNS believes that the current adjustments and conditions under which adjustments may be applied are consistent with program objectives and consistent with high cost adjustments available to States in the National School Lunch Program and the School Breakfast Program. No comments were received on this component of the funding formula. Therefore, the final rule reflects no changes at § 246.16(c)(3)(i)(B).

Food Spending Performance Standard

The current food spending performance standard was implemented in fiscal year 1995. Failure to meet this standard results in an adjustment of the current year grant. The current standard requires each State agency to expend at least 97 percent of its food grant. Typically, State agencies cannot spend 100 percent of their WIC grants due to factors that are inherent to the program. For example, because the federal grant is the only source of funds for WIC in most states, State agencies must exercise caution to ensure that they do not spend more than their federal grant. In addition, because State agencies must estimate the value of vouchers and checks to distribute food benefits, they cannot determine the program's actual

food costs until the vouchers and checks have been redeemed and processed.

While FNS recognizes that the structure of the program may cause some State agencies to have difficulty meeting this expenditure standard, the majority of State agencies should be able to expend at least 97 percent of its food funds in a stable funding environment. No comments were received on this provision of the proposed rule. Therefore, the 97 percent food spending performance standard will be retained in this final rule at § 246.16(e)(2)(i) and the obsolete references to the performance standards for fiscal years 1995–1997 will be deleted.

Eligibility Data

Data on the number of individuals estimated to be income eligible for program benefits is produced annually at the national level. State-level estimates of income-eligible infants and children are produced using similar data. These estimates, in turn, are used to estimate the fair share funding levels for WIC food grants.

Much consideration was given as to the reliability and accuracy of the income eligible data. Current regulations stipulate at § 246.16(c)(3)(i) that the income eligible data be calculated by FNS using the best available, nationally uniform, indicators. FNS continues to believe that the current methodology is the best available data and proposes no changes at this time. However, FNS will reevaluate the method for estimating the potential eligible population if new data sources or methods become available that could improve the current estimation process.

All commenters addressing this section were in support of continued work in estimating the potential eligible data. FNS is committed to ensuring that WIC eligibles estimates are developed using the best data and methods available. In prior years the agency has devoted substantial resources to research and analysis of data sources and technical approaches to eligibles estimation, and the estimation approaches have been improved as a result of these efforts. We fully anticipate that such efforts will continue and FNS will continue to update and improve the estimation process over time.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866, and has been reviewed by the Office of Management and Budget. An impact analysis statement has been prepared and is available upon request.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1531 *et seq.*) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA (2 U.S.C. 1532), FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA (2 U.S.C. 1535) generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Shirley R. Watkins, Under Secretary, Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects how FNS calculates food and NSA grant allocations for State agencies. State agencies are not small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act

This final rule does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For the reasons set forth in the final rule in 7 CFR, part 3015, subpart V, and related Notice (48 FR 29114), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have a preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the applications of its provisions, all applicable administrative procedures must be exhausted (7 U.S.C 6912(e)).

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition education, Public assistance programs, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

§ 246.2 [Amended]

2. In § 246.2, the definitions of *Residual funds* and *Stability funds* are removed.

3. In § 246.16:

a. Paragraph (c)(2)(i) is revised.

b. Paragraph (c)(2)(ii) is revised.

c. Paragraphs (c)(2)(iii) and (c)(2)(iv) are redesignated as paragraphs (c)(2)(iv) and (c)(2)(v), respectively, and a new paragraph (c)(2)(iii) is added.

d. Newly redesignated paragraph (c)(2)(iv) is revised.

e. Newly redesignated paragraph (c)(2)(v) is amended by removing the words ''discretionary funds'' and adding, in their place, the words ''operational adjustment funds''.

f. The heading of paragraph (c)(3)(i) and the first sentence of paragraph (c)(3)(i)(A) are revised.

g. Paragraph (c)(3)(ii) is revised.

h. The heading of paragraph (c)(3)(iii)and paragraph (c)(3)(iii)(A) are revised.

i. The first sentence of paragraph (e)(2)(i) is revised.

The revisions and an addition read as follows:

§ 246.16 Distribution of funds.

* * * * *

(c) * * *

(2) * * *

(i) *Fair share target funding level determination.* For each State agency, FNS will establish, using all available NSA funds, an NSA fair share target funding level which is based on each State agency's average monthly participation level for the fiscal year for which grants are being calculated, as projected by FNS. Each State agency receives an adjustment to account for the higher per participant costs associated with small participation levels and differential salary levels relative to a national average salary level. The formula shall be adjusted to account for these cost factors in the following manner: 90 percent of available funds shall provide compensation based on rates which are proportionately higher for the first 15,000 or fewer participants, as projected by FNS, and 10 percent of available funds shall provide compensation based on differential salary levels, as determined by FNS.

(ii) *Base funding level.* To the extent funds are available and subject to the provisions of paragraph (c)(2)(iv) of this section, each State agency shall receive an amount equal to 100 percent of the final formula-calculated NSA grant of the preceding fiscal year, prior to any operational adjustment funding allocations made under paragraph (c)(2)(iv) of this section. If funds are not available to provide all State agencies with their base funding level, all State agencies shall have their base funding level reduced by a pro-rata share as required by the shortfall of available funds.

(iii) *Fair share allocation.* Any funds remaining available for allocation for NSA after the base funding level required by paragraph (c)(2)(ii) of this section has been completed and subject to the provisions of paragraph (c)(2)(iv) of this section shall be allocated to bring each State agency closer to its NSA fair share target funding level. FNS shall make fair share allocation funds available to each State agency based on the difference between the NSA fair share target funding level and the base funding level, which are determined in accordance with paragraphs (c)(2)(i) and (c)(2)(ii) of this section, respectively. Each State agency's difference shall be divided by the sum of the differences for all State agencies, to determine the percent share of the available fair share allocation funds each State agency shall receive.

(iv) *Operational adjustment funds.* Each State agency's final NSA grant shall be reduced by up to 10 percent, and these funds shall be aggregated for all State agencies within each FNS region to form an operational adjustment fund. The Regions shall allocate these funds to State agencies according to national guidelines and shall consider the varying needs of State agencies within the region.

* * * * *

(3) * * *

(i) *Fair share target funding level determination.* (A) For each State agency, FNS will establish a fair share target funding level which shall be an amount of funds proportionate to the State agency's share of the national aggregate population of persons who are income eligible to participate in the Program based on the 185 percent of poverty criterion. * * *

* * * * *

(ii) *Prior year grant level allocation.* To the extent funds are available, each State agency shall receive a prior year grant allocation equal to its final authorized grant level as of September 30 of the prior fiscal year. If funds are not available to provide all State agencies with their full prior year grant level allocation, all State agencies shall have their full prior year grant level allocation reduced by a pro-rata share as required by the shortfall of available funds.

(iii) *Inflation/fair share allocation.* (A) If funds remain available after the allocation of funds under paragraph (c)(3)(ii) of this section, the funds shall be allocated as provided in this paragraph (c)(3)(iii). First, FNS will calculate a target inflation allowance by applying the anticipated rate of food cost inflation, as determined by the Department, to the prior year grant funding level. Second, FNS will allocate 80 percent of the available funds to all State agencies in proportionate shares to meet the target inflation allowance. Third, FNS will allocate 20 percent of the available funds to each State agency which has a prior year grant level allocation, as determined in paragraph (c)(3)(ii) of this section and adjusted for inflation as determined in this paragraph (c)(3)(iii), which is still less than its fair share target funding level. The amount of funds allocated to each State agency shall be based on the difference between its prior year grant level allocation plus target inflation funds and the fair share funding target level. Each State agency's difference shall be divided by the sum of the differences for all such State agencies, to determine the percentage share of the 20 percent of available funds each State agency shall receive. In the event a State agency declines any of its allocation under either this paragraph (c)(3)(iii) or paragraph (c)(3)(ii) of this section, the declined funds shall be reallocated in the percentages and manner described in this paragraph (c)(3)(iii). Once all State agencies receive allocations equal to their full target inflation allowance, any remaining funds shall be allocated or reallocated, in the manner described in this paragraph (c)(3)(iii), to those State agencies still under their fair share target funding level.

* * * * *

(e) * * *

(2) * * *

(i) The amount allocated to any State agency for food benefits in the current fiscal year shall be reduced if such State agency's food expenditures for the preceding fiscal year do not equal or exceed 97 percent of the amount allocated to the State agency for such costs. * * *

* * * * *

Dated: October 13, 1999.

Shirley R. Watkins,

Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–27431 Filed 10–20–99; 8:45 am]

BILLING CODE 3410–30–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB80

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; FCB Assistance to Associations; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Final rule; effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 615 on September 15, 1999 (64 FR 49959). In this final rule, we remove the requirement that Farm Credit Banks and agricultural credit banks (collectively referred to as banks) obtain our prior approval before making certain transfers of capital to affiliated associations. Instead, we require banks to take into account certain considerations, and to notify bank shareholders and us, before making such transfers. This amendment benefits banks and their associations because it provides clear guidelines and streamlined procedures for banks to follow when they wish to transfer

capital to associations. It also enables them to transfer the capital in a more timely manner. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 21, 1999.

EFFECTIVE DATE: The regulation amending 12 CFR part 615 published on September 15, 1999 (64 FR 49959) is effective October 21, 1999.

FOR FURTHER INFORMATION CONTACT:

Dale L. Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Jennifer A. Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444

(12 U.S.C. 2252(a)(9) and (10)).

Dated: October 15, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–27497 Filed 10–20–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–4]

Modification of Class E Airspace; Sedona, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Sedona, AZ. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 3 at Sedona Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 3 SIAP to Sedona Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Sedona Airport, Sedona, AZ.

EFFECTIVE DATE: 0901 UTC November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On July 29, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Sedona, AZ (64 FR 41054). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 3 SIAP at Sedona, Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 3 SIAP at Sedona Airport, Sedona, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Sedona, AZ. The development of a GPS RWY 3 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 3 SIAP at Sedona Airport, Sedona, AZ.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O.. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Sedona, AZ [Revised]

Sedona Airport, AZ

(Lat. 34°50′55″ N. long. 111°47′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Sedona Airport, excluding the portion within the Flagstaff, AZ, Class E airspace area.

* * * * *

Issued in Los Angeles, California, on October 5, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–27513 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 902

[Docket No. FR–4497–N–02]

RIN 2577–AC08

Public Housing Assessment System (PHAS); Transition to the PHAS

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice of delayed implementation.

SUMMARY: This document advises of transition assistance that will be provided in connection with implementation of the Public Housing Assessment System (PHAS) for public housing agencies (PHAs) with fiscal years ending on September 30, 1999, and December 31, 1999. HUD also gives notice that it will issue PHAS Advisory Scores and Management Assessment Scores as provided in the **SUPPLEMENTARY INFORMATION** of this document.

FOR FURTHER INFORMATION CONTACT: For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at (888)–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac. Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD's rule implementing the PHAS was published on September 1, 1998 (64 FR 46596), and became effective October 1, 1998. Although the PHAS regulation became effective October 1, 1998, the September 1, 1998 final rule provided PHAs with a delayed implementation date for the PHAS. The final rule took into consideration the time that was needed by PHAs to make the transition to the new assessment system. As provided by the September 1, 1998 final rule, the PHAS was scheduled to be implemented for PHAs with fiscal years ending on and after September 30, 1999.

On June 22, 1999 (64 FR 33348), HUD published a proposed rule to amend certain provisions of the PHAS regulation, codified at 24 CFR part 902. The Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (commonly referred to as the ''Public Housing Reform Act'') made certain changes to the statutory basis for the PHAS, which needed to be reflected in the regulation. Additionally, during the scheduled PHAS transition year (September 1998 to September 1999), HUD gained experience and valuable information from its physical inspection of PHA properties, testing the PHAS systems, and talking to PHAs about the PHAS. As a result of the experience and information gained, HUD determined that certain changes should be made to the PHAS regulation. These changes were described in the preamble to the June 22, 1999, proposed rule.

HUD's public comment period on the June 22, 1999, proposed rule closed August 23, 1999. Many of the PHAs who commented on this rule have fiscal years ending September 30, 1999, and December 31, 1999, making them the first PHAs to be issued PHAS scores under the September 1, 1998 rule. These PHAs requested additional time to prepare for compliance with the PHAS requirements, and HUD will grant them additional time as provided in this notice.

PHAs With Fiscal Years Ending 9/30/99 and 12/31/99

For PHAs with fiscal years ending September 30, 1999, or December 31, 1999, HUD will not issue PHAS scores for the fiscal years ending on these dates. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

PHAS Advisory Score. A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will be issued a PHAS advisory score. The PHA must comply with the requirements of 24 CFR part 902 (the PHAS regulation) so that HUD may issue the advisory score.

1. Physical inspections will continue to be performed by HUD, as part of the PHAS advisory score process, using HUD's uniform physical inspection protocols. In the event, however, that changes are made to HUD's Dictionary of Deficiencies, PHAS advisory scores will be revised and reissued to reflect these changes.

2. For these PHAs to successfully make the transition to the PHAS, they must comply with the requirements of PHAS, and be assessed by HUD under the PHAS, if only on an advisory basis.

Management Assessment Score. A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with 24 CFR part 902, subpart D of the PHAS regulation (PHAS Indicator #3, Management Operations).

PHAs With Fiscal Years Ending After 12/31/99

PHAs with fiscal years ending after December 31, 1999 will be issued PHAS scores.

HUD is completing work on its final rule to follow the June 22, 1999 proposed rule. HUD will issue a consensus-based final rule that will reflect the provisions of this Notice, address the public comments, and describe all changes to the PHAS regulation made as a result of the public comment and review process.

Dated: October 15, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

Donald J. LaVoy,

Acting Director, Real Estate Assessment Center.

[FR Doc. 99–27457 Filed 10–20–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–178]

Drawbridge Operation Regulations: Thames River, CT.

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 Amtrak Bridge, mile 3.0, across the Thames River in New London, Connecticut. This deviation from the regulations allows the bridge owner to require a two-hour advance notice for openings, Sunday through Thursday, 10 p.m. to 12 a.m. and 1 a.m. to 4:30 a.m., October 17, 1999, through November 11, 1999. This action is necessary to facilitate the replacement of structural steel at the bridge.

DATES: This deviation is effective from October 17, 1999, through November 11, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, mile 3.0, across the Thames River in New London, Connecticut, has a vertical clearance of 30 feet at mean high water, and 33 feet at mean low water in the closed position.

The bridge owner, National Railroad Passenger Corporation (Amtrak), has requested a deviation from the operating regulations governing the bridge to facilitate the replacement of deteriorated structural steel at the bridge. The Coast Guard previously allowed Amtrak to deviate from the operating regulations at this bridge to facilitate electrical modifications between August 2, 1999,

and September 30, 1999. During the process of the electrical modifications it was discovered that deterioration to the structural steel at the bridge had occurred. As a result, the bridge owner has requested a second deviation to replace the deteriorated structural steel.

Thirty days notice to the Coast Guard for approval of the maintenance repairs was not given by the bridge owner because this work involves vital, unscheduled maintenance that must be performed without undue delay. The Coast Guard has approved Amtrak's request because the work was determined to be necessary for public safety and the continued operation of the bridge.

This deviation to the operating regulations allows the bridge owner to require a two-hour advance notice for bridge openings for the Amtrak Bridge, mile 3.0, across the Thames River in New London, Connecticut. The deviation will be in effect from Sunday through Thursday, 10 p.m. to 12 a.m. and 1 a.m. to 4:30 a.m., October 17, 1999, through November 11, 1999. Requests for bridge openings can be made by calling (860) 395–2355 or on marine radio channel 13 VHF/FM. Mariners requiring an emergency opening are advised to call Amtrak's Chief Dispatcher at (617) 345–7569. Vessels that can pass under the bridge without an opening may do so at all times.

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: October 14, 1999.

Robert F. Duncan,

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

[FR Doc. 99–27553 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–15–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1275

RIN 3095–AA91

Nixon Presidential Materials

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule amends regulations on preservation and processing of and access to the Presidential historical materials of Richard M. Nixon in NARA's custody to reflect the 1998 decision of the U.S. Court of Appeals that the private or personal segments of the original tape recordings must be returned to the Nixon estate. The amended rule affects NARA and the Nixon estate. Other members of the public are not affected because no public access to the private and personal segments of the tapes has ever been permitted.

EFFECTIVE DATE: November 22, 1999.

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

SUPPLEMENTARY INFORMATION: NARA published a notice of proposed rulemaking on July 14, 1999 (64 FR 37922). One comment supporting the proposed rule was received from a member of the public. Accordingly, we are adopting the proposed rule without change.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. It is not a major rule as defined in the Congressional Review Act. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number small entities because it applies only to NARA and the estate of former President Nixon.

List of Subjects in 36 CFR Part 1275

Archives and records.

For the reasons set forth in the preamble, NARA amends part 1275 of title 36, Code of Federal Regulations, as follows:

PART 1275—PRESERVATION AND PROTECTION OF AND ACCESS TO THE PRESIDENTIAL HISTORICAL MATERIALS OF THE NIXON ADMINISTRATION

1. The authority citation for part 1275 continues to read as follows:

Authority: Sec. 102(a) of the National Archives and Records Administration Act of 1984, Pub. L. 98–497; 44 U.S.C. 2104; and secs. 103 and 104 of the Presidential Recordings and Materials Preservation Act 88 Stat. 1695; 44 U.S.C. 2111 note.

2. Revise paragraph (a) of § 1275.48 to read as follows:

§ 1275.48 Transfer of materials.

(a) The Archivist will transfer sole custody and use of those materials determined to be private or personal, or to be neither related to abuses of governmental power nor otherwise of general historical significance, to former President Nixon's estate, or, when appropriate and after notifying the Nixon estate, to the former staff member having primary proprietary or commemorative interest in the materials. Such materials to be transferred include all segments of the original tape recordings that have been or will be identified as private or personal.

* * * * *

3. Revise paragraph (e) of § 1275.64 to read as follows:

§ 1275.64 Reproduction of tape recordings of Presidential conversations.

* * * * *

(e) The Archivist shall produce and maintain a master preservation copy of the original tape recordings for preservation purposes. The Archivist shall ensure that the master preservation copy, like the portions of the original tape recordings retained by the Archivist, does not contain those segments of the tape recordings which have been identified as private or personal and which have been transferred to the Nixon estate in accordance with § 1275.48.

Dated: October 14, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–27374 Filed 10–20–99; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300934; FRL–6386–1]

RIN 2070–AB78

Metolachlor; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the combined residues of the herbicide metolachlor and its metabolites in or on spinach at 0.3 part per million (ppm) for an additional 19½–month period and grass forage at 10 ppm and grass hay at 0.2 ppm for an additional 2–year period. These tolerances will expire and be revoked on December 31, 2001. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on spinach and grass grown for seed. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act

(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).

DATES: This regulation is effective October 21, 1999. Objections and requests for hearings, identified by docket control number OPP–300934, must be received by EPA on or before December 20, 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–300934 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9367; and e-mail address: ertman.andrew@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–300934. 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 November 29, 1996 (61 FR 60617) (FRL–5574–7), which announced that on its own initiative under section 408 of the 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 combined residues of metolachlor and its metabolites in or on spinach at 0.3 ppm, with an expiration date of November 15, 1998. This tolerance was then extended in the **Federal Register** of December 2, 1998 (63 FR 66435) (FRL–6038–4) to have an expiration date of May 15, 2000.

EPA issued another final rule, published in the **Federal Register** of September 11, 1998 (63 FR 48586) (FRL–6017–9), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA (Public Law 104–170) it established time-limited tolerances for the combined residues of metolachlor and its metabolites in or on grass forage at 10.0 ppm and grass hay at 0.2 ppm, with an expiration date of December 31, 1999.

EPA established the tolerances 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 FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of metolachlor on spinach for this year's growing season due to the continuing emergency with weeds in spinach. This emergency condition was primarily brought about by the loss of the product Antor 4E (diethatyl ethyl), an herbicide that was used on spinach. As Antor 4E is no longer manufactured and stocks have been exhaused since 1993, spinach growers are in need of a product to effectively control weeds in spinach fields.

EPA received a request to extend the use of metolachlor on grass grown for seed for this year's growing season because the situation continues to remain an emergency. Due to the cancellation of herbicide uses in recent years, shifts in weed populations and development of resistance, combined with restrictions on open field burning, growers of grasses grown for seed in Oregon are no longer able to adequately control weeds. Significant economic losses are expected if these weeds are not adequately controlled, as the grass seed becomes contaminated with weed seed and does not meet certification requirements to be marketed.

After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of metolachlor on spinach for the control of weeds in Arizona, Colorado, Maryland, New Jersey, Oklahoma, Texas, Virginia, and Wisconsin and the use of metolachlor on grass grown for seed for the control of weeds in Oregon.

EPA assessed the potential risks presented by residues of metolachlor in or on spinach, grass forage and grass hay. In doing so, EPA considered the

safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances 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 rules of November 29, 1996 (61 FR 60617) and September 11, 1998 (63 FR 48586). Based on the data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance for spinach is extended for an additional 19½–month period and the time-limited tolerances for grass forage and grass hay are extended for an additional 2–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and be revoked on December 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on spinach, grass forage, and grass hay 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 tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

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–300934 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 20, 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–300934, 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 tolerances under section 408(l)(6) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of

actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (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(n)(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 under FFDCA section 408(l)(6), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

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: October 6, 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.

§ 180.368 [Amended]

2. In § 180.368, by amending paragraph (b) by changing the date for grass forage and grass hay from ''12/31/99'' to read ''12/31/01'' and by changing the date for spinach from ''5/15/00'' to read ''12/31/01''.

[FR Doc. 99–27399 Filed 10–20–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300917; FRL–6381–3]

RIN 2070–AB78

Pyriproxyfen; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of pyriproxyfen in or on citrus fruits, fruiting vegetables (except cucurbits), tree nuts, almond hulls, citrus oil and citrus pulp, dried. Valent USA Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective October 21, 1999. Objections and requests for hearings, identified by docket control number OPP–300917, must be received by EPA on or before December 20, 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 VI. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300917 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–6411; and e-mail address: tavano.joseph@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 OPP–300917. 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

In the **Federal Register** of October 6, 1998 (63 FR 53656) (FRL–6033–8), EPA issued a notice pursuant to 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) announcing the filing of a pesticide petition (PP 8F5022) for a tolerance by Valent USA Corporation, 1333 N. California Blvd., Walnut Creek, CA 94596. This notice included a summary of the petition prepared by Valent USA Corporation, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.510 be amended by establishing a tolerance for residues of the insecticide, pyriproxyfen, in or on almond hulls at 2.0 parts per million (ppm) citrus fruits (crop group 10) at 0.3 ppm; fruiting vegetables (crop group 8) at 0.1 ppm; tree nuts (crop group 14) at 0.02 ppm; and in the processed commodities citrus oil at 20 ppm and dried citrus pulp at 1.5. Pyriproxyfen is a reduced risk pesticide and controls California red scale, black scale brown soft scale, citrus whitefly, citrus leafminer and citrus black fly on citrus; immature sweet potato/silverleaf whitefly on peppers and tomatoes; codling moth and navel orangeworm on walnuts and San Jose scale and peach twig borer on almonds.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of pyriproxyfen on almond hulls at 2.0 ppm; citrus fruits at 0.3 ppm; fruiting vegetables (except cucurbits) at 0.2 ppm; tree nuts at 0.02 ppm; and in the processed commodities citrus oil at 20 ppm and dried citrus pulp at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by pyriproxyfen are discussed in this unit.

1. *Acute toxicity*. Acute toxicity studies with technical pyriproxyfen: Oral LD_{50} in the rat is >5,000 milligrams/kilograms (mg/kg) for males and females - Toxicity Category IV; dermal LD_{50} in the rabbit at >2, 000 mg/kg - Toxicity Category IV; inhalation LC_{50} in the rat is >1.3 mg/L (highest dose attainable) - Toxicity Category III; primary eye irritation in the rabbit (mild irritatant) - Toxicity Category III; primary dermal irritation in the rabbit (not an irritant: non-irritating to the skin under conditions of test))- Toxicity Category IV. Pyriproxyfen is not a sensitizer.

2. *Subchronic toxicity*— i. In the subchronic feeding study in rats, the no observed adversed effect level (NOAEL) was 27.68 mg/kg/day. The lowest oberved adversed effect level (LOAEL) was 141.28 mg/kg/day, based upon higher mean total cholesteral and phospholipids, decreased mean red blood cells (RBCs), hematocrit and hemoglobin counts and increased relative liver weight.

ii. In the subchronic feeding study in dogs, the NOAEL was 100 mg/kg/day and the LOAEL was 300 mg/kg/day. The effects were based on increased absolute and relative liver weight in males and hepatocellular hypertrophy in females. These findings were also observed at 1,000 mg/kg/day and may represent adaptive changes at both 300 mg/kg/day and the limit dose of 1,000 mg/kg/day.

iii. In a 21–day dermal study in rats, the NOAEL for systemic effects was >1,000 mg/kg/day (limit dose). The LOAEL for systemic effects was not established in this study. No dermal or systemic toxicity was observed at any dose tested.

3. *Chronic toxicity/carcinogenicity*—i. In a 1–year chronic feeding study in dogs, the NOAEL was 100 mg/kg/day. The LOAEL was 300 mg/kg/day based on decreased weight gain, increased absolute and relative liver weight, mild

anemia, increased cholesterol and triglycerides.

ii. In the oncogenicity study in mice, the NOAEL and LOAEL for systemic toxicity in males are 600 ppm and 3,000 ppm, respectively, based on renal lesions in males. The technical grade test material was given to male and female CD–1 mice in diet for 18 months at 0, 120, 600, or 3,000 ppm. No statistically significant increase in tumor incidence relative to controls were observed in either sex at any does up to 3,000 ppm highest dose tested (HDT).

iii. In the chronic feeding/ oncogenicity study in rats, the NOAEL (systemic) was 35.1 mg/kg/day and the LOAEL (systemic) was 182.7 mg/kg/day. The technical grade test material was administered to male and female Sprague-Dawley rats in diet for 24 months at 0, 120, 600, or 3,000 ppm. A decrease of 16.9% in body weight gain in females at 3,000 ppm (182.7 mg/kg/ day) was basis for the systemic LOAEL.

4. *Developmental toxicity* —i. In the developmental study in rabbits, the maternal NOAEL/LOAEL for maternal toxicity were 100 and 300 mg/kg/day based on premature delivery/abortions, soft stools, emaciation, decreased activity and bradypnea. The developmental NOAEL was determined to be 300 mg/kg/day and developmental LOAEL was determined to be undetermined; no dose related anomalies occurred in the four remaining litters studied at 1,000 mg/ kg/day.

ii. In the developmental study in rats, a maternal NOAEL/LOAEL were determined to be 100 mg/kg/day and 300 mg/kg/day, respectively. These findings were based on increased incidences in mortality and clinical signs at 1,000 mg/kg/day with decreased in food consumption, body weight, and body weight gain together with increases in water consumption at 300 and 1,000 mg/kg/day. The developmental NOAEL/LOAEL were 100 mg/kg/day and 300 mg/kg/day based on the increase of skeletal variations at 300 mg/kg/day and above.

5. *Reproductive toxicity*. In a 2–generation reproduction study in rats, the systemic NOAEL was 1,000 ppm (87 mg/kg/day). The LOAEL for systemic toxicity was 5,000 ppm (453 mg/kg/ day). Effects were based on decreased body weight, weight gain and food consumption in both sexes and both generations, and increased liver weights in both sexes associated with liver and kidney histopathology in males. The reproductive NOAEL was 5,000 ppm. A reproductive LOAEL was not established.

6. *Mutagenicity*. Studies on gene mutation and other genotoxic effects: In a Gene Mutation Assay (Ames Test)/ Reverse Mutation, finding were determined as negative for induction of gene mutation measured as the reversion to histine protrophy of five *S.typhimurium* strains and *E.Coli* WP2 uvra at doses from 10 to 5,000 µg/plate with and without S-9 activation. The highest does was insoluble. A Gene Mutation assay in Mammalian Cells was found to be negative for mutagencity in CHO (Chinese hamster ovary) V79 cells with and without metabolic activation up to cytotoxic doses (300 µg/milliliter (mL). In a Structural Chromosomal Aberration Assay *in vivo*, findings proved nonclastogenic in CHO cells both with and without S-9 activation up to cytotoxic doses (300 µg/mL). In other Genotoxicity Assays, an increase in unscheduled DNA synthesis was not induced both with and without activation in HeLa cells exposed up to insoluble doses ranging to 6.4 µg/mL (without activation) and 51.2 µg/mL (with activation).

7. *Metabolism*. The results of the metabolism studies are as follows: Acceptable rats were orally dosed with ^{14}C-labeled pyriproxyfen at 2 or 1,000 mg/kg and at repeated oral doses (14 daily doses) of unlabeled pyriproxyfen at 2 mg/kg followed by administration of a single oral dose of labeled pyriproxyfen at 2 mg/kg. Most radioactivity was excreted in the feces (81–92%) and urine (5–12%) over a 7–day collection period. Expired air was not detected. Tissue radioactivity levels were very low (less than 0.3%) except for fat. Examination of urine, feces, liver, kidney, bile and blood metabolites yielded numerous (>20) identified metabolites when compared to synthetic standards. The major biotransformation reactions of pyriproxyfen include: (i) Oxidation of the 4′ - position of the terminal phenyl group; (ii) Oxidation at the 5′ - position of pyridine; (iii) Cleavage of the ether linkage and conjugation of the resultant phenols with sulfuric acid.

8. *Neurotoxicity*. Neurotoxicity has not been observed in any of the acute, subchronic, chronic, developmental or reproductive studies performed with pyriproxyfen.

B. Toxicological Endpoints

1. *Acute toxicity*. An acute dietary dose and endpoint was not identified in the data base. The Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

2. *Short-term and intermediate-term toxicity*. Doses and endpoints were not identified for short-term and intermediate-term dermal and inhalation exposure. The Agency concludes that there are reasonable certainties of no harm from these exposures.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for pyriproxyfen, 2–[1-methyl-2-(4-phenoxyphenoxy)ethoxy]pyridine at 0.35 mg/kg/day. This RfD is based on a NOAEL of 35.1 mg/kg/day and an uncertainty factor (UF) of 100. The NOAEL was established from the combined chronic feeding/oncogenicity study in rats where the the LOAEL was 3,000 ppm, based on a 16.9% decrease in body weight gain in females when compared to controls.

The chronic Population Adjusted Dose (cPAD) is a modification of the chronic RfD to accommodate the FQPA Safety Factor. The cPAD is equal to the chronic RfD divided by the FQPA Safety Factor. The FQPA Safety Factor was reduced from 10x to 1x for the reasons explained below. Therefore, the cPAD is identical to the chronic RfD. Reducing 10x factor to 1x is supported by the following factors.

i. Developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits.

ii. A 2–generation reproduction toxicity study in rats showed no increased sensitivity in pups as compared to adults.

iii. The toxicology data base is complete and there are no data gaps.

4. *Carcinogenicity*. Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.510) for the residues of pyriproxyfen, in or on a variety of raw agricultural commodities. In today's action, tolerances will be established for the residues of pyriproxyfen in or on the raw agricultural commodities almond hulls at 2.0 ppm citrus fruits at 0.3 ppm; fruiting vegetables (except cucurbits) at 0.2 ppm; tree nuts at 0.02 ppm; and in the processed commodities citrus oil at 20 ppm and dried citrus pulp at 2.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No acute dietary endpoint and dose was identified in the toxicology data base for

pyriproxyfen; therefore, the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk.* The Dietary Exposure Evaluation Model (DEEM) analysis for pyriproxyfen was performed in order to provide an estimate of the dietary exposure and associated risk resulting from the existing tolerances and the recommended tolerance levels for citrus fruits, fruiting vegetables (except cucurbits), and tree nuts. The DEEM analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–92 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

This chronic dietary exposure analysis from food sources was conducted using the chronic population adjusted dose (cPAD) of 0.35 mg/kg/day.

In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions: 100% of all crops having pyriproxyfen tolerances will contain pyriproxyfen residues and those residues will be at the level of the established (or recommended) tolerance. Moreover, rather than making use of experimentally-determined processing factors, only DEEM default processing factors were used. This results in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

DEEM analysis including all the appropriate pyriproxyfen tolerances results in Total Exposures that are equivalent to the following percentages of the cPAD:

Subgroups	Total Exposure (mg/kg/day)	% cPAD
U.S. Population (48 contiguous states)	0.001411	0.4
Children (1–6 years)	0.003876	1.1
Non-hispanic other than black or white	0.001852	0.5
Hispanics	0.001592	0.5
Females (13+/nursing)	0.001660	0.5

The subgroups listed above are: (1) The U.S. population (48 contiguous states); (2) those for infants and children; and (3) the other subgroups for which the percentage of the cPAD occupied is greater than that occupied by the subgroup U.S. population (48 contiguous states).

2. *From drinking water* —i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Following EPA's Interim Guidance for Conducting Drinking Water Exposure and Risk Assessments issued on October 15, 1998, the PRZM/EXAMS model and the SCI-GROW model were run to produce estimates of pyriproxyfen concentrations in surface and ground water, respectively. The primary use of these models is to provide a coarse screen for sorting out pesticides for which EPA has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of comparison (DWLOCs). A human health DWLOC is the concentration of a pesticide in drinking water which would result in unacceptable aggregate risk, after having already factored in all food exposures and other non-occupational exposures for which EPA has reliable data.

$DWLOC_{chronic}$ = chronic water exposure (mg/kg/day) x (body weight) / consumption (L) x 10^{-3} mg/µg where chronic water exposure (mg/kg/day) = [cPAD - (chronic food + residential exposure) (mg/kg/day)]

The $DWLOC_{chronic}$ is the concentration in drinking water as part of the aggregate chronic exposure that results in a negligible cancer risk. The Agency's default body weights and consumption values used to calculate DWLOCs are as follows: 70 kg/2L (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

The results are summarized in the following table:

DWLOC Values Calculated for Pyriproxyfen Based on a Chronic Scenario

Population Subgroup	Chronic Scenario[1]			
	cPAD mg/kg/day	DWLOC µg/L	SCI-GROW EEC in µg/L	PRZM-EXAMS[2] EEC in µg/L
U.S. Population	0.35	12,000	0.006	0.11
Children (1–6 yrs)	0.35	3,500	0.006	0.11

[1] DEEM TMRCs in mg/kg/day: U.S. Population = 0.001411, Children (1–6 years) = 0.003876. The average potential dose rate from residential use of pet collars is 0.00058 and 0.000081 mg/kg/day for children and U.S. population, respectively (see Table 4.1).
[2] Using the 1–year average EEC for pyriproxyfen in surface water calculated using the citrus fruit application rate.

For chronic (non-cancer) exposure to pyriproxyfen in surface and ground water, the drinking water levels of concern are 12,000 µg/L for U.S. Population and 3,500 µg/L for children (1–6 years). Estimated average concentrations of pyriproxyfen in surface and ground water are 0.11 parts per billion (ppb) and 0.006 ppb, respectively. The estimated average concentrations of pyriproxyfen in surface and ground water are less than EPA's level of concern for pyriproxyfen in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account present uses and uses proposed in this action, EPA concludes with reasonable certainty that residues of pyriproxyfen in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

3. *From non-dietary exposure.* Pyriproxyfen is currently registered for use on residential non-food sites. Pyriproxyfen is the active ingredient in many registered residential (indoor, non-food) products for flea and tick control. Formulations include foggers, aerosol sprays, emulsifiable concentrates, and impregnated materials (pet collars).

i. *Acute exposure and risk.* Because no acute toxicological endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure.

ii. *Chronic exposure and risk.* Chronic residential post-application exposure and risk assessments were conducted to estimate the potential risks from pet collar uses.

The risk assessment was conducted using the following assumptions: application rate of 0.58 mg ai/day (product label), average body weight for a 1 – 6 year old child of 10 kg, the active ingredient dissipates uniformly through 365 days (the label instruct to change collar once a year), 1% of the active ingredient is available for dermal and inhalation exposure per day (assumption from Draft EPA Standard Operating Procedures (SOPs) for Residential Exposure Assessments, December 18, 1998). The assessment also assumes an absorption rate of 100%. This is a conservative assumption since the dermal absorption was estimated to be 10%.

Residential Exposure and Risk Assessment Exposure & Risk Assessment for Homeowner Use of Pet Collars

Population Subgroup	Application Rate[1] mg/day	Average Potential Dose Rate[2] (mg/kg/day)	Chronic Term MOE[3]
Children	0.58	0.00058	61,000
Adults	0.58	0.000081	430,000

[1] Product label: Reg. No. 2382–149 (0.5% pyriproxyfen, ovisterilant pet collar). Application rate = 42 gm collar x 0.5% a.i./collar x 1,000 mg/1 gm x 1/365 days. Collar to be replaced once a year.

[2] Potential Dose Rate (PDR) = Application rate x fraction of ai available for exposure (1%) x absorption rate (100%) x 1/(10 or 71.8 kg bw for children or adults, respectively).

[3] Dermal and Inhalation NOAEL = 35.1 mg/kg/day; MOE = NOAEL/Exposure; Adequate MOE = 100.

The estimated chronic term MOE was 61,000 for children, and 430,000 for adults. The risk estimates indicate that potential risks from pet collar uses do not exceed the Agency's level of concern.

iii. *Short- and intermediate-term exposure and risk*. Toxicological endpoints of concern were not identified for short- and intermediate-term exposures.The Agency concludes that there is a reasonable certainty of no harm from short and intermediate exposure.

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

EPA does not have, at this time, available data to determine whether pyriproxyfen has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyriproxyfen does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyriproxyfen has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk*. An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

2. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has calculated that the maximum percentage of the cPAD that will be utilized by dietary (food) exposure to residues of pyriproxyfen is 1.1% for children (1 – 6 years). Chronic residential exposure to pyriproxyfen from pet collars is estimated to increase total pyriproxyfen exposure of infants and children only marginally. Despite the potential for dietary exposure to pyriproxyfen in drinking water, EPA does not expect the aggregate dietary exposure to exceed 100% of the cPAD.

EPA bases this determination on a comparison of estimated concentrations of pyriproxyfen in surface and ground water to levels of concern for pyriproxyfen in drinking water. The estimates of pyriproxyfen in surface and ground water are derived from water quality models that use conservative assumptions regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with the pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impact of pyriproxyfen in food and drinking water as part of the aggregate chronic risk assessment process.

Taking into account the completeness and reliability of the toxicity data and this conservative exposure assessment, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from chronic aggregate exposure to pyriproxyfen residues.

3. *Short- and intermediate-term risk*. Due to the lack of significant toxicological effects observed, the risk from short and intermediate exposure is considered to be negligible.

Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

4. *Aggregate cancer risk for U.S. population*. Pyriproxyfen is classified as Category E: not carcinogenic in two acceptable animal studies.

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

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

1. *Safety factor for infants and children*—i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of pyriproxyfen, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies*. In the rat developmental study, the developmental NOAEL was 100 mg/kg/day and the maternal NOAEL was 100 mg/kg/day. Therefore, there was no prenatal developmental toxicity in the presence of maternal toxicity. Similarly in rabbits, the prenatal developmental NOAEL was 300 mg/kg/day and the maternal NOAEL was 300 mg/kg/day. Therefore, prenatally exposed fetuses were not more sensitive to the effects of pyriproxyfen than maternal animals.

iii. *Reproductive toxicity study*. In the rat reproduction study, the parental NOAEL of 1,000 ppm was identical to the pup NOAEL of 1,000 ppm (and decreased body weight was seen in both pup and parental animals). This finding demonstrates that there are no extra sensitivities with respect to prenatal and postnatal toxicity between adult and infant animals.

iv. *Prenatal and postnatal sensitivity*. The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to pyriproxyfen.

v. *Conclusion*. The 10x factor for infants and children (as required by FQPA) was reduced to 1x, since there was no special sensitivity for infants and children and the data base are complete. For chronic dietary risk assessment, a UF of 100 is adequate for protection from exposure to pyriproxyfen.

2. *Acute risk*. An acute dietary dose and endpoint was not identified. Thus the risk from acute aggregate exposure is considered to be negligible.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to pyriproxyfen from food will utilize 1.1% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyriproxyfen in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk*. Short-term and intermediate-term dermal and inhalation risks are judged to be negligible due to the lack of significant toxicological effects observed.

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

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants is understood. Acceptable metabolism studies using ^{14}C-labeled pyriproxyfen (phenyl and pyridyl rings) have been performed in/on apples, cotton and tomatoes. Metabolism of pyriproxyfen in apples proceeds through hydroxylation and cleavage of the phenoxy ether linkage. Primary metabolites formed are further metabolized to more polar products by oxidation or conjugation reactions. Similar metabolic pathways were observed for the metabolism of pyriproxyfen in cotton and tomatoes.

Accordingly, EPA has determined that there are no pyriproxyfen metabolites of toxicological or regulatory concern in plants. Thus, tolerances based on the parent only are appropriate.

1. *Poultry*. There are no poultry feed items associated with citrus, fruiting vegetables, or tree nuts. Therefore, no secondary residues are expected to occur in poultry eggs, fat, meat, and meat byproducts as a result of the proposed uses on citrus, fruiting vegetables, and tree nuts.

2. *Ruminants*. Valent submitted data from studies investigating the metabolism of (Ph-^{14}C uniformly ring labeled) and (Py-^{14}C in pyridine ring 2 and 6 positions) pyriproxyfen in lactating goats. Two goats were fed 10 ppm of Ph-^{14}C pyriproxyfen daily for 5 days, while two other goats were fed 10 ppm of Py-^{14}C pyriproxyfen daily for 5 days, with 1 control goat. Urine, feces and milk samples were obtained twice daily. After sacrifice at 6 hours after last dose, samples of blood, heart, kidneys, liver, loin muscle, rear leg muscle, omental and perirenal fat, gastrointestinal tract and contents were collected for ^{14}C analysis.

The majority (62–76%) of the ^{14}C-pyriproxyfen ingested by goats was excreted in urine and feces, with residue levels in feces being higher than in urine. Approximately 25 to 32% of the administered ^{14}C-pyriproxyfen was found in goat tissues, with the large majority located in the gastrointestinal tract. These studies show that metabolism of phenyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′- OH phenoxyphenyl moiety, and cleavage of the ether linkage. Metabolism of pyridyl-^{14}C pyriproxyfen in goats proceeds through hydroxylation of the phenoxyphenyl and pyridyl rings, sulfation of the 4′-OH phenoxyphenyl moiety, cleavage of the ether linkage and oxidation of the side chain. EPA concludes that the nature of the residue in ruminants is adequately understood.

EPA determined that the residues of concern in animals are pyriproxyfen and the free and sulfate forms of 4′-OH-PYR.

B. Analytical Enforcement Methodology

Residue analytical method RM-33P-2 (cotton) underwent validation in EPA laboratories and is suitable to gather residue data and to enforce tolerances.

For data collection and tolerance enforcement in fruits, Valent has proposed use of Method RM-33P-1-3, ''Determination of Pyriproxyfen and 4′-OH-Pyriproxyfen Residues in Apples, Pear, and Citrus Fruit.'' This method was successfully validated by an independent laboratory on the first try. The mean percent pyriproxyfen recoveries were 79.4 ± 1.6% and 84.9 ± 4.7% on apples and oranges, respectively. This method differs significantly from the method used to analyze cotton seed. Accordingly, method RM-33P-1-3 underwent validation in EPA laboratories and is suitable to gather residue data and to enforce tolerances. As described previously, this method also underwent successful radiovalidation using apple pomace samples. Thus, Valent has adequately demonstrated the extraction efficiency of this analytical method.

For data collection and tolerance enforcement in nutmeats, Valent has proposed use of Method RM-33N-2. This method is largely similar to Method RM-33P-1-3; thus, no independent laboratory validation was conducted for this method. However, method RM-33N-2 underwent validation in EPA laboratories and is suitable to gather residue data and to enforce tolerances. Method RM-33H was also validated in EPA laboratories and found suitable to gather residue data and enforce tolerances in almond hulls.

For data collection and tolerance enforcement in fruiting vegetables, Valent has proposed use of Method RM-33P-9. This method is largely similar to Method RM-33P-1-3; thus, no independent laboratory validation was conducted for this method. However, method RM-33P-9 underwent validation in EPA laboratories and is suitable to gather residue data and to enforce tolerances.

Valent submitted data from a study performed by Corning Hazleton Inc. describing the testing of pyriproxyfen through the Food and Drug Administration (FDA) Multiresidue

Methods Protocols A, C, D, E, and F found in the Pesticide Analytical Manual Volume I (PAM I), Appendix II. This study showed that pyriproxyfen was recovered from fortified apple and cotton samples through protocols A, C, D, E, and F. The metabolite PYPAC was tested with protocols A, B, C, and D. The multiresidue methods will serve as confirmatory methods for residues of pyriproxyfen. The multiresidue recovery data were sent to the FDA for inclusion in PAM I.

These methods may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

C. Magnitude of Residues

The submitted field trial data on citrus fruits are adequate. Geographic representation of field trials on grapefruit, lemons, and oranges conformed to OPPTS Series 860 guidelines and an adequate number of samples were analyzed. Residues of pyriproxyfen were <0.01–0.24 ppm in/on 52 samples of oranges, lemons, and grapefruits treated at 1x. The available data support the proposed tolerance of 0.3 ppm for residues of pyriproxyfen in/on citrus fruit.

The submitted field trial data on fruiting vegetables are adequate. Geographic representation of field trials on peppers and tomatoes conformed to OPPTS Series 860 guidelines and an adequate number of samples was analyzed. An adequate variety of commercially important peppers and tomatoes were included in the study. Residues of pyriproxyfen were <0.01–0.06 ppm in/on 46 samples of tomato and peppers treated at 1x; one sample bore pyriproxyfen residues at 0.105 ppm. The available data support a tolerance level of 0.20 ppm for residues of pyriproxyfen in/on fruiting vegetables.

Valent provided data from a total of 10 field trials in support of the tree nut group tolerance, 6 on almonds submitted with this petition, and 4 on walnuts that were previously reviewed. Valent requested that these data be used in lieu of the required 5 almond and 5 pecan field trials required for a tree nut group tolerance.

Due to the low toxicity of pyriproxyfen (no acute dietary, cancer, or short- or intermediate-term dermal or inhalation endpoints were identified), relatively high chronic RfD (0.35 mg/kg/day), removal of the FQPA safety factor, its low use rates, and the rapid incorporation of pyriproxyfen metabolites into the general carbon pool after metabolism, EPA is willing to agree to this modified data set for pyriproxyfen only. The Agency emphasizes that the general non-systemic nature of pyriproxyfen combined with the specific almond and walnut data showing that pyriproxyfen residues do not readily translocate from the nut shell into the nutmeat provide some confidence that finite pyriproxyfen residues should not be found in pecan nutmeat since almond shells are generally considered more porous than pecan shells.

The available data support the proposed tolerance of 2.0 ppm for residues of pyriproxyfen in/on almond hulls, and the proposed tolerance of 0.02 ppm for residues of pyriproxyfen in the tree nut crop group.

In conjunction with the residue study on oranges, Valent submitted data depicting residues of pyriproxyfen and 4′-OH-PYR in orange commodities processed from oranges bearing measurable residues.

The submitted orange processing study is adequate and indicates that residues of pyriproxyfen do not concentrate in juice, but concentrate by 74.6x in citrus oil and 6.4x in dried pulp. Based upon these concentration factors and the HAFT residues in/on oranges of 0.22 ppm, the proposed tolerances for pyriproxyfen residues in citrus oil and in dried pulp were 20.0 and 1.5 ppm, respectively. The citrus oil tolerance is appropriate; however, adverse effects disclosure (FIFRA section 6(a)(2)) data from California indicates that a citrus dried pulp tolerance of 2.0 ppm is needed.

Valent submitted data depicting the potential for concentration of pyriproxyfen residues in the processed commodities of tomatoes. This tomato processing study is adequate. Pyriproxyfen residues were 0.04 ppm in whole tomatoes, 0.02 ppm in paste, and <0.01 ppm in puree. As there was no concentration, separate tolerances for tomato paste and puree are not required.

There are no processed commodities associated with tree nuts and therefore no tolerances for processed commodities are required.

An adequate cattle feeding study has been previously reviewed and EPA concluded that tolerances would not be required for residues of pyriproxyfen in animal commodities provided that no additional uses on livestock feed items are proposed. The maximum theoretical dietary burden (MTDB) for beef and dairy cattle was calculated at 1.69 and 1.29 ppm, respectively, using estimated tolerances for almond hulls (2.0 ppm), apple wet pomace (0.8 ppm), dried citrus pulp (1.0 ppm), cottonseed (0.05 ppm) and cotton gin byproducts (2.0 ppm).

Based on the data submitted with the current petition, the calculated MTDB (Table 3.2) for beef and dairy cattle has increased slightly to 1.91 and 1.51 ppm, respectively, based on a more appropriate tolerance of 2.0 ppm for pyriproxyfen residues in dried citrus pulp. This adjustment does not significantly affect the maximum expected dietary burden of pyriproxyfen residues for livestock.

There are no poultry feed items associated with this petition. Therefore, no additional secondary residues are expected to occur in poultry eggs, fat, meat, and meat byproducts as a result of the proposed uses. In conjunction with the petition for use on cotton, EPA concluded that secondary residues in poultry and eggs are unlikely in light of the poultry metabolism study results.

Maximum Theoretical Dietary Burdens for Beef and Dairy Cattle.

Feed Item	Tolerance (ppm)	% Dry Matter[1]	Beef Cattle		Dairy Cattle	
			% of Diet	Burden, ppm	% of Diet	Burden, ppm
Apple pomace, wet	0.8[2]	40	40	0.80	20	0.40
Cotton gin byproducts	2.0[3]	90	20	0.44	20	0.44
Citrus, pulp	2.0	91	20	0.44	20	0.44
Almond hulls	2.0	90	10	0.22	10	0.22

Maximum Theoretical Dietary Burdens for Beef and Dairy Cattle.—Continued

Feed Item	Tolerance (ppm)	% Dry Matter[1]	Beef Cattle		Dairy Cattle	
			% of Diet	Burden, ppm	% of Diet	Burden, ppm
Cotton seed	0.05[3]	88	10	0.01	25	0.01
TOTAL			100	1.91	95	1.51

[1]From Residue Chemistry Test Guidelines (OPPTS 860.1000, Table 1).
[2]Based on apple residue data.
[3]Based on cotton residue data.

Typically, tolerances are required on all animal commodities having detectable residue levels at a 10x dosing rate or below. For the computed MTDB of 1.69 ppm in beef cattle, this would include the 3 and 9 ppm dosing levels. The only commodity having detectable pyriproxyfen residues at these levels was fat: 0.01 – 0.03 ppm. Since the MTDB calculation is based on a nutritionally unbalanced diet and includes contributions from some animal feed items that are used only regionally, EPA will not require the establishment of pyriproxyfen tolerances in fat at this time. However, should future new uses include additional animal feed items, tolerances on animal commodities will be needed.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances for pyriproxyfen residues in/on citrus fruits, fruiting vegetables, or the tree nut crop groups. Therefore, international harmonization is not an issue at this time.

E. Rotational Crop Restrictions

The Agency has determined that rotational crop studies are not required for uses of pesticides on the citrus fruits or tree nut crop groups. An adequate confined rotational crop study was conducted in support of the cotton tolerance previously issued. Based on a 30–day plantback interval and a treatment rate of 0.18 lb ai/A, no pyriproxyfen residues above 0.01 ppm were found in any of the following crop matrices: lettuce leaf; radish tops and roots; and wheat grain, forage, straw and chaff. Accordingly, EPA concludes that a 30–day plantback interval is needed for fruiting vegetables when treated with pyriproxyfen as directed.

V. Conclusion

Therefore, tolerances are established for residues of pyriproxyfen in citrus fruits, fruiting vegetables (except cucurbits), tree nuts, almond hulls, citrus oil and dried citrus pulp at 0.30, 0.20, 0.02, 2.0, 20, and 2.0 ppm respectively.

VI. 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–300917 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 20, 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 VI.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–300917, 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 5.1/6.1 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).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances 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 tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

VIII. 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 23, 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), (346a) and 371.

2. In § 180.510, by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.510 Pyriproxyfen; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
Almond hulls	2.0
* * * *	*
Citrus fruits	0.3
Citrus oil	20
Citrus pulp, dried	2.0
* * * *	*
Fruiting vegetables (except cucurbits).	0.2
* * * *	*
Tree nuts	0.02
* * * *	*

* * * * *

[FR Doc. 99–27398 Filed 10–20–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300928; FRL–6382–6]

RIN 2070–AB78

Tebufenozide; Benzoic Acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time limited tolerance for the indirect or inadvertent combined residues of tebufenozide and its metabolite benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-4-(1-hydroxyethyl)benzoylhydrazide in or on foliage of legume vegetables at 0.1 parts per million (ppm); forage, fodder, hay and straw of cereal grains at 0.5 ppm; grass forage, fodder and hay at 0.5 ppm and forage, fodder, straw and hay of non-grass animal feeds at 0.5 ppm. Rohm and Haas Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective October 21, 1999. Objections and requests for hearings, identified by docket control number OPP–300928, must be received by EPA on or before December 20, 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 VI. of the ''SUPPLEMENTARY INFORMATION'' section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300928 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Joseph Tavano, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305-6411; and e-mail address: tavano.joseph@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–300928. 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, 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

In the **Federal Register** of July 2, 1999 (64 FR 35999) (FRL–6085–6) and September 1, 1999 (64 FR 47795) (FRL–6096–8), EPA issued a notice pursuant to 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) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. This notice included a summary of the petition prepared by Rohm and Haas Company, the registrant. There were no comments received inresponse to these notices of filing.

The petition requested that 40 CFR 180. 482 be amended by establishing a tolerance for indirect or inadvertent residues of the insecticide, tebufenozide benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and its metabolite benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-4-(hydroxyethyl)benzoyl]benzoyl in or on foliage of legume vegetables; forage, fodder, hay and straw of cereal grains; grass forage, fodder and hay; and forage, fodder, straw and hay of nongrass animal feeds at 0.1, 0.5, 0.5 and 0.5 part per million (ppm) respectively. Tebufenozide is a reduced risk pesticide.

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

EPA performs a number of analyses to determine the risks from aggregate

exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for the combined residues of tebufenozide and its metabolite benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl)benzoyl]hydrazide on foliage of legume vegetables; forage, fodder, hay and straw of cereal grains; grass forage, fodder and hay and forage, fodder, straw and hay of nongrass animal feeds at 0.1, 0,5, 0.5 and 0.5 ppm respectively. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by are discussed in this unit.

1. Acute toxicity studies with technical grade: Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category III; inhalation LC_{50} in the rat is >4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit >5mg - Toxicity Category IV. Tebufenozide is not a sentizer.

2. In a 21-day dermal toxicity study, Crl:CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product [RH-75,992] at 1,000 mg/kg/day (Limit-Dose) or the formulation (23.1% a.i. product [RH-755,992 2F] at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the highest dose tested (HDT) 1,000 mg/kg/day during the 21 day study. Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A LOAEL for systemic toxicity and dermal irritation was not established.

3. A 1-year dog feeding study with a lowest-observable-adverse-effect level (LOAEL) of 250 ppm (9 mg/kg/day for male and female dogs) based on decreases in RBC, HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The no-observed adverse effect level (NOAEL) for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

4. An 18-month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

5. A 2-year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively)

6. In a prenatal developmental toxicity study in Sprague-Dawley rats (25/group) Tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

7. In a prenatal developmental toxicity study conducted in New Zealand white rabbits (20/group) Tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

8. In a 1993 two-generation reproduction study in Sprague-Dawley rats tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the LOAEL was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOAEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

9. In a 1995 2-generation reproduction study in rats tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

10. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an *in vivo* cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis assay (UDS) in rat hepatocytes.

11. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992, ^{14}C labeled in one of three positions (A-ring, B-ring or N-butylcarbon). The extent of

absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioacculmulation. Absorption and excretion were rapid.

A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons,. two methyl groups on the Bring and an ethyl group on the A ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be leaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

12. The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72 hour period, biliary excretion accounted for 30% (Male) to 34% (Female) of the administered dose while urinary excretion accounted for ≈5% of the administered dose and the carcass accounted for <0.5% of the administered dose for both males and females. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass was 35% (Male) to 39% (Female). The majority of the radioactivity in the bile (20% (Male) to 24% (Female) of the administered dose was excreted within the first 6 hours postdosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours postdosing. A large amount 67% (Female) to 70% (Male) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified i.e. - unabsorbed compound nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primary by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidized products found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity ((Female and/or Male). Bile also contained the previously undetected (in the pharmacokinetics study ''A'' Ring ketone and the ''B'' Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for >5% of the total administered dose. Total bile radioactivity accounted for ≈17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

B. Toxicological Endpoints

1. *Acute toxicity*. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000, or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. Thus the risk from acute exposure is considered negligible.

2. *Short- and intermediate-term toxicity*. No dermal or systemic toxicity was seen in rats receiving 15 repeated dermal applications of the technical (97.2%) product at 1,000 mg/kg/day (Limit- Dose) as well as a formulated (23% a.i) product at 0, 62.5, 250, or 1,000 mg/kg/day over a 21 day period. The Agency noted that in spite of the hematological effects seen in the dog study, similar effects were not seen in the rats receiving the compound via the dermal route indicating poor dermal absorption. Also, no developmental endpoints of concern were evident due to the lack of developmental toxicity in either rat or rabbit studies. This risk is considered to be negligable.

3. *Chronic toxicity*. EPA has established the chronic population adjusted dose (cPAD) for tebufenozide at 0.018 mg/kg/day. This endpoint is based on the NOAEL of 1.8 mg/kg/day from a chronic toxicity study in dogs. Growth retardation, alterations in hematology parameters, changes in organ weights, and histopathological lesions in the bone, spleen and liver were observed at the LOAEL of 8.7 mg/kg/day in this study. An uncertainty factor (UF) of 100 was applied to account for inter- (10 x) and intra- (10 x) species variation resulting in a chronic RfD of 1.8 mg/kg/day ÷ 100 = 0.018 mg/kg/day. For chronic dietary risk assessment, the 10 x factor to account for the protection of infants and children (as required by FQPA) was removed. Therefore, the chronic population adjusted dose (cPAD) is identical to the chronic RfD, cPAD = chronic RfD = 0.018 mg/kg/day. Removing the 10x factor is supported by the following factors:

i. Developmental toxicity studies showed no increased sensitivity in fetuses when compared to maternal animals following *in utero* exposures in rats and rabbits.

ii. Multi-generation reproduction toxicity studies in rats showed no increased sensitivity in pups as compared to adults and offspring. (iii) There are no data gaps.

4. *Carcinogenicity*. Tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' chemical by EPA.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on a variety of raw agricultural commodities. In today's action, Tolerances will be established for the indirect or inadvertent combined residues of tebufenozide and its metabolite benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl)benzoyl]hydrazide in or on foliage of legume vegetables; forage, fodder, hay and straw of cereal grains; grass forage, fodder and hay and forage, fodder, straw and hay of nongrass animal feeds at 0.1, 0.5, 0.5 and 0.5 ppm respectively. Risk assessments were conducted by EPA to assess dietary exposures from as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the

exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Estimates of percent crop treated were used for the following crops. In all cases the maximum estimate was used.

Commodity	Percentage	
	Average	Maximum
Almonds:	<1	<1
Apples:	1	2
Beans/Peas,Dry	0	1
Cotton	1	4
Walnuts	10	16
Cabbage, Fresh	2	3
Cole Crops	1	2
Spinach, Fresh	2	3
Spinach, Processed.	20	29

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which may be applied in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No Neuro or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of Tebufenozide at 1,000 mg/kg/day (Limit-Dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligable.

ii. *Chronic exposure and risk.* In conducting the DEEM (Dietary Exposure Evaluation Model) for chronic dietary (food only) analysis, EPA used tolerance level residues and some percent crop treated (Tier 2). For the subject crops, the tolerances used are: 0.1 ppm for foliage of legume vegetables; 0.5 ppm for forage, fodder, hay and straw of cereal grains; 0.5 ppm for grass forage, fodder and hay and 0.5 ppm for forage, fodder, straw and hay of nongrass animal feeds. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. Summaries of the ARC and their representations as percentages of the cPAD for the general population and subgroups of interest are presented in the following table.

CHRONIC EXPOSURE ANALYSIS BY THE DEEM SYSTEM FOR TEBUFENOZIDE

Population Subgroup	Exposure (mg/kg/day)	cPAD Percentage[1]
U.S. Population (48 States).	0.0017	10
Children (1-6 years old).	0.0038	21
Females (13+/ nursing).	0.0017	10

[1] cPAD% = Exposure/cPAD X 100%

The subgroups listed above are: (1) the U.S. population (48 states); (2) highest exposed population subgroup that includes infants and children; and (3) Female 13+.

This chronic dietary (food only) risk assessment should be viewed as conservative. Further refinement using anticipated residue values and additional % crop treated information would result in a lower estimate of chronic dietary exposure.

2. *From drinking water*— i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* EPA calculated the Tier I Estimated Environmental Concentrations (EECs) for tebufenozideusing GENEEC (surface water) and SCI-GROW (ground water) for use in the human health risk assessment. For chronic exposure, the worst case EECs for surface water and ground water were 16.5 ppb and 1.04 ppb, respectively. These values represent upper-bound estimates of the concentrations that might be found in surface and ground water. These modeling data were compared to the chronic drinking water levels of comparison (DWLOCs) for tebufenozide in ground and surface water.

For purposes of chronic risk assessment, the estimated maximum concentration for tebufenozide in surface and ground waters (16.5 ppb=16.5 g/L) was compared to the back-calculated human health DWLOCs for the chronic (non-cancer) endpoint. These DWLOCs for various population categories are summarized in the following table.

DRINKING WATER LEVELS OF COMPARISON FOR CHRONIC EXPOSURE TO TEBUFENOZIDE

Population Category	Chronic RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Max. Water Exposure (mg/kg/day)	DWLOC (μg/L)	EEC Calc.Max. (μg/L)
U.S. Population (48 states).	0.018	0.0017	0.016	560	16.5
Female (13+ years)	0.018	0.0017	0.016	480	16.5
Children (1-6)	0.018	0.0038	0.014	140	16.5

In performing this risk assessment, EPA has calculated drinking water levels of comparison (DWLOCs) for each of the DEEM population subgroups. Within each subgroup, the population with the highest estimated exposure was used to determine the maximum concentration of tebufenozide that can occur in drinking water without causing an unacceptable human health risk. As a comparison value, EPA has used the 16.5-ppb value in this risk assessment, as this represents a worst-case scenario. The DWLOCs for tebufenozide are above the DWEC of 16.5 ppb for all population subgroups. Therefore, the human health risk from exposure to tebufenozide through drinking water in not likely to exceed EPA's level of concern.

3. *From non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore there are no non-dietary acute, chronic, short- or intermediate-term exposure scenarios.

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

EPA does not have, at this time, available data to determine whether has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

2. *Chronic risk.* Using the somewhat conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, HED has concluded that dietary (food only) exposure to tebufenozide will utilize 10% of the cPAD for the U.S. population, and 21% of the cPAD for the most highly exposed population subgroup (Children 1-6 yr). Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than HED's DWLOCs. EPA generally has no concern for exposures below 100% of the cPAD. Since there are no registered residential uses of tebufenozide, there is no potential for exposure to tebufenozide from residential uses. HED concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risks do not exist.

4. *Aggregate cancer risk for U.S. population.* Since tebufenozide has been classified as a Group E, ''no evidence of carcinogenicity for humans,'' this risk does not exist.

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

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of , EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Pre- and post-natal sensitivity.* The toxicology data base for tebufenozide included acceptable developmental toxicity studies in both rats and rabbits as well as a two-generation reproductive toxicity study in rats.The data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1000 mg/kg/day in rats and rabbits. In the two-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

iii. *Conclusion.* There is a complete toxicity database for tebufenozide and exposure data is complete and reasonably accounts for potential exposures. For the reasons summarized above, EPA concluded that an additional safety factor is not needed to protect the safety of infants and children.

2. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to tebufenozide from food will utilize 21% of the cPAD for infants and children. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to ground water and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than HED's DWLOCs. EPA generally has no concern for exposures

below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since there are no registered residential uses of tebufenozide, there is no potential for exposure to tebufenozide from residential uses. EPA concludes that there is a reasonable certainty that no harm will result to adults, infants and children from chronic aggregate exposure to tebufenozide residues.

4. *Short- or intermediate-term risk.* Short and intermediate term risks are judged to be negligible due to the lack of significant toxicological effects observed.

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

IV. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood based upon acceptable apple, sugar beet, and rice metabolism studies. EPA has concluded that the residue of regulatory concern is tebufenozide per se.The qualitative nature of the residues in animals is also adequately understood based on acceptable poultry and ruminant metabolism studies. For animals, EPA has concluded that the residues of regulatory concern are tebufenozide and its metabolites benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-((4-carboxymethyl) benzoyl)hydrazide) , benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide , the stearic acid conjugate of benzoic acid, 3-hydroxymethyl,5-methyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and benzoic acid, 3-hydroxymethyl-5-methyl-1-(1,1-dimethylethyl)-2-(4-(1-hydroxyethyl)benzoyl)hydrazide.

B. Analytical Enforcement Methodology

The petitioner has submitted method validation/concurrent recovery studies for a proposed enforcement method. This HPLC/MS method, Rohm and Haas Method TR 34-99-10 which is a combination of methods TR 34-97-91 and TR 34-98-149, is to be used for determining residues of tebufenozide in/on rotated crops. The method, entitled ''Tolerance Enforcement Method for RH-5992 and Its Metabolites in Rotation Crops'' has undergone successful independent laboratory validation . It also has been adequately radiovalidated and an HPLC/MS-MS confirmatory method exists. The proposed enforcement method for rotated crops for determining residues of tebufenozide and metabolites, is adequate for collection of residue data.A copy of the method has been forwarded to the Analytical Chemistry Branch (ACB) for petition method validation (PMV) as a possible enforcement method. The proposed enforcement method has not been subjected to a complete Agency method validation at this time. EPA has conducted a preliminary review of the method that indicates that it appears to be suitable for enforcement purposes pending the outcome of the actual method validation. Given that the registrant has provided concurrent fortification data to demonstrate that the method is adequate for data collection purposes and has provided the Agency with a successful Independent Laboratory Validation, coupled with EPA's preliminary review, EPA concludes that the method is suitable as an enforcement method to support tolerances associated with a conditional registration only. As a condition of the registration, the Agency will require a successful method validation and the registrant will be required to make any necessary modifications to the method resulting from the laboratory validation.

This method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov..

C. Magnitude of Residues

The foliage portions of representative crops from the cereal grain and legume crop groups show quantifiable residues of the tebufenozide metabolite RH-1788 at the 30-day plantback interval. A tolerance is required on those commodities which have quantifiable residues: cereal grain straw and hay, and foliage of legume vegetables. Given the limited amount of data, the cereal grain tolerances should be extended to forage and fodder as well. Tolerances on rotated crops would normally require the same number and geographic location of residue field trials as those required were they primary crops. In this case, the crops for which rotational crop tolerances are requested, small grains and legumes, have much greater production acreage and geographic distribution than most of the registered tebufenozide primary crop uses. Rather than requiring the number and geographic diversity of the rotated crop field trials, which would entail trying to grow and treat primary crops in regions where tebufenozide is unlikely to be used, EPA will require using the number and geographic diversity for field trials of a primary crop likely to be rotated to grains/legumes and with a use pattern which would produce the conditions for highest possible residue in rotated crops.

The most significant crops or crop groups which are rotated and have registered tebufenozide uses are Brassica (cole) and leafy vegetables, cotton, and fruiting vegetables. The primary crops which have the essentially the highest use pattern, (0.92 lb ai/A/season), shortest PHI (7 days), highest current tolerances (2-10 ppm vs 0.8 for fruiting vegetables), and are most likely to be rotated are Brassica (cole) and leafy vegetables. Leaf lettuce is the crop within these crop groups with the highest consumption by the general population. Eight trials are normally required to establish a tolerance on leaf lettuce. The registrant has submitted two trials each on small grains and legumes. Therefore, EPA will require 6 additional crop field trials (the number of residue trials required for leaf lettuce) for the foliages of both rotated small cereal grains (e.g., wheat, barley, or oats) and legumes, for a total of 12 additional trials, to establish the requested tolerances on cereal grains and legumes for a 30-day plantback interval. The guidelines would normally require 63 total trials on these crops groups. A significant reduction in data will be acceptable in this case since this is a reduced risk pesticide, residues are found only in livestock feed items, and those residues do not impact tolerances for animal commodities. Additional data will not be required for grass forage, fodder, and straw and on non-grass animal feeds (forage, fodder, straw, and hay).The small grain and legume foliage data will be translated to these commodities. Up to 4 years may be required to generate and review the additional rotational crop data. To allow the rotation of crops while additional data are generated, EPA is issuing time-limited tolerances on cereal grain forage, fodder, straw, and hay; grass forage, fodder, and straw and non-grass animal feeds (forage, fodder, straw, and hay) at 0.5 ppm, and legume forage at 0.1 ppm. Upon receipt of the additional data, the proposed tolerance levels will be revisited.

D. International Residue Limits

No CODEX, Canadian or Mexican limits for tebufenozide have been were established on cereal grain forage, fodder, straw, and hay; grass forage,

fodder, and straw and non-grass animal feeds (forage, fodder, straw, and hay) and legume forage. Therefore, international harminization is not an issue at this time.

E. Rotational Crop Restrictions

EPA has determined that crops which the label allows to be treated directly can be planted at any time. All other crops can not be planted within 30 days of application.

V. Conclusion

Therefore, time limited tolerances are established for the combined residues of tebufenozide benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and its metabolite benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl)benzoyl]hydrazide in cereal grain forage, fodder, straw, and hay; grass forage, fodder, and straw and non-grass animal feeds (forage, fodder, straw, and hay) at 0.5 ppm, and legume forage at 0.1 ppm.

VI. 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–300928 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 20, 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 Room 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 be 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.'' (cite). 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 VI.A. of this preamble, you should also send a copy of your request to the PIRB 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–300928, 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 PRIB 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 5.1/6.1 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).

VII. 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.

VIII. 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: October 12, 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), (346a), and 371.

2. In § 180.482, by adding text to paragraph (d) to read as follows:

§ 180.482 Tebufenozide; tolerances for residues.

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent combined residues of tebufenozide benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl)hydrazide and its metabolite benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2- [4-(1-hydroxyethyl)benzoyl]hydrazide in or on the raw agricultural commodities when present therin as a result of the application of tebufenozide to growing crops listed in paragraph (a) of this section to read as follows:

Commodity	Parts per million	Expiration/ Revocation Date
Foliage of legume vegetables.	0.1	9/30/03
Forage, fodder, hay and straw of cereal grains.	0.5	9/30/03
Forage, fodder, straw and hay of non-grass animal feeds.	0.5	9/30/03
Grass forage, fodder and hay.	0.5	9/30/03

[FR Doc. 99–27393 Filed 10–20–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300932; FRL–6385–9]

RIN 2070–AB78

Sethoxydim; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in or on buckwheat. This action is in connection with a crisis exemption declared under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on buckwheat. This regulation establishes a maximum permissible level for residues of sethoxydim in this food commodity. The tolerance will expire and is revoked on December 31, 2001.

DATES: This regulation is effective October 21, 1999. Objections and requests for hearings, identified by docket control number OPP–300932, must be received by EPA on or before December 20, 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 VII. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300932 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9364; and e-mail address: pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially 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 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–300932. 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, 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, on its own initiative, in accordance with sections 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for combined residues of the herbicide sethoxydim (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on buckwheat at 10 part per million (ppm). This tolerance will expire and is revoked on December 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

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

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Sethoxydim on Buckwheat and FFDCA Tolerances

On June 18, 1999, the North Dakota Department of Agriculture availed itself of the authority to declare the existence of a crisis situation within the state, thereby authorizing use under FIFRA section 18 of sethoxydim on buckwheat for control of volunteer grains, foxtail, and quackgrass. Abnormal weather consisting of above average rainfall and cooler temperatures combined with a lack of labeled products available for grass control in buckwheat has resulted in increased germination of volunteer cereal grains, foxtail and quackgrass. The densities of these pests would cause economic loss if not controlled.

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

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether sethoxydim meets EPA's registration requirements for use on buckwheat or whether a permanent

tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of sethoxydim by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than North Dakota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for sethoxydim, contact the Agency's Registration Division at the address provided under ''FOR FURTHER INFORMATION CONTACT.''

IV. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of sethoxydim and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of sethoxydim (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) on buckwheat at 10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by sethoxydim are discussed in this unit.

B. Toxicological Endpoint

1. *Acute toxicity*. In a rat developmental study rats received doses of 0, 50, 180, 650, and 1,000 milligrams/kilogram/day (mg/kg/day). The maternal toxicity no-observed-adverse-effect level (NOAEL) was 180 mg/kg/day and the lowest-observed-adverse-effect level (LOAEL) was 650 mg/kg/day based on irregular gait, decreased activity, excessive salivation, and ano-genital staining. For developmental toxicity the NOAEL was 180 mg/kg/day and the LOAEL was 650 mg/kg/day based on 21-22% decrease in fetal weights, filamentous tail and lack of tail due to the absence of accral and/or caudal vertebrae, and delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal, and pubes. The end point for use in the risk assessment is the maternal NOAEL of 180 mg/kg/day. The end point is set on maternal effects because the NOAEL for developmental effects is also 180 mg/kg/day.

2. *Short- and intermediate-term toxicity.* No short- or intermediate-dermal or inhalation endpoints were identified. In a 21 day dermal study with rabbits dosed at 0, 40, 200, or 1,000 mg/kg/day, there was no evidence of compound related toxicity on clinical signs, body weights, food consumption, food efficiency, eye health, clinical pathology, organ weights, or gross pathology. The NOAEL was greater than 1,000 mg/kg/day (limit dose) in the acute inhalation study with rats the LC_{50} was 6.03 mg/l (males) and 6.28 mg/l (females), placing sethoxydim in category IV.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for sethoxydim at 0.9 mg/kg/day. This RfD is based on a finding of equivocal anemia in the 1–year dog study. The NOAEL was 8.86 mg/kg in males and 9.41 mg/kg in females.

4. *Carcinogenicity*. Sethoxydim is not classified. Available studies show no evidence of carcinogenicity in rats or mice.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.412) for the combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide), in or on a variety of raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures and risks from sethoxydim as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary endpoint is 180 mg/kg/day based on NOAEL's of 180 mg/kg/day for maternal and developmental effects in the rabbit developmental study. The FQPA safety factor of 3x was applied to females 13+ only because the endpoint (based on decrease in fetal weights, filamentous tail and lack of tail due to absence of sacral and/or caudal vertebrae, delayed ossification in the hyoids, vertebral centrum and/or transverse processes, sternebrae and/or metatarsal) occurs only during *in utero* exposure and is not a postnatal effect. Since the effects occur during *in utero* exposure, it is not an appropriate endpoint for acute dietary risk assessment of infants and children.

In conducting this acute dietary risk assessment, the Agency made very conservative assumptions--100% of all commodities having sethoxydim tolerances will contain sethoxydim regulable residues and those residues will be at the level of the tolerance--which result in an over estimation of human dietary exposure.

From the acute dietary (food only) risk assessment, a high-end exposure estimate of 0.2 mg/kg/day was calculated. This exposure yielded dietary (food only) margins of exposure (MOEs) ranging from 420 for children (1-6 years old) to 622 for female 13+ and greater than 500 for all other subgroups.

ii. *Chronic exposure and risk.* The FQPA Safety Factor will not be applied for chronic dietary risk assessment because the endpoint is based on anemia in male dogs. The endpoint for which the FQPA safety factor is based is an *in utero* effect and can not result from postnatal exposure. There was no indication of increased susceptibility in the prenatal developmental study in rabbits following *in utero* exposure. In the 2–generation reproduction study in rats, effects in offspring were observed only at above treatment levels which resulted in evidence of appreciable parental toxicity. No increased susceptibility was demonstrated in the developmental toxicity study with rats when the maternal and developmental NOAELs/LOAELs were compared.

In conducting this chronic dietary risk assessment, the Agency has made very conservative assumptions no percent crop-treated data were used and all commodities having sethoxydim tolerances will contain sethoxydim residues and those residues will be at the level of the tolerance which will result in an overestimate of human dietary exposure.

The sethoxydim tolerances (published and pending) result in a Theoretical Maximum Residue Contribution

(TMRC) that is equivalent to the following percentages of the RfD:

Subgroup	TMRC	%RFD
U.S. Population	0.03966	44
All Infants	0.06666	74
Nursing Infants	0.02027	22
Non-Nursing Infants (< 1 year old)	0.08619	96
Children (1–6 years old)	0.08635	95
Children (7–12 years old)	0.05859	65
Female (13+, nursing)	0.04115	46
Males (13–19 years old)	0.04074	45
U.S Population (Autumn Season)	0.04115	46
Northeast Region	0.04121	46
Hispanics	0.04016	45
Non-Hispanic Others	0.04119	46

The subgroups listed above are (1) the U.S. population (48 states); (2) those for infants, children, females, 13+ nursing; and other subgroups for which the percentage of RfD occupied is greater than occupied by the subgroup U.S. population.

2. *From drinking water.* Based on information available, sethoxydim is a non-persistent, but highly mobile compound in soil and water environments. There are no Maximum Contaminant Levels or Health Advisories established for sethoxydim residues in drinking water.

For this proposed Section 18 use, EPA used the Screening Concentration In GROund Water (SCI-GROW) model to estimate the concentration of sethoxydim residues in ground water. The maximum long-term estimated concentration is not expected to exceed 3 parts per billion (ppb) (chronic), and the maximum residue concentration using an average anaerobic half-life of 85 days, is predicted to be 33 ppb (acute); EPA used the generic expected environmental concentration (GENEEC) model to estimate the concentration of sethoxydim residues in surface water. The peak expected environmental concentration (EEC) was 42 ppb (acute), while the 56-day average EEC was 27 ppb (chronic).

3. *From non-dietary exposure.* Sethoxydim is currently registered for use on the following residential non-food sites: ornamentals and flowering plants, recreational areas, and buildings/structures (outdoor non-agricultural). These residential uses comprise a short- and intermediate-term exposure scenario, but do not comprise a chronic exposure scenario.

i. *Acute exposure and risk.* There is a potential for exposure to sethoxydim by homeowner mixers/applicators. However, since no endpoints for dermal or inhalation were selected, the use on residential non-food sites is not expected to pose an unacceptable acute risk.

ii. *Chronic exposure and risk.* The registered uses for sethoxydim do not comprise a chronic exposure scenario. A chronic non-dietary endpoint was not selected; therefore, the use on residential non-food sites is not expected to pose an unacceptable chronic risk.

iii. *Short- and intermediate-term exposure and risk.* Short-term or intermediate-term endpoints were not identified. However, the following scenarios may result if herbicides containing sethoxydim are applied to residential turf, and/or ornamental plants: incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer, ingestion of pesticide-treated turfgrass, and incidental ingestion of soil from treated lawns. A residential exposure estimate and risk assessment was conducted for postapplication exposure following the application of sethoxydim on turf and ornamental gardens. The acute dietary endpoint was used for this risk assessment because the acute dietary endpoint provides the worst case estimate of risk and exposure for these use patterns. The assessment was performed using Draft SOPs for Residential Exposure Assessments (12/18/98). The proposed postapplication aggregate exposure assessment takes into account chronic dietary exposure plus outdoor residential exposures. These exposure assessments assume that 20 percent of the application rate is available from the turf grass as dislodgeable residue and 2 hours as the duration of exposure. These assumptions are considered conservative and protective.

Exposures and MOEs were calculated to be 0.053 mg/kg/day (MOE of 3400) for hand to mouth transfer for treated lawns (toddlers), 0.0012 mg/kg/day (MOE of 150,000) for ingestion of treated turf grass (toddler), and 0.000025 (MOE of 7,000,000) for incidental ingestion of soil (toddlers). MOEs exceeded 100 for all three scenarios. MOEs greater than or equal to 100 do not exceed the Agency's level of concern.

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

EPA does not have, at this time, available data to determine whether sethoxydim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, sethoxydim does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that sethoxydim has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Using the published and pending tolerances, the dietary (food only) acute MOEs range from 420 for children (1-6 year) to 622 for females 13+ years. The level of concern for females 13 + years is 300 (includes 3X safety factor) for acute sethoxydim exposure and 100 for all other population subgroups. This risk estimate should be viewed as highly conservative; refinement using anticipated residue values and percent crop treated data in conjunction with Monte Carlo analysis will result in a lower acute dietary exposure estimate. The dietary exposure does not exceed the Agency's level of concern.

Sethoxydim is a non persistent, but highly mobile compound in soil and water environments. The modeling data for sethoxydim in drinking water indicate levels less than OPP's DWLOC for acute exposure. Since a refined acute risk for food only would not exceed EPA's levels of concern for acute dietary exposures and the monitoring and modeling levels in water are less than the acute DWLOC, EPA does not expect aggregate acute exposure to sethoxydim will pose an unacceptable risk to human health.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sethoxydim from food will utilize 44 percent of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 95% for children 1 to 6 years; discussed below. EPA generally

has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sethoxydim in drinking water and from non- dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Endpoints for short or intermediate term were not selected. An aggregate exposure estimate and risk assessment was conducted for post-application exposure to sethoxydim on turf and ornamental plants taking into account chronic exposure from food and the acute dietary NOAEL. The resulting MOEs (1390-2350) are not of concern to the Agency.

4. *Aggregate cancer risk for U.S. population*. Sethoxydim has not ben classified. Available studies do not show evidence of carcinogenicity in rats or mice.

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

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

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of sethoxydim, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Prenatal and postnatal sensitivity*. There was no indication of increased susceptibility in the prenatal developmental toxicity study in rabbits following *in utero* exposure. In the 2–generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of appreciable parental toxicity. No increased susceptibility was demonstrated in the developmental toxicity studies; however developmental toxic effects, were observed at the highest dose tested (LOAEL).

Acceptable developmental toxicity studies have been performed in rats and rabbits; an acceptable 2–generation reproduction study has also been performed in rats. A chronic feeding/carcinogenicity guideline study in rats has been submitted and is currently undergoing review. An initial examination of the study supports the current findings of no evidence of carcinogenicity. There is a complete toxicity database for sethoxydim and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

The FQPA Safety Factor is to be retained in case of developmental toxicity in the absence of maternal toxicity. Since malformations were seen in the rat study at levels that produced minimal maternal toxicity. The Agency concluded that an FQPA safety factor is needed. However, it was determined that the 10X safety factor need not be retained, instead, the safety factor should be reduced to 3X based on the following weight of evidence considerations: (1) developmental toxicity was seen in only one species, in the presence of maternal toxicity, and at a very high dose (650 mg/kg/day) that approached the Limit-Dose of 1,000 mg/kg/day; (2) no developmental toxicity was observed in the rabbit study at the highest dose tested (400 mg/kg/day); (3) there was no increased susceptibility seen in the 2–generation reproduction study in rats at doses up to 150 mg/kg/day (highest dose tested); and (4) lack of concern for structure activity relationship (i.e. no significant developmental or reproductive toxicity was seen with the structural analog, clethodim.)

Exposure assessments do not indicate a concern for potential risk to infants and children based on; (1) the dietary exposure assessments use field study data and assume 100% crop treated which results in an overestimate of dietary exposure; (2) limited monitoring data is used for ground and surface source drinking water exposure assessments, resulting in estimates considered to be reasonable upper-bound concentrations; (3) there is a potential for post-application hand-to-mouth exposure to toddlers associated with lawn use, however, the use of conservative models and/or assumptions in the residential exposure assessment provide adequate protection of infants and children.

The FQPA safety factor is applicable for acute dietary risk assessment for females 13 + because the endpoint occurs only during *in utero* exposure and is not a postnatal effect. Since the effects occur during *in utero* exposure, it is not an appropriate endpoint for acute dietary risk assessment of infants and children. The FQPA safety factor is not applied for chronic risk assessment because the endpoint is an *in utero* effect and can not result from postnatal exposure. The FQPA safety factor is not applicable to the post-application hand-to-mouth exposure associated with the lawn use since this exposure scenario would only be expected for toddlers and not for females 13+.

iii. *Conclusion*. There is a complete toxicity data base for sethoxydim and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk*. Using the conservative exposure assumptions that 100% of the commodities having sethoxydim tolerances will contain sethoxydim regulable residues and that those residues will be at the level of the tolerance, EPA calculated acute dietary (food only) MOEs ranging from 420 for children (1–6 years old) to 622 for females 13+ years. The level of concern is 300 (3x safety factor x 100) for females 13+ years and 100 for all other subgroups.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to sethoxydim from food will utilize less than 100% of the RfD for nursing infants, non-nursing infants (< 1 years old), children (1–6 years old), and

children (7–12 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to sethoxydim in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* An aggregate exposure estimate and risk assessment was conducted for post-application exposure to sethoxydim on turf and ornamental plants taking into account chronic exposure from food and the acute dietary NOAEL. The resulting MOEs (1,390–2,350) are not of concern to EPA.

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

V. Other Considerations

A. Metabolism in Plants and Animals

The metabolism of sethoxydim in plants and animals is understood. The tolerances for plant and animal commodities are expressed as the combined residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide).

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas-liquid chromatography GLC with flame photometric detection) is available (Method I, PAM II) to enforce the tolerance expression.

C. Magnitude of Residues

Residues of sethoxydim and its metabolites containing the 2-cyclohexen-1-one moiety are not expected to exceed 10.0 ppm in/on buckwheat or its processed commodity flour as a result of this Section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with this Section 18 use.

D. International Residue Limits

There are no Codex, Canadian, or Mexican residue limits for sethoxydim on buckwheat. Therefore, harmonization is not an issue for this Section 18 use.

E. Rotational Crop Restrictions

No rotational crop restrictions are specified in the Section 18 or Federal label.

VI. Conclusion

Therefore, the tolerance is established for combined residues of (2-[1-(ethoxyimino]butyl)-5-[2-(ethylthio) propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety (calculated as the herbicide) in buckwheat at 10 ppm.

VII. 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–300932 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 20, 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 VII.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 the docket control number OPP-300932, 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).

VIII. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (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(n)(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 under FFDCA section 408(l)(6), 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.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of 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: October 5, 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.

2. In § 180.412, the table in paragraph (b) is amended by adding an entry for ''buckwheat'' to read as follows:

§ 180.412 Sethoxydim; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Buckwheat	10	12/31/01
* * *	* * *	*

* * * * *

[FR Doc. 99–27391 Filed 10–20–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–279; RM–8368 and RM–8385]

Radio Broadcasting Services; Cal-Nev-Ari, NV.

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: This document grants an appeal filed by Richard W. Myers of a *Report and Order*, 60 FR 37623 (July 21, 1995), which concluded that Cal-Nev-Ari, Nevada, did not qualify as a ''community'' for allotment purposes. The Commission finds that Cal-Nev-Ari constitutes a ''community'' for allotment purposes and adds Channel 285A to Cal-Nev-Ari, Nevada, as its first local aural transmission facility. The coordinates for Channel 285A at Cal-Nev-Ari are: North Latitude 35–17–12 and West Longitude 114–51–57. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 22, 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. 93–279, adopted September 29, 1999, and released October 8, 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, DC. 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, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Cal-Nev-Ari, Channel 285A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–27526 Filed 10–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2096, MM Docket No. 98–208; RM–9396]

Radio Broadcasting Services; Princeton and Elk River, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 291C2 from Princeton, Minnesota, to Elk River, Minnesota, and modifies the license for Station KLCI to specify operation on Channel 291C2 at Elk River in response to a petition filed by Milestone Radio, LLC. *See* 63 FR 68719, December 14, 1998. The coordinates for Channel 291C2 at Elk River are 45–23–00 and 93–48–30. With this action, this proceeding is terminated.

DATES: Effective November 22, 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. 98–208, adopted September 29, 1999, and released October 8, 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 Minnesota, is amended by removing Princeton, Channel 291C2 and adding Elk River, Channel 291C2.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–27527 Filed 10–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2095; MM Docket No. 98–180; RM–9365]

Radio Broadcasting Services; Fremont and Holton, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 261A from Fremont, Michigan to Holton, Michigan, and modifies the license for Station WSHN-FM, Fremont, to specify operation at Holton, in response to a petition filed by Noordyk Broadcasting, Inc. *See* 63 FR 54431, October 9, 1998. The coordinates for Channel 261A at Holton are 43–28–15 NL and 85–56–25 WL. With this action, this proceeding is terminated.

DATES: Effective November 22, 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. 98–180, adopted September 29, 1999, and released October 9, 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 Twelfth Street, SW, Washington, D.C. 20554. 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 removing Fremont, Channel 261A and adding Holton, Channel 261A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–27534 Filed 10–20–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

48 CFR Parts 201 and 213

[DFARS Case 99–D002]

Defense Federal Acquisition Regulation Supplement; Overseas Use of the Purpose Card

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit use of the Governmentwide commercial purchase card for purchases valued at or below $25,000 that are made outside the United States for use outside the United States and are for commercial items. Use of the purchase card permits immediate receipt of supplies and services and, therefore, increases mission readiness and accomplishment.

EFFECTIVE DATE: October 21, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 99–D002.

SUPPLEMENTARY INFORMATION:

A. Background

Section 13.301 of the Federal Acquisition Regulation (FAR) permits use of the Governmentwide commercial purchase card to make purchases valued at or below the micro-purchase threshold of $2,500 ($2,000 for construction purchases). The FAR permits use of the card for purchases exceeding the micro-purchase threshold only as an ordering or payment method in conjunction with a contract. This final rule amends the DFARS to permit use of the card on a stand-alone basis for overseas purchases of commercial items valued at or below $25,000. This action is possible since many laws do not apply to purchases made overseas for use overseas. For example, some laws do not apply if the contractor's employees are recruited outside of the United States. Current requirements and restrictions imposed on card usage for purchases other than those falling within the scope of this rule remain unchanged.

DoD published a proposed rule on May 25, 1999 (64 FR 28134). Forty-seven sources submitted comments on the proposed rule. DoD considered all comments in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only affects commercial item purchases that are made outside the United States for use outside the United States. Small business concerns are not significantly affected by overseas transactions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 201 and 213

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 201 and 213 are amended as follows:

1. The authority citation for 48 CFR Parts 201 and 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 201.603–3 is amended by redesignating the existing text as paragraph (a), and by adding a new paragraph (b) to read as follows:

201.603–3 Appointment

* * * * *

(b) Agency heads may delegate the purchase authority in 213.301 to DoD civilian employees and members of the U.S. Armed Forces.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

3. Section 213.301 is added to read as follows:

213.301 Governmentwide commercial purchase card.

(1) ''United States,'' as used in this section, means the 50 States and the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, Wake Island, Johnston Island, Canton Island, the outer Continental Shelf lands, and any other place subject to the jurisdiction of the United States (but not including leased bases).

(2) An individual appointed in accordance with 201.603–3(b) also may use the Governmentwide commercial purchase card to make a purchase that exceeds the micro-purchase threshold but does not exceed $25,000, if—

(1) The purchase—

(A) Is made outside the United States for use outside the United States; and

(B) Is for a commercial item; but

(C) Is not for work to be performed by employees recruited within the United States;

(D) Is not for supplies or services originating from, or transported from or through, sources identified in FAR Subpart 25.7;

(E) Is not for ball or roller bearings as end items; and

(F) Does not require access to classified or Privacy Act information; and

(ii) The individual making the purchase—

(A) Is authorized and trained in accordance with agency procedures;

(B) Complies with the requirements of FAR 8.001 in making the purchase; and

(C) Seeks maximum practicable competition for the purchase in accordance with FAR 13.104(b).

[FR Doc. 99–27278 Filed 10–20–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–99–5843]

RIN 2105–AC80

Relocation of Standard Time Zone Boundary in the State of Nevada

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is relocating the City of West Wendover, Nevada, from the Pacific Time Zone to the Mountain Time Zone. This action is taken in response to a petition by the Mayor of West Wendover. The action is designed to facilitate commerce and reduce confusion.

DATES: This rule is effective at 2:00 a.m. PDT, Sunday, October 31, 1999.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–9315; email address: joanne.petrie@ost.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points for common carriers engaged in interstate or foreign commerce.''

Petition for Rulemaking

On January 8, 1999, Walter F. Sanders, Mayor of the City of West

Wendover, Nevada sent a letter to the Department of Transportation petitioning the Department to change the city from the Pacific Time Zone to the Mountain Time Zone. The letter noted the following facts in support of the petition.

1. West Wendover is located on the border of Utah and Nevada and is directly adjacent to the City of Wendover, Utah, which is in the Mountain Time Zone.

2. It is more than one hundred miles to the nearest city.

3. Businesses in West Wendover make most of their purchases from Salt Lake City, which is in the Mountain Time Zone.

4. The city receives all of its television and radio broadcasts from Salt Lake City. Due to mountain ranges west of West Wendover, radio broadcasts cannot be received from the Nevada area.

5. West Wendover has one weekly local newspaper, which is printed in Salt Lake City.

6. The City of West Wendover currently has no passenger rail service. The nearest public rail service is located in either Salt Lake City, Utah or Elko, Nevada. Both cities are more than one-hundred miles from West Wendover.

7. Greyhound buses travel through West Wendover on an east/west run, but only stop in Wendover, Utah.

8. Wendover, Utah, has a small airport, which is limited to mostly small private aircraft and which receives no commercial air service. Tooele County, Utah, which is on Mountain time, is in the process of renovating its airport. The closest major airport is Salt Lake City International Airport.

9. A small percentage of West Wendover's working population resides outside the City limits. The majority of employed residents work in the gaming/tourism industry.

10. Medical services are currently provided by a local medical clinic. The facility is owned by the City of West Wendover, which in turn has leased the facility to the University of Utah—Medical Facility. This agreement provided the opportunity for expanded medical services to the community. Most residents of West Wendover travel to Salt Lake City for major and routine health care.

11. Secondary education is offered in Salt Lake City, Utah and Elko, Nevada.

12. West Wendover is in the process of expanding its recreation facilities. These recreational services are designed to accommodate people from the Wastach Front area, which is on Mountain time.

13. West Wendover's residents must travel to Salt Lake City or Elko in order to obtain a greater variety of services, shopping, and recreation.

14. The City of West Wendover is trying to purchase Air Force property adjacent to the Tooele County Airport. This purchase is expected to provide opportunities to establish a more diversified economy within the Wendover/West Wendover community.

15. Historically, West Wendover has always operated on Mountain time. Prior to the 1980s, there was no reason to do otherwise because there was literally nothing to the town fifty yards past the state line. When West Wendover began to ''boom,'' the town tried to operate by Pacific time. According to the Mayor, this action created mass confusion for both residents and those outside the community.

16. The Mayor stated that by allowing West Wendover to formally move into the Mountain Time Zone, commerce within the Wendover/West Wendover community would be facilitated and confusion would be eliminated.

On July 26, 1999, the DOT published a notice of proposed rulemaking in the **Federal Register** (64 FR 40331) that would move West Wendover to the Mountain Time Zone. On August 10, 1999, the DOT held a public hearing at the West Wendover Library to take questions and comments on the proposed change. The hearing was attended by approximately twelve people plus the City Council. All but one of those testifying favored the change. The individual in favor of Pacific time did not elaborate on her reasons for her position. Those in favor focused on the practicality of observing Mountain time based on the geography of the area. The City is located on the State line and adjacent to Wendover, Utah. The nearest towns are over 100 miles away. Most of the commerce takes place to the east. The economy of the community, especially its plans for future expansion, are tied to the Mountain Time Zone. The City has always observed Mountain time and it would be a hardship to now enforce Pacific time.

One written comment strongly supporting Mountain time was filed in the docket by Viola S. Troyan. Among other things, Ms. Troyan noted her belief that 99 percent of the people in West Wendover ''think Mountain time.''

Finding

We find that, based on the Mayor's petition, testimony presented at the hearing and the comment filed in the docket, there is good cause to place West Wendover, Nevada in the Mountain Time Zone. The change is effective at 2:00 a.m. PDT, Sunday, October 31, 1999. Because the community is already unofficially observing Mountain time, we find good cause to make this rule effective on less than 30 days notice.

Impact on Observance of Daylight Saving Time

This time zone change does not affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2:00 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis and Notices

This rule 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. It has not been reviewed by the Office of Management and Budget 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.) We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small business, 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. This rule primarily affects individuals and their scheduling of activities. Although it will affect some small businesses, not-for-profits, and the City of West Wendover, it will not be a substantial number. In addition, the change should have little, if any, economic impact. I, therefore, certify under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and Executive Order 12875, enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule does not impose an unfunded mandate.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protect Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time.

For the reasons discussed above, the Office of the Secretary is amending Title 49 Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; 49 CFR 159(a), unless otherwise noted.

2. In § 71.9, revise paragraph (b) to read as follows:

§ 71.9 Boundary line between mountain and Pacific zones.

* * * * *

(b) *Utah-Nevada-Arizona-California.* From the northeast corner of the State of Nevada southerly along the Utah-Nevada boundary to the junction with the northern border of the City of West Wendover, Nevada. Then westward along the northern, western, and southern boundaries of the City of West Wendover back to the Utah-Nevada boundary. Then southerly along the Utah-Nevada boundary, the Nevada-Arizona boundary, and the Arizona-California boundary to the boundary between the United States and Mexico.

* * * * *

Issued in Washington, DC. on October 12, 1999.

Rodney E. Slater,

Secretary.

[FR Doc. 99–27240 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–62–P

Proposed Rules

Federal Register
Vol. 64, No. 203
Thursday, October 21, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 91, 121, 135, and 145

[Docket No. FAA–1999–5836; Notice No. 99–09]

RIN 2120–AC38

Part 145 Review: Repair Stations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This action extends the comment period for an NPRM that was published on June 21, 1999. In that document, the FAA proposed changes to the Code of Federal Regulations to update and revise the regulations for repair stations. This extension is a result of formal requests from repair stations and industry associations to extend the comment period to the proposal. This extension is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

DATES: Comments must be received on or before December 3, 1999.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–5836, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Richard E. Nowak, Aircraft Maintenance Division, Airworthiness Systems and Air Agency Branch (AFS–330), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7228.

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. Comments relating to the environmental, energy, federalism, business or economic impacts that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposed rule must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–1999–5836.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's electronic web page at http://www.access.gpo.gov.nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On June 11, 1999, the Federal Aviation Administration (FAA) issued Notice No. 99–09, Part 145 Review: Repair Stations (64 FR 33142, June 21, 1999). Comments to that document were to be received on or before October 19, 1999.

By letter, twenty-one repair stations and industry associations requested that the FAA extend the comment period for Notice No. 99–09 for periods of time ranging from 60 days to 180 days. Two petitioners requested that the comment period to be extended 60 days; fourteen petitioners requested an extension to December 31, 1999; one petitioner requested an extension to January 1, 2000; one petitioner requested an extension to March 31, 2000; two petitioners requested an extension of 180 days; and one petitioner requested the maximum allowable extension. The petitioners stated that the proposal is a highly complex document that affects all repair stations. Many petitioners noted that they use non-certificated sources to perform certain functions and needed additional time to consult with those sources to assess business and economic impacts and provide comments. Industry association expressed a need for additional time to contact member companies, some of which are located outside the United States. Most petitioners stated that an extension of the comment period would provide affected entities with sufficient time to obtain a copy of this proposal, research it and fully evaluate the business and economic impacts of the

proposal before submitting comments to the FAA.

In accordance with § 11.20(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions for extension of the comment period to Notice No. 99–09. All petitioners have shown a substantive interest in the proposed rule and good cause for the extension. The FAA also has determined that extension of the comment period is consistent with the public interest.

Extension of Comment Period

The FAA has reviewed the requests for consideration of an extended comment period for Notice No. 99–09 and determined that an extension would be in the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for Notice No. 99–09 is extended to December 3, 1999.

Issued in Washington, DC on October 15, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–27470 Filed 10–18–99; 12:36 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that would have required repetitive inspections to ensure the proper condition of the engine thrust link components, and follow-on corrective action, if necessary; and replacement of the end cap assembly with an improved assembly. Such replacement, when accomplished, would terminate the repetitive inspections. That proposal was prompted by a report of fatigue cracking of end cap bolts caused by improper installation. This new action revises the proposed rule by adding a repair requirement and by clarifying the type of inspection and terminology used in describing the parts to be inspected. The actions specified by this new AD are intended to prevent failure of the end cap assembly, which could lead to separation of the engine from the airplane in the event of a primary thrust linkage failure.

DATES: Comments must be received by November 10, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–186–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–186–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 20, 1998 (63 FR 27696). That NPRM would have required repetitive inspections to detect improper installation or fatigue damage of the end cap of the forward engine mount, and replacement of the end cap assembly with an improved assembly. Such replacement, when accomplished, would terminate the repetitive inspections. That NPRM was prompted by a report of fatigue cracking of end cap bolts caused by improper installation. That condition, if not corrected, could result in failure of the end cap assembly, which could lead to separation of the engine from the airplane in the event of a primary thrust linkage failure.

Comments

Due consideration has been given to the comments received in response to the NPRM:

One commenter states that it is not affected by the proposal because its Model 767–200ER series airplanes are powered by General Electric engines. Another commenter generally supports the proposal.

Request To Withdraw the Original NPRM

One commenter does not consider that issuance of the original NPRM is necessary for the following reasons:

1. The commenter states that ''regulatory action mandating incorporation of Boeing Alert Service Bulletin 767–71A0087 is unwarranted for JT9D powered Model 767 aircraft'' for several reasons. First, the original

NPRM was issued solely because the part numbers of the end caps and bolts on Model 767 and Model 747–400 series airplanes are the same. Second, the alert service bulletin was issued on the basis of one report of broken end cap bolts by one operator of a Model 747–400 series airplane.

The FAA does not concur that the original NPRM should be withdrawn. Issuance of the original NPRM was not based on the fact that both end caps have the same part number, but on the fact that the configuration of the end cap assembly is identical. The configuration of the end cap assembly for Model 767 and 747 series airplanes is identical in all relevant respects. Therefore, if an end cap assembly is installed incorrectly in either of those airplane models, the same unsafe condition is likely to occur. In addition, the unsafe condition is likely to occur regardless of whether the airplane is powered by Pratt & Whitney Model JT9D or Model PW4000 series engines, as the installations of those airplane engines also are identical. In light of this, the FAA has determined that an unsafe condition exists. No change to the supplemental NPRM is necessary in this regard.

2. The commenter states that the cause of the bolt failure on a Model 747–400 series airplane was attributed to a personnel error when the end cap was installed backwards. The commenter adds that one isolated incident involving a personnel error ''does not warrant drastic repetitive inspections.''

The FAA does not concur that the original NPRM should be withdrawn. While personnel error was involved in the mis-installation of the end cap, it is the ease by which an end cap can be installed backwards that makes it likely that this condition could exist on other airplanes. For this reason, the FAA considers that an unsafe condition is likely to develop on other airplane models of the same design, and that issuance of this AD and the repetitive inspections required by this AD are necessary to ensure continued operational safety. No change to the supplemental NPRM is necessary in this regard.

3. The commenter states that the end cap and bolts are routinely inspected for defects when they are removed from the assembly. In addition, in the entire operating history of Model 767 series airplanes powered by Pratt & Whitney Model JT9D series engines, there is no documented event of any operator experiencing failure of an end cap or bolt. Further, there is no evidence that the end caps were ever installed backwards on any Model 767 series airplane.

The FAA does not concur that the original NPRM should be withdrawn. Even though the operator may conduct a routine inspection of the end cap and bolts for defects, additional inspections are required because of the possibility of early fatigue failure. The FAA considers this AD necessary in order to address two major concerns:

- First, if an end cap were installed incorrectly, it would automatically pick up thrust loads on every flight and result in an early fatigue failure of the end cap assembly. Thus, if the primary load path provided by the thrust links, evener bar, and engine lugs were to then experience a failure, the engine would separate from the airplane almost immediately.
- Second, investigation has revealed that even a *properly* installed end cap assembly has an inadequate fatigue life. Analysis and testing indicate that if the primary load path fails, the end cap assembly then would react all of the new loads and cause the end cap assembly to fail within a relatively small number of flight cycles. Such failure would occur even if the end cap assembly had been entirely intact at the time the primary load path failed. For this reason, the original NPRM specifies repetitive inspections of the primary load path (i.e., the thrust link, evener bar, and engine lugs) until accomplishment of the replacement action specified in Work Packages 3 or 4.

The FAA considers that the lack of defects found in the operator's end caps implies merely that the original end caps were installed correctly, as a properly installed end cap would not react any loads during normal flight operations, thereby making it unlikely that any fatigue damage would have occurred. However, because it has been determined that the existing end cap assembly has an inadequate fatigue life, the FAA considers that the requirements of this AD are necessary to ensure the operational safety of the fleet. No change to the supplemental NPRM is necessary in this regard.

4. The commenter states that the alert service bulletin mandates a visual check and an ultrasonic on-wing [non-destructive test (NDT)] inspection of the evener bar and thrust links for the engine mounts for Pratt & Whitney Model JT9D series engines, but no on-wing ultrasonic inspection is specified for Model PW4000 series engines. If repetitive on-wing ultrasonic inspections are waived for the higher thrust Model PW4000 series engines, there is no justification to require those inspections for the lower thrust Model JT9D series engines. Further, the operating history of airplanes powered by Model JT9D series engines does not support any regulatory action regarding the forward lower engine mount.

The FAA does not concur that the original NPRM should be withdrawn. The FAA points out that the original NPRM makes it clear in the ''Differences'' paragraph that the two airplane groups for Model 767 series airplanes, Group 1 airplanes (with JT9D engines) and Group 2 airplanes (with PW4000 engines), are to be treated exactly the same. According to the manufacturer's fleet utilization data base, there should never be a case of any Group 2 airplane ever reaching the threshold of 16,000 flight cycles before it reaches the 3-year compliance time for the mandatory terminating action. Although the logic diagram in Figure 1 of the alert service bulletin specifies that operators of Group 2 airplanes (*i.e.*, airplanes with Model PW4000 series engines) [with more than 16,000 flight cycles] should contact the manufacturer, the FAA considers that this instruction was included on the off-chance that an airplane might fall into this category. However, this does not imply that any such airplanes would be waived from the NDT inspection requirements. On the contrary, such airplanes would be handled on a case-by-case basis, with every expectation that NDT inspections would be required at shorter inspection intervals because of the higher fatigue damage that could be caused by the higher thrust Model PW4000 series engines. No change to the supplemental NPRM is necessary.

Request To Clarify Inspection Requirements and Components To Be Inspected

One commenter, the manufacturer, requests certain changes to the ''Explanation of Relevant Service Information'' paragraph in the original NPRM. The commenter contends that the AD should refer to inspections of the ''engine thrust link components'' rather than to inspections of the ''end cap.''

The FAA concurs that the commenter's suggested changes add clarity and technical accuracy to the supplemental NPRM. Additionally, Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996, does not specify inspections of the ''end cap,'' but only includes inspections of the ''forward engine mount'' to ensure that the thrust links, evener bar, associated engine lugs, and attaching hardware are firmly attached. Although the ''Explanation of Relevant Service Information'' paragraph is not included

in this supplemental NPRM, the FAA has determined that certain changes are necessary in this AD for several reasons.

The FAA considers that requiring operators ''to ensure the proper condition of the engine thrust link components'' more accurately describes the action required for the inspection rather than ''to detect improper installation or fatigue damage of the end cap of the forward engine mount.'' The FAA points out that ''fatigue damage of the end cap of the forward engine mount,'' which involves the secondary load path, could not be detected until the forward engine mount was disassembled. In addition, the inspections specified by the alert service bulletin are for ''engine thrust link components,'' not the ''end cap'' itself.

This supplemental NPRM correlates the corrective action to the presence or absence of damage to the engine thrust link components. In addition, the engine thrust link components, which involve the primary load path, can be inspected with no disassembly of the forward engine mount. In light of this information, the FAA has made the appropriate changes to the ''Summary'' paragraph of this supplemental NPRM.

Request To Include Repair of Discrepancies

One commenter, the manufacturer, requests that paragraph (d) of the original NPRM be revised to require that all discrepancies or damage found be repaired in accordance with an approved FAA procedure.

The FAA concurs partially. The action required by paragraph (d) of the original NPRM is now included in paragraphs (c), (c)(1), and (c)(2) of the supplemental NPRM. The repair requirement is added in paragraph (c)(1), and the action for accomplishment of Work Package 3 is included in paragraph (c)(2). Because the repair procedures are not specified in Work Package 3 of the alert service bulletin, it is necessary for this supplemental NPRM to require that any repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO).

Explanation of Changes Made to the Supplemental NPRM

The FAA has clarified one of the inspection requirements contained in the original NPRM. Whereas the original NPRM specified the accomplishment of Work Package 1 (visual inspection of the forward engine mount), the FAA has revised this supplemental NPRM to clarify that its intent is to require a detailed visual inspection. Additionally, a note has been added to the supplemental NPRM to define that inspection.

The FAA has deleted the reference to paragraph (c) that was included in paragraph (a) of the original NPRM, which stated that ''Where Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996, specifies that the actions required by this AD may be accomplished in accordance with an operator's equivalent procedure,' the actions must be accomplished in accordance with Chapter 71–00–00 of the Boeing 767 Airplane Maintenance Manual (AMM), as specified in the alert service bulletin.'' The FAA has determined that the required inspections and replacement actions specified in paragraphs (a), (b), and (c)(2) of the supplemental NPRM are adequately addressed in the alert service bulletin. Therefore, reference to a specific chapter of the AMM is not necessary.

Paragraphs (a)(1) and (a)(2) of this supplemental NPRM have been revised to clarify the inspection requirements.

Explanation of Changes Made to This Final Rule

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas the proposal specified a visual inspection, the FAA has revised this final rule to clarify that its intent is to require a detailed visual inspection. Additionally, a note has been added to the final rule to define that inspection.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 239 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 96 airplanes of U.S. registry will be affected by this AD, that it will take approximately 37 work hours per airplane (18.5 work hours per engine) to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $213,120, or $2,220 per airplane, per inspection cycle.

It will take approximately 135 work hours per airplane (67.5 work hours per engine) to accomplish the required replacement of the forward engine mount end cap and bolts, and the average labor rate is $60 per work hour. Required parts would cost approximately $1,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $873,600, or $9,100 per airplane.

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

Regulatory Impact

The regulations 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:

Boeing: Docket 97–NM–186–AD.

Applicability: Model 767 series airplanes, powered by Pratt & Whitney Model JT9D or Model PW4000 series engines, as listed in Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent possible separation of the engine from the airplane in the event of a primary thrust linkage failure, accomplish the following:

Initial and Repetitive Inspections

(a) For Groups 1 and 2 airplanes: Accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, as applicable, in accordance with Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996.

(1) Within 500 flight hours or 300 flight cycles after the effective date of this AD, whichever occurs later: Accomplish Work Package 1 (a detailed visual inspection of the forward engine mount to ensure that the thrust link, evener bar, associated lugs, and attaching hardware are firmly attached). Thereafter, repeat Work Package 1 at the intervals specified in the alert service bulletin until the requirements of either paragraph (a)(2) or (a)(3) of this AD are accomplished.

Note 2: For the purposes 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 an intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(2) Prior to the accumulation of 16,000 total flight cycles on any engine or within 500 flight hours or 300 flight cycles after the effective date of this AD, whichever occurs latest: Accomplish Work Package 2 (non-destructive test inspection of the forward engine mount to ensure the proper condition of the engine thrust link components). Thereafter, repeat Work Package 2 on that engine at the intervals specified in the alert service bulletin until the requirements of paragraph (a)(3) of this AD are accomplished. Accomplishment of Work Package 2 constitutes terminating action for the repetitive inspections required by paragraph (a)(1) of this AD for that engine.

Replacement and Terminating Action

(3) Within 3 years after the effective date of this AD: Accomplish Work Package 3 (end cap and bolt replacement of the forward engine mount). Accomplishment of Work Package 3 constitutes terminating action for the requirements of this AD for Groups 1 and 2 airplanes.

(b) For Group 3 airplanes: Within 3 years after the effective date of this AD, accomplish Work Package 4 (bolt replacement) in accordance with Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996.

Repair and Replacement Action

(c) For all airplanes: If any discrepancy (including an improperly installed or damaged engine thrust link component) is found during any inspection required by this AD, prior to further flight, accomplish the actions required by paragraphs (c)(1) and (c)(2) of this AD.

(1) Repair any discrepancies in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(2) Accomplish Work Package 3 in accordance with Boeing Alert Service Bulletin 767–71A0087, dated October 10, 1996.

Spares

(d) As of the effective date of this AD, no person shall install a forward engine mount end cap having part number 310T3026–1 on any airplane.

Alternative Method of Compliance

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

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

Special Flight Permits

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

Issued in Renton, Washington, on October 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27564 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–p

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–248–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4 series airplanes. This proposal would require repetitive inspections to detect cracking of the inner skin panel of the longitudinal lap joint; and repair, or modification and new repetitive inspections, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct stress corrosion cracking of the inner skin panel of the longitudinal lap joint, which could result in rapid depressurization of the airplane.

DATES: Comments must be received by November 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–248–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–248–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l' Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes. The DGAC advises that, on four in-service Airbus Model A300 series airplanes, cracking of the inner skin panel of the longitudinal lap joint was detected between frames 67 and 70 at stringer 57. The cracking of the fuselage skin panel was attributed to stress corrosion. On two of the airplanes, corrosion was found previously in the long lap joints, and those areas were reworked beyond the limits provided in the Airbus A300 Structural Repair Manual. Subsequent stress corrosion cracking is attributed to the improper rework. Such cracking of the inner skin panel of the longitudinal lap joint, if not corrected, could result in rapid depressurization of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999. That service bulletin describes procedures for repetitive external and internal eddy current inspections to detect cracking of the inner skin panel of the longitudinal lap joint between frames 65 and 72 at stringer 57, and repair, if necessary. For repaired areas, the service bulletin also specifies new repetitive inspections. The DGAC classified the service bulletin as mandatory and issued French airworthiness directive 98–150–246(B), dated April 8, 1998, in order to assure the continued airworthiness of these airplanes in France.

The manufacturer also has issued Airbus Service Bulletin A300–53–306, dated September 5, 1995, which describes procedures for modification of the inner skin panel of the longitudinal lap joint between frames 65 and 72 at stringer 57 by installation of a doubler. That modification is intended to delay the onset of cracking of the inner skin panel of the longitudinal lap joint, and would eliminate the need to accomplish the repetitive inspections described in Airbus Service Bulletin A300–53–305, Revision 1, for all modified areas.

The manufacturer also has issued Airbus Service Bulletin A300–53–211, Revision 5, dated April 29, 1999. That service bulletin describes inspection criteria to detect cracking of, among other areas, the inner skin panel of the longitudinal lap joint between frames 65 and 72 at stringer 57 after it has been modified in accordance with Airbus Service Bulletin A300–53–306.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Difference Between Proposed Rule and Service Bulletins

Operators should note that, unlike the procedures described in Airbus Service Bulletin A300–53–305, Revision 1, and Airbus Service Bulletin A300–53–211, Revision 5, this proposed AD would not permit further flight if a crack is detected in the inner skin panel of the longitudinal lap joint. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject inner skin panel that is found to be cracked must be repaired or modified prior to further flight.

Difference Between Proposed Rule and Foreign Airworthiness Directive

Operators should note that, although French airworthiness directive 98–150–246(B) states that no inspections in accordance with that airworthiness directive are necessary after accomplishment of Airbus Service Bulletin A300–53–306, this proposed AD would require repetitive inspections in accordance with Airbus Service Bulletin A300–53–211, Revision 5, for areas modified in accordance with Airbus Service Bulletin A300–53–306. The modification described in Airbus Service Bulletin A300–53–306 is intended to delay the onset of cracking of the inner skin panel of the longitudinal lap joint. However, cracking may still occur in the modified area. The FAA finds that repetitive inspections of the modified area are necessary to ensure that any cracking is detected in a timely manner.

Other Relevant Rulemaking

On May 28, 1996, the FAA issued AD 96–12–02, Amendment 39–9644 (61 FR 28497, June 5, 1996). The applicability statement of that AD is the same as for this proposed AD. That AD requires measurements of the thickness of the inner skin of, and inspections to detect cracking of, the longitudinal lap joint from the inside of the fuselage at certain stringers, and repair, if necessary, in accordance with Airbus All Operator Telex (AOT) 53–05, Revision 1, dated August 16, 1993. Airbus Service Bulletin A300–53–305, Revision 1, specifies separate compliance times for airplanes on which Airbus AOT 53–05, Revision 1, has been accomplished. Because the actions specified in that AOT are already required by AD 96–12–02, this proposed AD does not specify compliance times for airplanes on

which the AOT has not been accomplished.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed eddy current inspection (either internal or external), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $720, or $240 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 98–NM–248–AD.

Applicability: Model A300 B2 and B4 series airplanes, manufacturer serial numbers 003 through 156 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct stress corrosion cracking of the inner skin panel of the longitudinal lap joint, which could result in rapid depressurization of the airplane, accomplish the following:

Initial Inspection

(a) Within 400 flight cycles after the effective date of this AD, perform an external eddy current inspection for cracking of the inner skin panel of the longitudinal lap joint between frames 65 and 72 at stringer 57, in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999.

Repetitive Inspections

(b) If no cracking is detected during the inspection performed in accordance with paragraph (a) of this AD: Thereafter, perform an internal or external eddy current inspection, as specified in paragraphs (b)(1) and (b)(2) of this AD, as applicable; at intervals not to exceed 1,250 flight cycles or 7 months, whichever occurs first; in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999; until the requirements of paragraph (e) of this AD have been accomplished.

(1) If the most recent inspection was an internal eddy current inspection, perform an external eddy current inspection of the inner skin panel of the longitudinal lap joint.

(2) If the most recent inspection was an external eddy current inspection, perform an internal eddy current inspection of the inner skin panel of the longitudinal lap joint.

Corrective Actions

(c) If any cracking is detected during any inspection performed in accordance with paragraph (a) or (b) of this AD, prior to further flight, accomplish the actions required by either paragraph (c)(1) or paragraph (c)(2) of this AD.

(1) Repair the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999. Thereafter, repeat the inspection of areas in which no cracking is detected at the interval specified in, and in accordance with, paragraph (b) of this AD; and repeat the inspection of the repaired area at the intervals specified in the service bulletin, in accordance with the service bulletin. If any cracking is found in the repaired area during any repetitive inspection, prior to further flight, repair in accordance with the service bulletin.

Note 2: Airbus Service Bulletin A300–53–305, Revision 1, dated January 29, 1999, references Airbus Structural Repair Manual Chapter 53–17–00, as an additional source of service information to accomplish the repair specified in paragraph (c)(1) of this AD.

(2) Modify the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995, and accomplish the requirements of paragraph (d) of this AD.

(d) For airplanes modified in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995: Inspect the modified inner skin panel of the longitudinal lap joint to detect cracking at the applicable threshold and repetitive intervals specified in Table 1A, 1B, or 2 of Airbus Service Bulletin A300–53–211, Revision 5, dated April 29, 1999, in accordance with Airbus Service Bulletin A300–53–211, Revision 5. If any cracking is found during any repetitive inspection, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–211, Revision 5.

Optional Modification

(e) Modification of the inner skin panel of the longitudinal lap joint in accordance with Airbus Service Bulletin A300–53–306, dated September 5, 1995, constitutes terminating action for the repetitive inspections required by paragraph (b) of this AD. Such modification does not terminate the repetitive inspections required by paragraph (d) of this AD.

Alternative Method of Compliance

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

Note 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

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

Note 4: The subject of this AD is addressed in French airworthiness directive 98–150–246(B), dated April 8, 1998.

Issued in Renton, Washington, on October 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27565 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–254–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. This action would continue to require the relocation using new electrical contacts, and, for certain airplanes, would add a requirement to replace certain contacts installed in shelf 95VU during relocation of the relay with new contacts. 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 a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–254–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–254–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–254–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 14, 1998, the FAA issued AD 98–20–10, amendment 39–10777 (63 FR 50492, September 22, 1998), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised that the airplane manufacturer discovered that a number of the modification kits referenced in the service bulletin contained incorrect contact parts.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998. The modification procedures described in this service bulletin are essentially identical to those described in Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; and Revision 02, dated March 9, 1998; which were referenced in AD 98–20–10 as appropriate sources of service information. However, Revision 03 of the service bulletin includes new modification kit numbers and, for airplanes modified in accordance with the original issue, Revision 01, or Revision 02 of the service bulletin, describes procedures for replacement of the contacts on lines 20 through 23 in shelf 95VU with new contacts. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified Revision 03 of this service bulletin as mandatory and issued French airworthiness directive 1999–263–134(B), dated June 30, 1999, 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 section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–20–10 to continue to require relocation of the engine/master 1 relay from relay box 103VU to shelf 95VU in the avionics bay. This proposed AD would add a requirement to replace certain contacts installed in shelf 95VU during relocation of the relay, with new contacts. The actions would be required to be accomplished in accordance with Revision 03 of the service bulletin described previously.

Explanation of Applicability

The applicability of AD 98–20–10 specifies airplanes on which Airbus Modification 26065 (reference Airbus Service Bulletin A320–24–1092, Revision 01, dated December 24, 1997) has not been accomplished. As described above, this proposed AD would require additional action for airplanes modified in accordance with the original issue, Revision 01, or Revision 02 of the service bulletin. Therefore, the FAA has revised the applicability statement of this proposed AD to specify that this AD would apply to airplanes listed in Revision 03 of the service bulletin.

Cost Impact

There are approximately 120 airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is currently required by AD 98–20–10, and retained by this proposed AD, takes approximately 61 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $209 or $961 per airplane, depending on the modification kit purchased. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be as low as $3,869 per airplane, or as high as $4,621 per airplane.

Should an operator be required to accomplish the replacement of certain contacts that is proposed in this AD action, it would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $120 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10777 (63 FR 50492, September 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–254–AD. Supersedes AD 98–20–10, Amendment 39–10777.

Applicability: Model A319, A320, and A321 series airplanes; as listed in Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 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 a simultaneous cutoff of the fuel supply to both engines, which could result in a loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 18 months after October 27, 1998 (the effective date of AD 98–20–10, amendment 39–10777), relocate the engine/master 1 relay (11QG) from relay box 103VU to shelf 95VU in the avionics bay, in accordance with Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; Revision 02, dated March 9, 1998; or Revision 03, dated September 16, 1998. After the effective date of this AD, only Revision 03 shall be used.

(b) For airplanes on which Airbus Service Bulletin A320–24–1092, dated March 26, 1997; Revision 01, dated December 24, 1997; or Revision 02, dated March 9, 1998; has been accomplished prior to the effective date of this AD: Within 500 flight hours after the effective date of this AD, replace the contacts on lines 20 through 23 in shelf 95VU with new contacts, in accordance with paragraph B.(2)(m) of the Accomplishment Instructions of Airbus Service Bulletin A320–24–1092, Revision 03, dated September 16, 1998.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–263–134(B), dated June 30, 1999.

Issued in Renton, Washington, on October 15, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–27566 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Rule Public Workshop Conference

AGENCY: Federal Trade Commission.

ACTION: Announcement of date of Public Workshop Conference.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') will hold a Public Workshop Conference in connection with the periodic regulatory review of the Commission's Trade Regulation Rule on Funeral Industry Practices, 16 CFR Part 453 (the ''Funeral Rule'' or the ''Rule''), and the comments received in response to the Commission's call for comments on that review.

DATES: The Public Workshop Conference will be held on November 18, 1999 at the FTC's Washington, DC headquarters. The Conference will run from 9 a.m. until 5 p.m.

FOR FURTHER INFORMATION CONTACT: Myra Howard, (202) 326–2047, Division of Marketing Practices, Bureau of Consumer Protection, Federal Commission, Washington, D.C. 20580, or e-mail *funeralrule@ftc. gov*.

SUPPLEMENTARY INFORMATION: The Commission adopted the Funeral Rule on September 24, 1982, and it became fully effective on April 30, 1984.[1] Subsequently, the Funeral Rule was amended as a result of a regulatory review and amendment proceeding begun in 1987; the amended Funeral Rule was published on January 11, 1994, and took effect July 19, 1994.[2] On May 5, 1999, the Commission again published a request for comment on the Rule, 64 FR 24250 (''FR Notice''), as part of its continuing program of periodic review of all of its trade regulation rules (''Rule Review'') to determine their current effectiveness and impact. The FR Notice sought comment on the standard regulatory review questions, such as what are the costs and benefits of the Rule, whether there is a continuing need for the Rule, what changes in the Rule would increase the Rule's benefits to consumers and how these changes would affect compliance costs, and what changes in the marketplace and new technologies may affect the Rule.

The FR Notice also sought comment on several distinct issues: (1) Whether the Commission should amend the Rule by revising its definition of ''funeral provider;'' (2) Whether the Commission's casket handling fee prohibition has been effective and how it had affected consumers and funeral providers; (3) Whether the Commission should retain the provision that allows one, and only one, non-declinable fee to cover the basic services of the funeral director and staff; and (4) Whether the Commission should add, delete, or revise any of the required disclosures on the General Price List.

The initial deadline for written comments was July 12, 1999, but based on a number of requests from commenters, the deadline was extended until August 11, 1999. 64 FR 35965 (July 2, 1999). In its May 5, 1999 FR Notice regarding the regulatory review of the Funeral Rule, the Commission also stated that FTC staff would conduct a Public Workshop Conference to discuss the written comments received in response to the solicitation of comments pursuant to the Rule Review. The initial deadline to submit a request to participate in the public workshop was July 12, 1999, but was also extended until August 11, 1999.

The Public Workshop Conference, which will be held on November 18, 1999, will afford Commission staff and interested parties an opportunity to discuss openly issues raised during the Rule Review, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. Commission staff will consider the views and suggestions made during the Conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the Funeral Rule.

The Commission staff will select a limited number of parties to represent the significant interests affected by the Funeral Rule. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments.

In addition, the Conference will be open to the general public. Members of the general public who attend the Conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the rule review process. Oral statements of views by members of the general public will be limited to a few minutes. The time allotted for these statements will be determined on the basis of the time available and the number of persons who wish to make statements. The discussion will be transcribed and placed on the public record. Written submissions of views, or any other written or visual materials, will not be accepted during the Conference.

To the extent possible, Commission staff will select parties to represent the following affected interests: Funeral homes; cemeteries; monument builders; third party sellers of funeral goods; trade organizations; consumer organizations; consumers economists and academicians; Federal, State and local law enforcement and regulatory authorities; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties representing the above-referenced interests will be selected on the basis of the following criteria:

1. The party submitted a comment during the comment period ending on August 11, 1999.
2. The party notified Commission staff in writing or by E-mail of its interest and, if required, authorization to represent an affected interest, on or before August 11, 1999.
3. The party's participation would promote a balance of interests being represented at the Conference.
4. The party's participation would promote the consideration and discussion of a variety of issues raised during the Rule Review process.
5. The party has experience or expertise in activities affected by the Funeral Rule.
6. The party adequately reflects the views of the affected interest(s).
7. The number of parties selected will not be so large as to inhibit effective discussion among them.

The Conference will be facilitated by a Commission staff member. It will be held on November 18, 1999, at the Federal Trade Commission's headquarters, 600 Pennsylvania Ave., NW, Washington, DC 20580. Prior to the

[1] 48 FR 45537.
[2] 59 FR 1592.

Conference, parties selected to represent an affected interest will be provided with copies of the comments submitted by all Conference participants. The Commission strongly encourages all interested individuals to participate in the Public Workshop Conference, as the transcripts from the Conferences will be an important part of the public record in this proceeding. Individuals wishing to make oral statements at the end of the day need not submit a request to participate, and the Commission will make every effort to provide time for all members of the general public to make statements regarding any of the rulemaking issues.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–27441 Filed 10–20–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116125–99]

RIN 1545–AX62

Prevention of Abuse of Charitable Remainder Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that modify the application of the rules governing the character of certain distributions from a charitable remainder trust. These regulations are necessary to prevent taxpayers from using charitable remainder trusts to achieve inappropriate tax avoidance. The regulations affect charitable remainder trusts described in section 664 and certain beneficiaries of those trusts. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written comments must be received by January 19, 2000. Requests to speak (with outlines of oral comments) at the public hearing scheduled for February 9, 2000, at 10 a.m. must be submitted by January 19, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116125–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, 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–116125–99), 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 of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.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 regulations, Catherine Moore, (202) 622–3070; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: This document proposes to amend sections 643 and 664 of the Income Tax Regulations (26 CFR part 1) to provide additional rules regarding charitable remainder trusts.

Background

Section 664, added to the Internal Revenue Code (Code) by section 201(e) of the Tax Reform Act of 1969 (Public Law 91–172 (83 Stat. 487, 562–64)), contains the rules for charitable remainder trusts. In general, a charitable remainder trust provides for a specified periodic distribution to one or more noncharitable beneficiaries for life or for a term of years, with an irrevocable remainder interest held for the benefit of charity. The amount distributed to the noncharitable beneficiaries may be either a sum certain, in the case of a charitable remainder annuity trust, or a fixed percentage of the net fair market value of the trust's assets valued annually, in the case of a charitable remainder unitrust. Section 664(b) provides rules for determining the character of amounts distributed by a charitable remainder trust in the hands of the beneficiary to whom the distribution is made. In general, a distribution is taxable to the beneficiary if it represents a distribution of ordinary income or capital gain of the trust. A distribution generally is not taxable to the beneficiary if it represents a distribution of tax-exempt income of the trust or of trust corpus. Section 664(c) provides that a charitable remainder trust is exempt from all taxes under subtitle A of the Code for any taxable year except a taxable year in which the trust has unrelated business taxable income under section 512.

Section 643(a)(7), added to the Code by section 1906(b) of the Small Business Job Protection Act of 1996 (Public Law 104–188 (110 Stat. 1755, 1915)), authorizes the Secretary of the Treasury to issue regulations that may be necessary or appropriate to carry out the purposes of the rules applicable to estates, trusts, and beneficiaries, including regulations to prevent the avoidance of those purposes.

Explanation of Provisions

A. Tax-Avoidance Arrangements Using Charitable Remainder Trusts

The IRS and the Treasury Department are aware of certain abusive transactions that attempt to use a section 664 charitable remainder trust to convert appreciated assets into cash while avoiding tax on the gain from the disposition of the assets. In these transactions, a taxpayer typically contributes highly appreciated assets to a charitable remainder trust having a relatively short term and relatively high payout rate. Rather than sell the assets to obtain cash to pay the annuity or unitrust amount to the beneficiary, the trustee borrows money, enters into a forward sale of the assets, or engages in some similar transaction. Because the borrowing, forward sale, or other similar transaction does not result in current income to the trust, the parties attempt to characterize the distribution of cash to the beneficiary as a tax-free return of corpus under section 664(b)(4). Distributions may continue to be funded in this manner for the duration of the trust term (which is usually short, so as to meet the 10-percent remainder requirement of section 664(d)(1)(D) or 664(d)(2)(D)). The appreciated assets may be sold and the transaction closed out (*e.g.,* the loan is repaid) in the last year of the trust, or the trustee may distribute the appreciated assets, subject to a contractual obligation to complete the transaction (*e.g.,* the forward sale contract), to the charitable beneficiary.

A mechanical and literal application of rules and regulations that would yield a result inconsistent with the purposes of the charitable remainder trust provisions will not be respected. When section 664 was amended by the Revenue Reconciliation Act of 1997, Congress indicated that a scheme that, in effect, attempts to convert appreciated assets to a tax-free cash distribution to the non-charitable beneficiary is ''abusive and is inconsistent with the purpose of the charitable remainder trust rules.'' S.

Rep. No. 33, 105th Cong., 1st Sess. 201 (1997). Although the particular scheme that was the focus of Congress's attention in 1997 involved an attempt to exploit the interplay of rules under section 664 governing the timing of income and the character of trust distributions, the attempted result of the scheme (commonly referred to as an ''accelerated charitable remainder trust'') was the same as that claimed by the promoters of the transactions described above—that is, a literal application of rules governing trust distributions in an attempt to convert appreciated trust assets into tax-free cash in the hands of the non-charitable beneficiary. The latest schemes involving charitable remainder trusts are no less ''abusive'' or ''inconsistent with the purpose of the charitable remainder trust rules'' than were the accelerated charitable remainder trust schemes addressed by Congress in 1997.

B. The Proposed Regulations

Section 643(a)(7) authorizes the Secretary to prescribe regulations to carry out the purposes of the provisions of the Code relating to the taxation of estates, trusts, and beneficiaries, including regulations to prevent avoidance of such purposes. The proposed regulations exercise this authority by modifying the treatment of certain distributions by charitable remainder trusts for purposes of section 664(b) to prevent a result that, as discussed above, is inconsistent with the purposes of the charitable remainder trust rules.

The proposed regulations provide that, to the extent that a distribution of the annuity or unitrust amount from a charitable remainder trust is not characterized in the hands of the recipient as income from the categories described in section 664(b)(1), (2), or (3) (determined without regard to the rules in these proposed regulations) and was made from an amount received by the trust that was neither a return of basis in any asset sold by the trust (determined without regard to the rules in these proposed regulations) nor attributable to a contribution of cash to the trust with respect to which a deduction was allowable under section 170, 2055, 2106, or 2522, the trust shall be treated as having sold, in the year for which the distribution is due, a pro rata portion of the trust assets. Any transaction that has the purpose or effect of circumventing this rule will be disregarded. For example, a return of basis in an asset sold by a charitable remainder trust does not include basis in an asset purchased by the charitable remainder trust from the proceeds of a borrowing secured by previously contributed assets.

The proposed regulations include examples that illustrate the application of the above rule. The IRS and the Treasury Department request comments on whether there are situations where the application of this rule would be inappropriate.

These proposed regulations adopt a pro-rata sale approach to determine the amount of gain on the distribution of funds acquired in advance of income recognition. The IRS and the Treasury Department also considered an approach that more directly related the distributed funds to the asset that is the subject of the borrowing or forward sale. Comments are requested on this alternative approach.

C. Proposed Effective Date

The regulations are proposed to apply to distributions made by charitable remainder trusts after October 18, 1999.

However, to the extent that a charitable remainder trust financed a distribution to a beneficiary by borrowing funds or entering into a forward sale or other similar transaction prior to the effective date of these regulations, the IRS may apply an appropriate legal doctrine to recast the entire transaction, to characterize the distribution as gross income rather than corpus, or to challenge the qualification of the trust under section 664. In appropriate circumstances, the IRS may impose the tax on self-dealing transactions under section 4941. Additionally, the trust may be treated as having unrelated business taxable income under section 512 from the transaction. The IRS will also apply any applicable penalties to the participants in the transaction.

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 is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the understanding of the IRS and Treasury Department that the number of charitable remainder trusts engaging in transactions affected by these regulations is not substantial, and none are small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). 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 written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 9, 2000, at 10 a.m. in room 2615, 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 that wish to present oral comments at the hearing must submit timely written comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by January 19, 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 authors of these regulations are Mary Beth Collins and Catherine Moore, Office of Chief Counsel (Passthroughs and Special Industries). 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 Amendments 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 in part as follows:

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

Section 1.643(a)–8 also issued under 26 U.S.C. 643(a)(7). * * *

Par. 2. Section 1.643(a)–8 is added to read as follows:

§ 1.643(a)–8 Certain distributions by charitable remainder trusts.

(a) *Purpose and scope.* This section is intended to prevent the avoidance of the purposes of the charitable remainder trust rules and should be interpreted in a manner consistent with this purpose. This section applies to all charitable remainder trusts described in section 664 and the beneficiaries of such trusts.

(b) *Deemed sale by trust.* (1) For purposes of section 664(b), a charitable remainder trust shall be treated as having sold, in the year for which a distribution of an annuity or unitrust amount from the trust is due, a pro rata portion of the trust assets to the extent that the distribution of the annuity or unitrust amount—

(i) Is not characterized in the hands of the recipient as income from the categories described in section 664(b)(1), (2), or (3), determined without regard to this paragraph (b); and

(ii) Was made from an amount received by the trust that was not—

(A) A return of basis in any asset sold by the trust, determined without regard to this paragraph (b); or

(B) Attributable to cash contributed to the trust with respect to which a deduction was allowable under section 170, 2055, 2106, or 2522.

(2) Any transaction that has the purpose or effect of circumventing the rules in this paragraph (b) shall be disregarded.

(3) For purposes of paragraph (b)(1) of this section, ''trust assets'' do not include cash or assets purchased with the proceeds of a trust borrowing, forward sale, or similar transaction.

(4) Proper adjustment shall be made to any gain or loss subsequently realized for gain or loss taken into account under paragraph (b)(1) of this section.

(c) *Examples.* The following examples illustrate the rules of paragraph (b) of this section:

Example 1. Deemed sale by trust. Donor contributes stock having a fair market value of $2 million to a charitable remainder unitrust with a unitrust amount of 50 percent of the net fair market value of the trust assets and a two-year term. The stock has a total basis of $400,000. In Year 1, the trust receives dividend income of $20,000. As of the valuation date, the trust's assets have a net fair market value of $2,020,000 ($2 million in stock, plus $20,000 in cash). To obtain additional cash to pay the unitrust amount to the noncharitable beneficiary, the trustee borrows $990,000 against the value of the stock. The trust then distributes $1,010,000 to the beneficiary before the end of Year 1. Under section 664(b)(1), $20,000 of the distribution is characterized in the hands of the beneficiary as dividend income. The rest of the distribution, $990,000, is attributable to an amount received by the trust that did not represent either a return of basis in any asset sold by the trust (determined without regard to paragraph (b) of this section) or a cash contribution to the trust with respect to which a charitable deduction was allowable. Under paragraph (b)(3) of this section, the stock is a trust asset because it was not purchased with the proceeds of the borrowing. Therefore, in Year 1, under paragraph (b)(1) of this section, the trust is treated as having sold $990,000 of stock and as having realized $792,000 of capital gain (the trust's basis in the shares deemed sold is $198,000). Thus, in the hands of the beneficiary, $792,000 of the distribution is characterized as capital gain under section 664(b)(2) and $198,000 is characterized as a tax-free return of corpus under section 664(b)(4).

Example 2. Adjustment to trust's basis in assets deemed sold. The facts are the same as in *Example 1.* During Year 2, the trust sells the stock for $2,100,000. The trustee uses a portion of the proceeds of the sale to repay the outstanding loan, plus accrued interest. Under paragraph (b)(4) of this section, the trust's basis in the stock is $1,192,000 ($400,000 plus the $792,000 of gain recognized in Year 1). Therefore, the trust recognizes capital gain (as described in section 664(b)(2)) in Year 2 of $908,000.

Example 3. Distribution of cash contributions. Upon the death of D, the proceeds of a life insurance policy on D's life are payable to T, a charitable remainder annuity trust. The terms of the trust provide that, for a period of three years commencing upon D's death, the trust shall pay an annuity amount equal to $x annually to A, the child of D. After the expiration of such three-year period, the remainder interest in the trust is to be transferred to charity Z. In Year 1, the trust receives payment of the life insurance proceeds and pays the appropriate pro rata portion of the $x annuity to A from the insurance proceeds. During Year 1, the trust has no income. Because the entire distribution is attributable to a cash contribution (the insurance proceeds) to the trust for which a charitable deduction was allowable under section 2055 with respect to the present value of the remainder interest passing to charity, the trust will not be treated as selling a pro rata portion of the trust assets under paragraph (b)(1) of this section. Thus, the distribution is characterized in A's hands as a tax-free return of corpus under section 664(b)(4).

(d) *Effective date.* This section is applicable to distributions made by a charitable remainder trust after October 18, 1999.

Par. 3. Section 1.664–1 is amended as follows:

1. Paragraph (d)(1)(iii) is redesignated as paragraph (d)(1)(iv).

2. New paragraph (d)(1)(iii) is added.

The addition reads as follows:

§ 1.664–1 Charitable remainder trusts.

* * * * *

(d) * * *

(1) * * *

(iii) *Application of section 643(a)(7).* For application of the anti-abuse rule of section 643(a)(7) to distributions from charitable remainder trusts, see § 1.643(a)–8.

* * * * *

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 99–27376 Filed 10–18–99; 11:16 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[USCG–1999–6097]

RIN 2115–AF90

Federal Pilotage for Foreign-Trade Vessels in Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to require that vessels engaged in foreign trade, under way on the navigable waterways within the State of Maryland, be under the direction and control of Federally-licensed pilots when not under the control and direction of State pilots. This measure is necessary to ensure that vessels are navigated by competent, qualified persons, knowledgeable in the local area and accountable to either the State or the Coast Guard. This measure would promote navigational safety by increasing the level of accountability and reducing the risk of marine casualties in the waters of Maryland.

DATES: Comments and related material must reach the Docket Management Facility on or before December 20, 1999.

ADDRESSES: To make sure your comments and related material do not enter the docket more than once, please submit them (referred to USCG 1999–6097) by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Timothy Farley, Office of Investigations and Analysis (G–MOA), Coast Guard, 202–267–1414; e-mail Tfarley@comdt.uscg.mil, or Lieutenant Michael Dreier, Office of Standards, Evaluation and Development (G–MSR), phone 202–267–6490; e-mail Mdreier@comdt.uscg.mil. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–6097), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a self-addressed, stamped postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Under 46 U.S.C. 8503(a) the Secretary of Transportation may require a Federally-licensed pilot to be aboard a self-propelled vessel engaged in foreign trade and operating on the navigable waters of the United States when State law does not require a pilot. 46 U.S.C. 8503(b) provides that Federal authority to require Federally-licensed pilots on vessels engaged in foreign trade terminates when the State having jurisdiction establishes a superseding requirement for a State pilot and notifies the Secretary (in practice, the Coast Guard) of that fact. 46 CFR part 15 requires Federal pilots to be aboard vessels engaged in foreign trade while operating on certain navigable waters within California, Hawaii, Massachusetts, New York and New Jersey, and North Carolina. (On October 27, 1998, we issued a final rule [63 FR 57252] that requires vessels engaged in foreign trade to have Federal pilots aboard when operating in specified waters in North Carolina.)

Commercial vessels transit the navigable waters of the State of Maryland carrying various types of freight, oil, and hazardous substances and materials, as well as large quantities of bunkers. Under Maryland law [General Statutes of Maryland, § 11–501], every foreign vessel and every domestic vessel sailing under register must use a State-licensed pilot, except that the vessel need not use a State-licensed pilot if it is under the control of a docking master while maneuvering with tug assistance during berthing or unberthing, or shifting within a port. Maryland does not license, establish qualifications for, or regulate the competency of, these docking masters. Although all docking masters now operating in the Port of Baltimore already hold valid Federal pilots' licenses (or pilotage endorsements on Federal licenses), holding these is voluntary and is as yet neither a State nor a Federal requirement. Anyone may serve as docking master, and, by law, no one need demonstrate proficiency or competency to do so. This problem is similar to the one that prevailed in New York Harbor until the adoption in 1995 of 46 CFR 15.1030. Docking masters, many of whom held valid Federal pilots' licenses, provided pilotage. 46 U.S.C. 7703 establishes that a mariner's license is not subject to suspension or revocation unless the mariner is acting under it. (A docking master is acting under his or her Federal pilot's license when directing a tug assisting a ship. The problem has been that he or she may not be acting under it when directing the ship itself, either in the absence of a tug or without reliance on one.) Unless the docking master is operating under the authority of a Federal License (or pilotage endorsement), or the Coast Guard has some other basis for jurisdiction, the Coast Guard cannot suspend or revoke his or her Federal license. This rule would help ensure that a person providing pilotage is operating under the authority of either a valid State or Federal pilot's license, and so would ensure adequate accountability. It would add a new section to Subpart I of 46 CFR Part 15 to require that a foreign-trade vessel be under the direction and control of a Federally-licensed pilot when operating in designated waters of Baltimore Harbor from the Key Bridge to moor, except when under the direction and control of a State-licensed pilot operating under the authority of his or her State license.

We have determined that it is unsafe for certain vessels to undertake intra-port transits, or otherwise navigate in the waters of the State of Maryland, except when under the direction and control of pilots accountable to the State or the Coast Guard. Operating these vessels with docking masters who are either not licensed (or endorsed) as Federal or State pilots or not operating under the authority of pilots' licenses presents an unacceptable risk to human life, property, and the environment. Therefore, we have determined that requiring persons to serve under the authority of Federal first-class pilots' licenses (or endorsements), and so be accountable for their actions and

competency, would increase maritime safety.

Currently, to obtain a Federal first-class pilot's license (or endorsement), a person must pass a comprehensive examination, which includes performing a chart sketch of the area, demonstrating proficiency in the use of navigational aids, and maneuvering and handling ships in high winds, tides, and currents. Further, a person must complete a specific number of transits in the area and demonstrate specialized knowledge of the waters for which the Coast Guard issues the license (or endorsement). Therefore, we propose to require Federal pilots' licenses (or endorsements) for persons acting as docking masters on vessels engaged in foreign trade and operating in the navigable waters of the State of Maryland, unless these vessels are under the direction and control of State-licensed pilots operating under the authority of valid State pilots' licenses.

Discussion of Changes

This proposed rule would add a new section to 46 CFR part 15, subpart I, to require that every vessel engaged in foreign trade and operating in the navigable waters of Maryland be under the direction and control of a Federally-licensed pilot except when under the direction and control of a State-licensed pilot operating under the authority of a valid State license.

Regulatory Evaluation

This proposed rule 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, l979)). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Foreign-trade vessels are normally under the direction and control of docking masters or State pilots when making intra-port transits or transits in congested waters. Although they need not, persons now serving as docking masters within the navigable waters of the State of Maryland do hold Federal pilots' licenses. Therefore, this rule would not impose any immediate costs on those persons. However, persons entering this profession in the future would have to hold Federal first-class pilots' licenses. Historically, persons filling these vacancies have already obtained Federal first-class pilots' licenses and necessary endorsements in the normal course of advancement in their profession. Nevertheless, this rule would require an initial expense to obtain the license, in addition to a yearly physical and the five-year renewal fees. These costs should be insignificant as those persons currently acting as docking masters already hold, and those likely to enter this profession would already hold, the required license. This rule would promote responsibility and safety by requiring a Federal first-class pilot, where the State requires no pilot. We believe that the benefits of requiring licensed, qualified persons aboard these vessels significantly outweigh the small costs associated with implementing this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises 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.

We expect that this rule would have minimal economic impact on small entities. Vessels affected by this rule probably are not owned or operated by small entities. The pilots themselves do not qualify as small entities. However, State pilots' associations may qualify as small entities. We understand that those persons now providing pilotage to foreign-trade vessels calling at ports in Maryland already hold Federal first-class pilots' licenses (or endorsements) for those waters. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Timothy Farley, Office of Investigations and Analysis (G–MOA), Coast Guard, 202–267–1414; e-mail Tfarley@comdt.uscg.mil.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal rules to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Congress, under 46 U.S.C. 8503(a), specifically authorizes the Federal Government to require a Federally-licensed pilot where State law requires no licensed pilot. Maryland permits docking masters, not licensed by the State, to serve as pilots on certain waters within the State. Therefore, the Federal Government may require Federally-licensed pilots on those waters. The Federal authority to require that pilots hold Federal licenses is effective only until the State establishes a superseding requirement that pilots hold State licenses and notifies the Coast Guard of that fact according to 46 U.S.C. 8503(b).

Since this rule aims primarily at requiring Federal pilots to supplement State pilots, we do not believe that the preparation of a Federalism Assessment is warranted. This rule would not impinge upon existing State laws. The Federal statute itself lets Maryland preempt Federal authority. If Maryland adopted superseding legislation requiring foreign and domestic vessels, sailing on registry, to be under the direction and control of State-licensed

pilots, we would withdraw this rule. Still, we specifically seek public comment on the implications of this rule for Federalism.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership (58 FR 58093 (October 28, 1993)) govern the issuance of Federal rules that require unfunded mandates. An unfunded mandate is a rule that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. We have determined that most people now providing pilotage to foreign-trade vessels within the navigable waters of Maryland would continue to provide it since all pilots already hold Federal first-class pilots' licenses for these waters. Therefore, this rule would let affected vessels continue to operate according to current practices in the industry. We also recognize that this rule may minimize the risk of environmental harm that may result from collisions and grounding of vessels. Nevertheless, this impact should not be significant enough to warrant further documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 46 CFR Part 15

Crewmembers, Marine Safety, Navigation (water), Seamen, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 15 as follows:

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; 49 CFR 1.45 and 1.46.

2. Add § 15.1060 to read as follows:

§ 15.1060 Maryland.

All U.S. navigable waters located within the State of Maryland when the vessel is making a transit within a port to include, but not limited to, a movement from a dock to a dock, from a dock to an anchorage, from an anchorage to a dock, or from an anchorage to an anchorage, and the vessel is not under the direction and control of a State-licensed Pilot operating under the authority of a valid State pilot's license.

Dated: October 12, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–27552 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2085; MM Docket No. 97–156; RM–9110]

Radio Broadcasting Services; Greenwood and Abbeville, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission, at the request of Sutton Radiocasting Corporation, dismisses its petition proposing the substitution of Channel 244C3 for Channel 244A at Greenwood, the reallotment of Channel 244C3 from Greenwood to Abbeville, South Carolina, and the modification of Station WCRS–FM's license accordingly. *See* 62 FR 38054, July 16, 1997. A showing of continuing interest is required before a channel can be allotted to a community. It is Commission policy, absent such an expression of interest, to refrain from allotting the channel. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–156, adopted September 29, 1999, and released October 8, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW, Washington, DC. 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, DC 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. 99–27525 Filed 10–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2101; MM Docket No. 99–299, RM–9687]

Radio Broadcasting Services; Osceola & Sedalia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The Clair Group (''Clair''), licensee of Station KMFC(FM), Centralia, Missouri. Clair requests the substitution of Channel 262A for Channel 222A at Osceola, Missouri, and modification of the license for Station KCVJ to specify operation on Channel 262A and substitution of Channel 222A for Channel 221A at Sedalia, Missouri, and modification of the license for Station KSDL to specify operation on Channel 222A. The substitutions at Osceola and Sedalia will allow Station KMFC(FM), Centralia, to operate on six kilowatts.

We will not accept competing expressions of interest for Channel 262A at Osceola or Channel 222A at Sedalia because the Commission's Rules do not contemplate the filing of expressions of interest in proceedings, such as this one, which seek to make equivalent channel substitutions. The coordinates for Channel 262A at Osceola are 39–09–58 and 92–09–52 and the coordinates for Channel 222A at Sedalia are 38–43–52 and 93–13–32.

DATES: Comments must be filed on or before November 29, 1999, and reply comments on or before December 14, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lauren Lynch Flick, Fisher Wayland Cooper Leader & Zaragoza, L.L.P., 2001 Pennsylvania Avenue, NW, Suite 400, Washington, D. C. 20006.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–299, adopted September 29, 1999, and released , October 8, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information 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.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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. 99–27532 Filed 10–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2100; MM Docket No. 99–298, RM–9714]

Radio Broadcasting Services; Fairmont and St. James, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Minnesota Valley Broadcasting Company, Inc., proposing the reallotment of Channel 263C2 from St. James, Minnesota, to Fairmont, Minnesota, as that community's second local FM service and modification of its license for Station KXAC to specify Fairmont as its community of license. The coordinates for Channel 263C2 at Fairmont are 43–39–08 and 94–27–39. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 263C2 at Fairmont.

DATES: Comments must be filed on or before November 29, 1999, and reply comments on or before December 14, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Jerrold Miller, Miller & Miller, P.c., P. O. Box 33003, Washington, D.C. 20033.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–298, adopted September 29, 1999, and released October 8, 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 Twelfth Street, SW, Washington, DC 20554. 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

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. 99–27533 Filed 10–20–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204 and 252

[DFARS Case 99–D015]

Defense Federal Acquisition Regulation Supplement; Disclosure of Information

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation supplement (DFARS) to narrow the circumstances under which contractors must obtain contracting officer approval for release of unclassified information to the public. The amendments are expected to streamline the current approval process.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before December 20, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Melissa Rider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 99–D015.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D015 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 99–D015 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, (703) 602–4245. Please cite DFARS Case 99–D015.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule adds a new subpart to the DFARS and revises the existing clause at DFARS 252.204–7000 to narrow the circumstances under which contractors must obtain contracting officer approval for release of unclassified information outside the contractor's organization. The clause at DFARS 252.204–7000 presently requires contractors to obtain approval from the contracting officer prior to release of any unclassified information related to the contract. This rule proposes amendments to the clause to limit the applicability of the approval requirement to unclassified information that may be sensitive and inappropriate for release to the public. In addition, the rule adds a third exception to the approval requirement, to exclude from the requirement information that must be disclosed to a subcontractor or prospective subcontractor for performance of its subcontract. The rule also moves the clause prescription from its present location at DFARS 204.404–70 to a new subpart at DFARS 204.7X, and adds guidance to the contracting officer related to processing contractor requests for release of information.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains only to the administrative procedures for submission and approval of contractor requests for release of information to the public. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D015 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 204 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 204—ADMINISTRATIVE MATTERS

204.404–70 [Amended]

2. Section 204.404–70 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

3. Subpart 204.7X is added to read as follows:

Subpart 204.7X—Safeguarding Sensitive Information

Sec.
204.7X01 Disclosure of information.
204.7X02 Contract clause.

204.7X01 Disclosure of information.

If a contractor submits a request for approval to release information in accordance with the clause at 252.204–7000, Disclosure of Information—

(a) Obtain a decision from the appropriate authority regarding the suitability of the information for release in accordance with agency procedures; and

(b) Notify the contractor of approval or disapproval for release of the information within 45 days of receipt of the contractor's request.

204.7X02 Contract clause.

(a) Use the clause at 252.204–7000, Disclosure of Information, in solicitations and contracts when—

(1) The contractor will have access to or generate unclassified information that may be sensitive and inappropriate for release to the public; and

(2) The solicitation or contract does not include the clause at FAR 52.204–2, Security Requirements.

(b) Use of the clause at 252.204–7000 does not eliminate the requirements for use of the clauses at FAR 52.224–1, Privacy Act Notification, and FAR 52.244–2, Privacy Act, in accordance with the prescriptions at FAR 24.104.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.204–7000 is revised to read as follows:

252.204–7000 Disclosure of information.

As prescribed in 204.7X02, use the following clause:

Disclosure of Information (XXX 1999)

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information that may be sensitive and inappropriate for release to the public, regardless of medium (*e.g.*, film, tape, paper, electronic), that is generated under the contract or to which the Contractor has been given access under the contract, unless—

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information must be disclosed to a subcontractor or prospective subcontractor for performance of its subcontract.

(b) Requests for approval shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its requests to the Contracting Officer at least 45 days before the proposed release date.

(c) The Contractor shall include a similar requirement in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

(End of clause)

252.204–7003 [Amended]

5. Section 252.204–7003 is amended in the introductory text by removing the reference ''204.404–70(b)'' and adding in its place the reference ''204.404–70(a)''.

252.204–7005 [Amended]

6. Section 252.204–7005 is amended in the introductory text by removing the reference ''204.404–70(c)'' and adding in its place the reference ''204.404–70(b)''.

[FR Doc. 99–27277 Filed 10–20–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–99–6355; Notice 1]

Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High Consequence Areas

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting and request for comments.

SUMMARY: This notice announces a public meeting to consider the need for additional safety and environmental regulations for gas transmission lines and hazardous liquid pipelines in high-density population areas, waters where a substantial likelihood of commercial navigation exists, and areas unusually sensitive to environmental damage. RSPA's Office of Pipeline Safety (OPS) intends to incorporate a process into its regulations to validate pipe integrity in these high consequence areas. The purpose of the meeting is to determine the extent to which operators now have integrity management programs, to explore effective ways to promote their development and implementation by all operators, and to discuss mechanisms by which OPS could confirm the existence and adequacy of such operator-developed programs. The meeting will discuss a practical definition of high consequence areas, as well as the need, if any, for increased inspection, enhanced damage prevention, improved emergency response, and other measures to prevent and mitigate pipeline leaks and ruptures in these areas.

DATES: The public meeting will be on November 18, 1999, from 9 a.m. to 4 p.m., through November 19, 1999, from 9 a.m. to 12 noon, at the Hyatt Dulles Hotel, 23 Dulles Corner Boulevard, Herndon, VA 20171, (703) 713–1234. If you want to make an oral presentation at the meeting, please notify Jenny Donohue no later than November 12, 1999, by phone (202–366–4046) or by Internet e-mail (donohuej@rspa.dot.gov). In addition, no later than December 20, 1999, you may submit written comments as described in the **ADDRESSES** section.

ADDRESSES: Submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. You also may submit written comments to the docket electronically. To do so, log on to the following Internet Web address: http://dms.dot.gov. Click on ''Help & Information'' for instructions on how to file a document electronically. All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone desiring confirmation of mailed comments must include a self-addressed stamped postcard.

The Dockets Facility is located on the plaza level, Room PL–401, of the US Department of Transportation, 400 7th St., SW, Washington, DC. It is open from 10 a.m. to 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Beth Callsen (tel: 202–366–4572; E-mail: beth.callsen@rspa.dot.gov). You can read comments and other material in the docket on the Internet at: http://dms.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

Office of Pipeline Safety (OPS) and National Transportation Safety Board (NTSB) investigations and analyses of major pipeline incidents have underscored the importance of ensuring safety and environmental protection in areas of high population density and in areas unusually sensitive to environmental damage. Congress has also directed OPS to undertake a variety of activities concerning areas where the risk of a pipeline spill could have significant impact (what we call high consequence areas). For example, Congress directed OPS to prescribe, if necessary, additional standards requiring the periodic inspection of each pipeline in high population density areas or in areas unusually sensitive to environmental damage (49 U.S.C. 60108 (b)).

In response to the Congressional directive, OPS created the Risk Management Demonstration Program, the Systems Integrity Inspection (SII) Program, and other initiatives. These programs encourage and evaluate operator-developed safety and environmental management processes that incorporate operator- and pipeline-specific information and data to identify, assess, and address pipeline risks. These programs, along with the Oil Spill Response Plan Review and Exercise Program, have helped OPS refine regulatory oversight processes. These processes help to ensure that pipeline operators have effective processes in place to identify the most important risks to the public and the environment, and to develop and implement cost-effective preventive and mitigative actions to manage these risks. Many of these initiatives have validated the importance of focusing resources and establishing higher levels of protection in areas where a pipeline spill could have significant consequences.

Through its various programs and initiatives, OPS has observed and become familiar with the wide array of existing operator safety programs that identify, assess, and address all significant risks to the pipeline in an integrated manner. These operator-developed programs closely examine internal inspection data, surveillance and operating information such as expected population growth, land use, and construction activity along the pipeline, and other information relevant to assuring the pipeline's integrity in high population areas and in environmentally sensitive areas. OPS believes the next step is to determine the extent to which such programs exist, to develop effective ways to encourage their development and implementation by all operators, and to establish mechanisms by which OPS can confirm the existence and adequacy of such operator-developed programs.

OPS believes that current pipeline safety regulations address the most important risks to the nation's pipelines, and have served the industry well, resulting in a good safety record compared to competitive modes of transportation. However, safety programs based on strict compliance with the regulations can often result in a piece-meal approach to identifying and controlling risks, sometimes neglecting the interrelationships among failure causes and the benefits of coordinated risk control activities.

OPS is considering ways to further enhance safety and environmental protection in areas where a pipeline failure could have serious consequences for the public or the environment, *i.e.*, high consequence areas, through a more integrated approach to identifying and addressing risks. A conceptual approach is described below. OPS believes that many operators already have processes in place that are consistent with this approach. Through this Notice and the November 18–19, 1999, public meeting, OPS is soliciting input on this or other approaches to improved protection for high consequence areas.

Key Elements

OPS envisions a process that places stronger regulator and operator emphasis on high consequence areas in the vicinity of pipeline facilities. The following key elements should be reflected in such a process:

1. The need for pipeline-specific assessments in determining the need for additional preventive and mitigative activities.

OPS recognizes that industry-wide requirements for specific additional preventive or mitigative actions might not be the most effective way of reducing risk. Companies must have the responsibility and the necessary flexibility to consider geographic- and segment-specific conditions in assessing the need for additional safety and

environmental protection programs and in developing effective programs.

2. The need to assess all risk factors and risk reduction activities in an integrated manner.

Analyses of major pipeline incidents show that combinations of design, operation, maintenance, and environmental factors are usually involved, rather than a single cause. Accordingly, OPS envisions assessment and decision processes that examine causes for pipeline failure in a comprehensive and integrated manner. For example, data from internal in-line inspections must be combined with other information related to the condition of the pipe (*e.g.*, results of close internal surveys and patrols) to determine appropriate evaluation and remediation activities.

3. The need for increased assurance that high consequence areas are being protected.

OPS recognizes that existing regulations and industry practices already focus on some high consequence areas. For example, the class location scheme embedded in the gas pipeline regulations imposes more stringent requirements in areas with higher population. Many liquid pipeline operators already have formalized environmental, safety, and health programs that focus attention and resources on areas of highest risk. However, OPS also recognizes the need to assure the public that the condition of the pipelines in high consequence areas is adequately known, that current regulations and industry practices are adequate, and that the need for additional protection has been explicitly and responsibly considered.

OPS's Approach to Improved Protection

OPS envisions a process that would include, at the least, the following steps:

- Defining and Locating High Consequence Areas
- Identifying Affected Pipeline Segments
- Inspecting and Assessing the Condition of the Affected Segments
- Assessing the Need for Additional Preventive or Mitigative Actions
- Remediating and Repairing the Affected Segments as Necessary
- Implementing and Monitoring Other Cost-Effective Risk Control Activities
- Documenting Inspections, Assessments, and Actions
- Reviewing and Ensuring Compliance

(See the Flowchart included in this Notice.)

Each of these steps is briefly discussed below, including key questions for discussion.

• Identifying and Locating High Consequence Areas

The first step in the process is to identify and locate the areas where a pipeline failure could pose serious safety and environmental consequences to the public or environment. This first step is intended as a filtering step, focusing attention on those areas of possible high consequence. Subsequent steps address the likelihood of such consequences actually occurring, and the need for any action to reduce the likelihood or consequences of a pipeline incident in these areas.

There are relevant past and current efforts to define or identify these areas.

- Class locations for gas pipelines (49 CFR 192.5) are based on habitable structures within a 220 yard corridor on either side of the pipeline.
- Many companies have developed Geographic Information Systems (GIS) that can provide accurate, more detailed information concerning the proximity of population and buildings to the pipeline.
- OPS, other federal agencies, and the hazardous liquid pipeline industry are working together to develop a definition for Unusually Environmentally Sensitive Areas (USAs), focusing on areas in which a pipeline spill could threaten local water supplies, threatened and endangered species, and other environmental resources (Docket No. RSPA–99–5455; 64 FR 38173; July 15,1999). OPS is currently pilot testing a model for defining USAs.

In high consequence areas, OPS believes that an operator should be required to explicitly assess each area, determine the condition of the pipeline that could affect these areas, understand the potential causes of failure of these pipelines, and ascertain the need, through a structured and documented process, for additional preventive or mitigative actions.

Key questions that OPS would like to discuss at the meeting include:

a. How should ''high consequence'' areas be defined?

1. What is the status of OPS's definition of USAs?

2. What should be the definition of ''high population density'' area for a natural gas pipeline?

3. Can operator GIS systems be used to identify high population areas with greater precision than current class location schemes?

4. What should be the definition of ''high population density'' area for a hazardous liquid pipeline?

5. Should ''high property damage,'' ''significant disruption in service,'' ''significant disruption in commerce,'' ''waters where a substantial likelihood of commercial navigation exists,'' or the potential for other significant consequences be included in the definition of high consequence areas?

b. Should the operator or OPS be responsible for identifying the location of high consequence areas?

c. What percentage of natural gas pipelines might be expected to intersect high consequence areas (e.g., what percentage currently are in Class 3 or Class 4 locations?)

d. What percentage of hazardous liquid pipelines might be expected to intersect high consequence areas (e.g., what percentage currently are in non-rural areas or intersect USAs).

e. What process should OPS or the industry use to ensure that the identified high consequence areas continue to reflect current conditions along the pipeline (e.g., population expansion, new information on environmental resources)?

2. Identifying Affected Pipeline Segments

In this step, the specific pipeline segments whose failure could have serious safety or environmental consequences are identified. Once the high consequence areas are located on a map, the existing pipelines must be overlaid to identify the segments in or in close proximity to these areas. The physical ability of the overlaid pipeline segments to affect the environmental resources in the area or to impact the surrounding population must then be examined. The fact that a pipeline is within a high consequence area (defined in the first step) does not necessarily mean that a pipeline leak or rupture can result in environmental damage or impact public safety. For example, the population in a ''high population density'' area might be physically located sufficiently far from the pipeline to preclude safety impact. There may also be topographical barriers between the environmental resource and the pipeline that would preclude migration of any spill from the pipeline to the resource. This step, in conjunction with the first screening step, allows the pipeline operator to take into account pipeline-specific information to identify those segments of pipe that could result in environmental damage or public safety consequences.

Key questions that OPS would like to discuss at the meeting include:

- Does adequate data exist for operators to reliably ascertain the specific pipeline segments that could affect ''high consequence'' areas?
- Should pipeline segments near, but not within, high consequence areas also be examined for possible impact? If yes, what kinds of assumptions should be used to determine whether or not an impact occurs (*e.g.,* use of ''worst case discharge'' from spill response plans)?
- What would be the expected cost to an operator to perform this step?

3. Inspecting and Assessing the Condition of the Affected Segments

The next step in the process is for the operator to understand and assess the condition of the pipeline segments identified in Step 2. This step, in conjunction with the following step, is intended to ensure that the likelihood of pipeline failure due to internal or external corrosion, construction damage, previous excavation damage, or other mechanical damage is very low.

Undetected defects introduced by corrosion or by outside force damage have caused major pipeline accidents. Some of the major pipeline incidents over the last decade involved degradation of wall thickness from dents or gouges caused by outside force or third party damage. In some instances these dents and gouges had been in the pipe for a period of time before failure, and the line had not been inspected using internal inspection tools capable of detecting wall thinning or geometric defects in the pipe. OPS is especially interested in methods to detect and repair such defects before they lead to leaks or ruptures in high consequence areas.

One acceptable way of performing this step would be the use of an intelligent in-line inspection device (smart pig) appropriate to the type of pipeline being inspected. An operator can also use alternative, equivalent means to assess the condition of the affected segments. If the line has recently been pigged, the operator could review the available pig data in conjunction with other current data (*e.g.,* from close interval surveys) to assess the condition of the line. This step results in an operator identifying anomalies (areas of potential loss of wall thickness or pipe damage) that should be investigated further.

The hazardous liquid pipeline industry has developed recommended practices for monitoring, testing, and inspection methods that go beyond the requirements of 49 CFR part 195 (API Recommended Practices 1129, Assurance of Hazardous Liquid Pipeline System Integrity). This document comprises a range of best practices—including design and construction; monitoring and controls; inspections, reviews and audits; and damage prevention—to assist pipeline operators in improving the integrity of their pipeline systems.

Key questions that OPS would like to discuss at the meeting include:

- Are current industry standards sufficient for pipelines in high consequence areas? For example, is the ASME B.31 standard, used by operators to determine acceptable pipe wall loss, appropriate in high consequence areas? Or should more conservative standards apply in these areas?
- What is the current capability of smart pigs to find prior mechanical damage and other defects?
- What alternatives to internal inspection can provide equivalent information on pipeline condition?
- How recently should a line have been pigged to provide reliable data for this step? What factors should be considered in making this determination (*e.g.,* recent construction activity, cathodic protection system performance, interference from foreign line crossings, *etc.*)?
- What percentage of natural gas pipelines in Class 3 or Class 4 areas have been smart pigged in the last 5–10 years?
- What percentage of hazardous liquid pipelines intersecting non-rural or environmentally vulnerable areas might be expected to have been smart pigged in the last 5–10 years?
- What is the expected cost to an operator to pig (or equivalent) pipeline segments that would impact high consequence areas?
- How soon should the condition of the a line be assessed after determining that it could impact a high consequence area?
- What criteria should be used to identify anomalies that require further investigation?
- What is the appropriate period between pig runs for high consequence areas? (Should this period be based on pipeline-specific conditions impacting the likelihood of corrosion or mechanical damage?)
- Should OPS specify minimum performance criteria for internal inspection tools? If so, what should those criteria be?

4. Assessing the Need for Preventive or Mitigative Actions

In this step, the operator would determine the most likely causes of failure in the identified high consequence areas, and determine if any additional preventive or mitigative actions, beyond those the regulations require or the operator performs, are needed. In addition to assessing the need for repairs to lower the likelihood of leaks or ruptures due to corrosion or past mechanical damage (in Step 3), the operator should also assess the need for additional preventive actions to lower the likelihood of failure from all potential causes (*e.g.,* third party damage, geological hazards, operation and control center malfunctions, *etc.*) or additional mitigative actions to reduce the consequences should the pipeline leak or rupture.

This assessment should be performed as part of an integrated, segment-specific assessment of the possible causes of pipeline failure, and cost-effective actions to reduce the specific risks identified on these segments.

Although internal inspection and remediation of the lines can help ensure the condition of the lines, inspection and remediation does not address many important causes of pipeline failure. For example, OPS data show that in 1998, 37 percent of reported gas pipeline incidents were due to outside force damage. Similarly, on hazardous liquid pipelines, outside forces caused 26 percent of reportable events. Additional preventive measures may be needed to reduce the likelihood of these reported incidents, or to reduce the expected level of consequences should an incident occur. Accordingly, in addition to internal inspection of pipeline segments in high consequence areas, OPS is also interested in comment on the need for additional assessments and analyses of other preventive and mitigative measures to reduce risk in these areas.

For example, additional preventive measures might include the development of enhanced damage prevention programs. Recently, OPS sponsored a multi-industry effort to define best practices in damage prevention. Although OPS is not considering translating these best practices into regulations, it is interested in comments on how to otherwise promote the adoption of damage prevention best practices to reduce the likelihood of pipeline incidents. Additional mitigative actions might include developing enhanced emergency response plans in high consequence areas, or using emergency flow restricting devices or remotely controlled valves to limit the amount of product loss following a line failure.

Key questions that OPS would like to discuss at the meeting include:

- What structured assessment and decision processes could operators use to perform this step?
- What percentage of the natural gas industry already has structured processes in place to perform such assessments?
- What percentage of the hazardous liquid industry already has structured processes in place to perform such assessments?
- What should be the criteria for deciding whether additional actions by the operator are required?
- What would be the expected cost of performing such an assessment?

5. Repairing the Affected Segments as Necessary

In this step, the operator would determine which anomalies require remediation, and the appropriate means of repair. This step, in conjunction with the previous step, is intended to ensure that the likelihood of pipeline failure due to internal or external corrosion, construction damage, previous excavation damage, or other mechanical damage is very low.

Key questions that OPS would like to discuss at the meeting include:

- Should current industry standards (*e.g.,* ASME B.31G) be used as the repair criteria, or do other methodologies exist or need to be developed for pipelines in high consequence areas?
- What is the status of the current rulemaking to allow alternative repair techniques?
- After an operator identifies anomalies requiring repair, how much time should be allowed in which to complete the repair work?
- What would be the expected additional cost to the operators of more stringent inspection and repair criteria?

6. Implementing and Monitoring Other Cost-Effective Risk Control Activities

The operator would then be expected to implement the additional preventive and mitigative actions, and monitor their effectiveness over time to ensure that they are producing the risk reductions envisioned. The operator would be expected to implement the activities in a timely manner, consistent and integrated with internal budget processes that establish priorities and allocate resources based on risk significance of the planned activities.

Key questions that OPS would like to discuss at the meeting include:

- How can operators monitor the effectiveness of risk control activities?
- How would integrating an implementation schedule into normal operator maintenance schedules or budget cycles affect the cost of implementing these activities?

7. Documenting Inspections, Assessments, and Actions

An operator would maintain records establishing compliance with any new requirements addressing high consequence areas, including records identifying pipe segments capable of affecting high consequence areas, the schedule of inspections, the findings of the inspections and assessments, and the preventive and mitigative actions taken.

A key question that OPS would like to discuss at the meeting:

- What would be the expected costs and labor burdens of these documentation requirements?

8. OPS Reviews Operator Compliance

OPS will examine the operator's records to ensure compliance. OPS currently envisions an on-site review of the company's program documentation and records, as well as interviews with key management personnel responsible for implementing the process. The specific review activities will be tailored for the company's management system and assessment processes. Major review activities are expected to include:

- Reviewing the policies, procedures, guidelines, and manuals that describe how the company identifies the pipeline segments that could impact high consequence areas and assesses the need for additional protection on these segments.
- Reviewing the company's assessment and decision making processes.
- Reviewing in-line inspection data and the criteria to determine if further evaluation and repair is required.
- Reviewing the status of remediation and other preventive or mitigation actions.
- Reviewing performance measures to understand, evaluate, and demonstrate the effectiveness of the company's decisions.
- Meeting with company management to understand the level of management support and awareness of the program to protect high consequence areas.

After the review of the operator's internal processes and documentation, OPS will conduct field validation checks. These validation checks will confirm that the operator has implemented the additional preventive and mitigative activities.

The selection of field inspection sites will consider the operator's assessment and results. Where possible, the OPS team will perform an integrated review of information from a variety of sources (*e.g.*, internal inspection results, close interval surveys, leak history, and other observed conditions) in selecting field validation check sites.

After the OPS inspection team has completed its review and field validation checks, the team will prepare a summary report. This summary report will contain observations on the operator's program and processes, as well as on the effectiveness of this program in enhancing protection for high consequence areas. The report will document the positive features of the company's program and any areas that need improvement. The report will include any process improvements that OPS has determined are necessary, and the operator's work plan for addressing them. If compliance issues are discovered during the review, OPS will determine the appropriate resolution of these issues through its normal enforcement processes, and the resolution of those issues will be included in this report.

Key questions that OPS would like to discuss at the meeting include:

- How can OPS ensure consistency of review across all companies?
- What review protocols or criteria will OPS use to evaluate the effectiveness of an operator's assessment and decision-making processes?
- What is the appropriate avenue for public input into the decision-making process to protect high consequence areas?
- What qualifications or training should OPS inspectors have to perform this verification?

Information Requested

Consistent with the President's regulatory policy (E.O. 12866), OPS wants to carry out the mandate to consider additional inspections, and other preventive and mitigative measures at the least cost to society. Toward this end, interested persons are urged to present views on whether additional inspection requirements or other preventive and mitigative actions are needed to ensure adequate protection of high consequence areas. The questions listed above provide more specific guidance on the information being solicited for each step in the process. In addition, and applicable to all steps in the envisioned process, OPS is also interested in comments on the expected cumulative costs and benefits associated with implementing the described process, any comment on whether any of these measures would have a disproportionate impact on small operators, and any concerns on the information collection, recordkeeping, or reporting requirements of any of these initiatives under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3057(d)).

Authority: 49 U.S.C. Chapter 601 and 49 CFR 1.53.

Issued in Washington, DC on October 14, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

BILLING CODE 4910–60–P

Enhancing Safety and Environmental Protection in High Consequence Areas

Define Which Pipelines Could Impact High Consequence Areas

1. Identify High Consequence Areas

A. High Population Density Areas
B. Unusually Sensitive Environmental Areas
C. Commercial Navigable Waterways

2. Identify Affected Pipeline Segments

A. Locate High Consequence Areas
B. Identify Pipeline Segments Capable of Impact

↓

Determine Threats to the Pipelines in these Areas

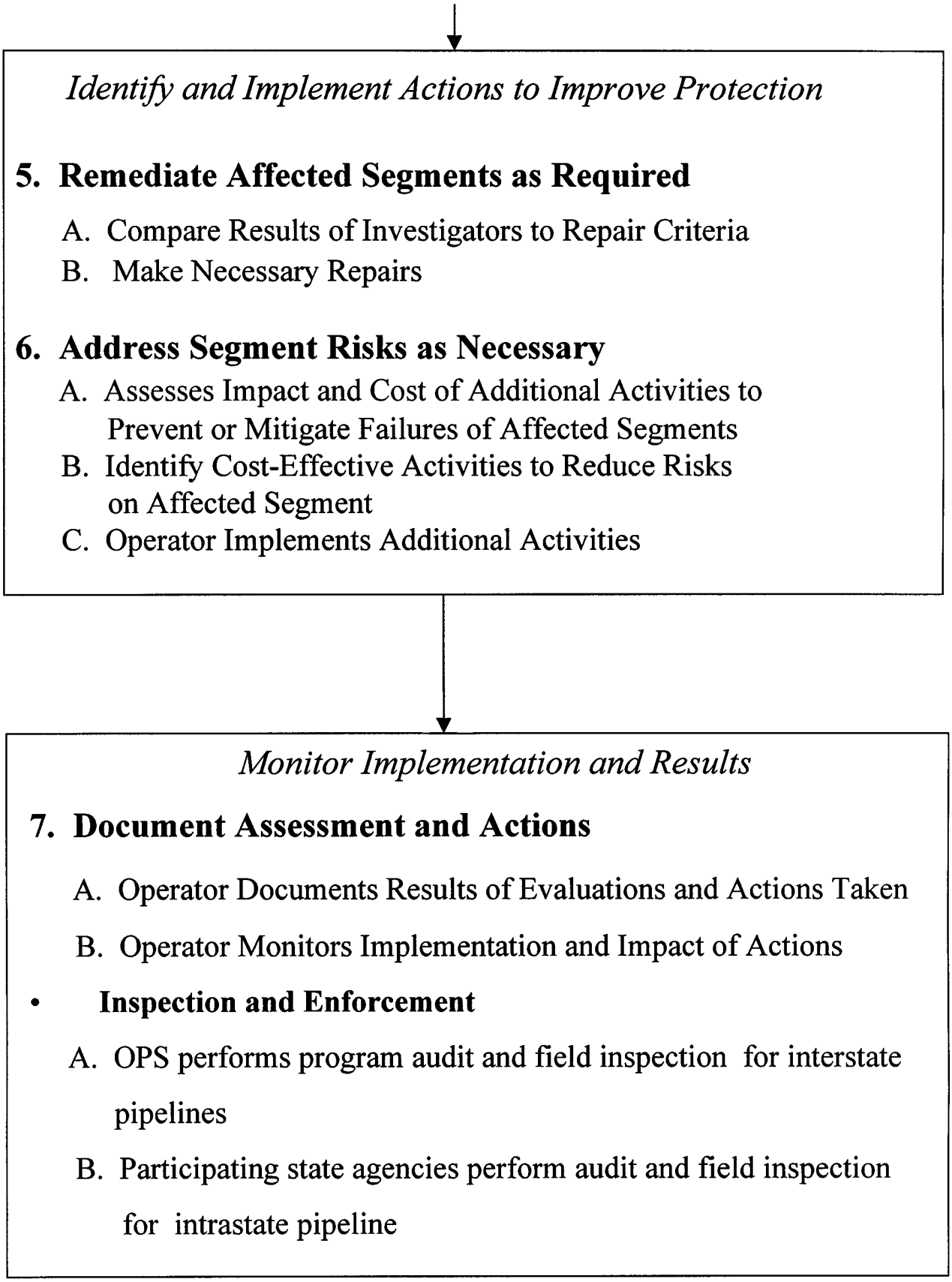
3. Assess Current Condition of the Affected Segments

A. Internal Inspection or Equivalent (or re-examines pig data)
B. Examine Other Relevant Data (e.g., CIS, construction activity over pipeline)
C. Evaluate Inspection and Other Data
D. Identify Anomalies Requiring Repair or Further Investigation

4. Identify the Most Likely Failure Causes of the Segments

A. Operator Uses Structured Processes to Identify the Most Likely Causes of Failure of the Affected Segments

↓



[FR Doc. 99–27281 Filed 10–20–99; 8:45 am]
BILLING CODE 4910–60–C

Notices

Federal Register
Vol. 64, No. 203
Thursday, October 21, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Michigan

AGENCY: Natural Resources Conservation Service (NRCS) in Michigan, US Department of Agriculture.

ACTION: Notice of availability of proposed changes in Michigan NRCS FOTG, Section IV for review and comment.

SUMMARY: It is the intention of NRCS in Michigan to issue revised conservation practice standards in Section IV of the FOTG. The revised standards include:

Forest Harvest Trails and Landings (655)
Critical Area Planting (342)
Upland Wildlife Habitat Management (645)

DATES: Comments will be received on or before November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Kevin Wickey, Assistant State Conservationist for Technology, Natural Resources Conservation Service, 1405 S. Harrison Rd., Room 101, E. Lansing, MI 48823. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *kwickey@mi.nrcs.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Kevin Wickey, 517–337–6701, ext. 1242.

SUPPLEMENTARY INFORMATION: Section 393 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Michigan will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Michigan regarding disposition of those comments and a final determination of change will be made.

Dated: October 5, 1999.

Jane E. Hardisty,

State Conservationist, E. Lansing, Michigan.

[FR Doc. 99–27450 Filed 10–20–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 990924263–9263–01]

American Indian and Alaska Native Areas (AIANA) Geographic Program for Census 2000—Proposed Program

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of proposed program and request for public comments.

SUMMARY: This notice includes the proposed program used to designate American Indian and Alaska Native areas (AIANAs) in Census 2000 and describes the changes from the criteria used for the 1990 census, as well as a list of definitions of key terms used in the criteria, and background information. This proposed program will apply to all AIANAs in the United States. The Census Bureau will accept comments on this notice for a period of 30 days after publication in the **Federal Register**.

The Census Bureau uses the collective term AIANAs for Census 2000 to refer to:

- Alaska Native Regional Corporations (ANRCs),
- Alaska Native village (ANVs) statistical areas,
- Federally recognized American Indian reservations,
- American Indian tribal subdivisions,
- American Indian off-reservation trust lands,
- Tribal designated statistical areas (TDSAs),
- Oklahoma tribal statistical areas (formerly ''tribal jurisdiction statistical areas (TJSAs)''),[1]
- State-recognized American Indian reservations, and
- State-designated American Indian statistical areas (SDAISAs).

The above includes both legally established geographic areas and statistically created geographic areas (see ''Definitions of Key Terms'' in the **SUPPLEMENTARY INFORMATION** section).

Prior to the 1980 census, the U.S. Office of Management and Budget established an ad hoc interagency committee on the American Indian and Alaska Native Population to identify and examine how the federal government could provide improved data for this population. One of the primary tasks of the interagency committee, which included the U.S. Census Bureau and federal agencies with responsibility for funding, planning, or administering programs for this population, was to identify the content and geographic areas for which 1980 census data were needed to fulfill federal legislative and program requirements. In addition to the federal effort, the Census Bureau sought information on data needs from American Indian and Alaska Native tribal governments and communities as well as state governments.

To meet the diverse data requirements, as well as provide general-purpose statistics, the Census Bureau had to identify and define new geographic areas reflecting, to the extent possible, legally established entities, unique historical tribal homelands, and current settlements of tribal activity.

While aware of the use(s) of data by other federal agencies for program purposes, the Census Bureau does not create geographic frames of reference based on specific federal agency use(s) or need(s). The challenge of developing geographic frames of reference that would produce data for legal entities as well as significant statistical areas was made more difficult by the lack of one definitive source of information, and the differing legal circumstances and geographic settlement patterns of particular tribes. There are both federally recognized and state-recognized tribes with reservations and/or established land bases. While some

[1] The designation ''tribal jurisdiction statistical area'' was changed to Oklahoma tribal statistical area to avoid the mis-perception that such designation constituted recognition or confirmation by the federal government of a particular legal status. The new designation is defined in the ''Definitions of Key Terms'' section.

federally recognized and state-recognized tribes do not have established land bases, they conduct identifiable tribal activity.

For tribal governments with reservations existing under law today or off-reservation trust lands, the Census Bureau had to work out a mechanism to obtain and maintain the most current, legally established boundaries for census purposes. Because some tribes do not currently have a legally established land base (reservation or off-reservation trust lands) with clearly delineated boundaries and legally recognized jurisdictions, the Census Bureau has had to develop a statistical equivalent. In doing so, the Census Bureau had to focus on the overall objective—producing statistics for a geographically defined area having significance for the tribal governments and for federal and state agencies funding and administering programs for the tribal governments. With this as the objective, the Census Bureau has developed the underlying premise that newly created geographic statistical areas should reflect, to the extent reasonably possible, the area in which there is an identifiable tribal activity and a concentration of persons who identify with the particular tribe. Admittedly, because of the lack of a clearly defined land base for some recognized tribes and because persons who identify with other tribes may be concentrated in the same areas, these criteria are of necessity somewhat amorphous.

The effort to produce meaningful data for American Indian tribal governments has been an evolutionary process that is best evidenced by the steps taken by the Census Bureau in the 1980 and 1990 censuses. A brief description of those procedures is included under the ''Background'' heading in the **SUPPLEMENTARY INFORMATION** section. This historic narrative will be followed by a description of the plans for Census 2000.

DATE: Any comments, suggestions or recommendations concerning this Census 2000 proposed program in this notice should be submitted in writing by November 22, 1999.

ADDRESS: Address all written comments to the Director, Bureau of the Census, Room 2049, Federal Building 3, Washington DC 20233–0001.

FOR FURTHER INFORMATION CONTACT: Robert Marx, Chief, Geography Division, Bureau of the Census, Room 651, WP–1, Washington DC 20233–7400, telephone (301) 457–2131, or e-mail (rmarx@geo.census.gov).

SUPPLEMENTARY INFORMATION: Pursuant to Title 13, United States Code, Section 141(a), the Secretary of Commerce, as delegated to the Census Bureau, undertakes every ten years the decennial census ''* * * in such form and content as he may determine * * *,'' giving wide discretion to the Census Bureau in undertaking the census. The Census Bureau depicts AIANAs solely for purposes of presenting general-purpose statistical data from the decennial census of population and housing. It does not take into account or attempt to anticipate any nonstatistical uses that may be made of AIANAs, nor will the Census Bureau modify the definition of AIANAs to meet the requirements of the programs of other agencies. Where disputes occur because of overlapping boundaries, the Census Bureau will encourage the respective tribal officials to reach a mutually acceptable agreement. However, there may be instances where the Census Bureau cannot depict the boundaries submitted because they are in dispute. Representation of boundaries on Census Bureau maps and in Census Bureau data bases are solely for the purpose of data collection and data tabulation and do not convey any representation or right as to land ownership or legal status.

Executive Order 12866

This notice does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel, Small Business Administration, that this notice will not have a significant economic impact on a substantial number of small entities. This notice sets forth the Census Bureau's proposed program to designate AIANAs in Census 2000. The program will be used by the Census Bureau to tabulate and disseminate statistical data for AIANAs from the decennial census, solely for statistical purposes.

Definitions of Key Terms

Alaska Native Claims Settlement Act (ANCSA)—Legislation (Pub. L. 92–203) enacted in 1972 establishing Alaska Native Regional Corporations (ANRCs) and Alaska Native villages (ANVs) to conduct business and nonprofit activities by and for Alaska Natives.

Alaska Native Regional Corporation (ANRC)—A corporate entity organized to conduct both business and nonprofit affairs of Alaska Natives pursuant to the Alaska Native Claims Settlement Act. Twelve ANRCs are geographic entities that cover most of the State of Alaska. A thirteenth ANRC represents Alaska Natives who do not live in Alaska and do not identify with any of the 12 corporations. The boundaries of ANRCs have been legally established.

Alaska Native village (ANV)—A type of local governmental unit in Alaska that constitutes an association, band, clan, community, group, tribe, or village recognized pursuant to the Alaska Native Claims Settlement Act of 1972 (Pub. L. 92–203). ANVs do not have boundaries that are clearly delineated or locatable. The Census Bureau does not define ANVs for the purposes of presenting census data. The Census Bureau does present census data for ANV statistical areas that represent the settled portion of the ANV.

Alaska Native village statistical area (ANVSA)—A statistical entity that represents the densely settled portion of an ANV. ANVSAs are delineated or reviewed by officials of the ANV or the ANRC in which the ANV is located for the purpose of presenting census data.

American Indian reservation—An American Indian governmental entity with legally defined boundaries established by treaty, statute, and/or executive or court order. The federal government and some state governments have established reservations as territory over which American Indians have primary governmental jurisdiction. These entities are designated as colonies, communities, pueblos, rancherias, ranches, reservations, reserves, tribal towns, or villages. The Bureau of Indian Affairs (BIA) maintains a list of federally recognized tribal governments. States provide a list of state-recognized American Indian reservations.

American Indian tribal subdivision—An administrative subdivision of a federally recognized American Indian reservation, known as an area, chapter, community, district, and so forth. These entities are internal units of self-government or administration that serve social, cultural, and/or economic purposes for the American Indians on the reservation and/or off-reservation trust lands.

American Indian trust land—Land held in trust by the federal government for either a tribe recognized by the federal government (tribal trust land) or an individual member of that tribe (individual trust land). Trust land can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior or his/her authorized representative. Trust lands may be located on or off the reservation.

The Census Bureau recognizes and tabulates data separately only for off-reservation trust lands, because primary tribal governmental authority is generally not attached to tribal lands located off the reservation unless those lands are placed into trust status. Trust land always is associated with a specific federally recognized reservation and/or tribal government.

Boundary and Annexation Survey (BAS)—A Census Bureau survey of counties/county equivalents, minor civil divisions (MCDs), incorporated places, ANRCs, and federally recognized American Indian reservations and/or off-reservation trust lands. Its purpose is to determine, solely for the purposes of data collection and data tabulation, the complete inventory and the correct names, legal descriptions, official status, and official boundaries of the legal entities with primary governmental jurisdiction over certain lands within the United States as of January 1 of the survey year. The BAS also collects specific information on the legal actions that establish a boundary or impose boundary changes.

Bureau of Indian Affairs (BIA)—An agency of the federal government, located in the Department of the Interior, responsible for the historic and legal relationships between the federal government and federally recognized American Indian tribal governments and communities.

Fee land (or land in fee simple status)—Land owned in fee simple (total ownership, not in trust) by a tribe recognized by the federal government or individual members of a tribe. The title to such land is held by the tribe or an individual, and tracts and/or parcels of land can be alienated or encumbered by the owner without the approval of the Secretary of the Interior or his/her authorized representative. This type of land may be located on or off a federally recognized reservation. The Census Bureau does not identify fee land (or land in fee simple status) as a specific geographic category.

Historic Areas of Oklahoma—The area encompassing the former American Indian reservations that had legally established boundaries during the period 1900 through 1907 but were dissolved during the two- to three-year period preceding the establishment of Oklahoma as a state in 1907. The 1980 census tabulated data for this single entity, which was replaced for the 1990 census by the designation ''tribal jurisdiction statistical areas'' (TJSAs), reflecting, in general, a breakdown of the data by individual former reservations.

Joint use area—The term, as applied to any AIANA by the Census Bureau, means that the area is administered jointly and/or claimed by two or more American Indian tribes. The Census Bureau designates both legal and statistical joint use areas as unique geographic entities for the purpose of presenting census data.

Legal entity—A geographically defined governmental entity whose origin, boundary, name, and description result from charters, laws, treaties, or other governmental action. Examples are the United States, states and state equivalents, counties and county equivalents, MCDs, incorporated places, congressional districts, American Indian reservations and off-reservation trust lands, ANRCs, ANVs, and American Indian tribal subdivisions. The legal entities recognized for Census 2000 are those that exist on January 1, 2000. (The Census Bureau does not recognize ANVs for the purpose of presenting census data. The Census Bureau presents census data for ANV statistical areas which represent the settled portion of the ANV.)

Oklahoma tribal statistical area (OTSA)—A statistical entity identified and delineated for the Census Bureau in consultation with federally recognized American Indian tribes in Oklahoma. (In 1990, OTSAs were called TJSAs.) An OTSA encompasses an area that is generally defined by the boundaries of a former reservation in Oklahoma and is occupied today by individuals who identify with a tribe or tribes that have historically held or resided upon the former reservation.

Restricted land—A type of American Indian land belonging to tribes recognized by the federal government or individual members of those tribes. The title to such land is held by the tribe or individual and can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior or his/her authorized representative. Restricted land may be located on or off a federally recognized reservation. The Census Bureau does not identify restricted land as a specific geographic category.

State-designated American Indian statistical area (SDAISA)—A statistical entity for state-recognized American Indian tribes that do not have a state-recognized land base (reservation). SDAISAs are identified and delineated for the Census Bureau by a designated state official. SDAISAs generally encompass a compact and contiguous area that contains individuals who identify with a state-recognized American Indian tribe and in which there is identifiable tribal activity.

Statistical entity—A specially defined geographic entity for which the Census Bureau tabulates data. Statistical entity boundaries are not legally defined, and the entities have no legal or governmental standing. Examples are metropolitan areas, urbanized areas, census county divisions, census-designated places, census tracts, census block groups, census blocks, tribal designated statistical areas (TDSAs), state-designated American Indian statistical areas (SDAISAs), Oklahoma tribal statistical areas (OTSAs—formerly called tribal jurisdiction statistical areas (TJSAs)), and Alaska Native village statistical areas (ANVSAs).

Subreservation area—See ''American Indian tribal subdivision.''

Surface estate—That portion of the interest, ownership, or property in land that resides on the earth's surface, as distinguished from the subsurface estate (for example, mineral rights). The Census Bureau collects the boundaries of off-reservation trust lands where the surface estate is held in trust; it does not collect the boundaries where only the subsurface estate is held in trust.

Tribal designated statistical area (TDSA)—A statistical entity identified and delineated for the Census Bureau by a federally recognized American Indian tribe that does not currently have a legally established land base (reservation and/or off-reservation trust land). A TDSA encompasses a compact and contiguous area that contains individuals who identify with the federally recognized American Indian tribe and in which there is identifiable tribal activity.

Tribal jurisdiction statistical area (TJSA)—See ''Oklahoma tribal statistical area'' (OTSA).

Background

1980 Census

The Census Bureau began to report data systematically for American Indian and Alaska Native areas (AIANAs) in conjunction with the 1980 census, when it identified and published data for American Indian reservations. The Census Bureau worked with the BIA and state officials to identify American Indian reservations and to obtain accurate maps of their boundaries, and with officials in Alaska to determine locations for ANVs. American Indian off-reservation tribal trust lands were identified for the first time as geographic entities. To provide data for tribes recognized by the federal government in Oklahoma that no longer had a reservation, an all-encompassing geographic entity called the Historic Areas of Oklahoma was created. Also

identified as geographic entities were American Indian subreservation areas, which are internal units of self-government or administration such as chapters, communities, and districts. The Census Bureau also sought input from American Indian tribal governments on the identification of the geographic areas.

1990 Census

For 1990, the Census Bureau expanded and improved its geographic identification of American Indian reservations and off-reservation trust lands and increased the involvement of American Indian and Alaska Native officials in the geographic delineations. The Census Bureau also consulted with the Census Advisory Committee on the American Indian and Alaska Native Populations. For those tribes identified by the BIA as currently having a legally established land base, defined as a reservation or off-reservation trust lands, the Census Bureau continued to use boundaries certified by the BIA only for census purposes. The Census Bureau did not provide data for subreservation areas. It began to report data for American Indian off-reservation individual trust lands (in addition to the off-reservation tribal trust lands) and for Alaska Native Regional Corporations (ANRCs). It developed Alaska Native village statistical areas (ANVSAs) to represent the settled portion of Alaska Native villages (ANVs) because of the difficulty in obtaining and representing boundaries for the ANVs. It established a new geographic entity called the tribal designated statistical area (TDSA) to identify federally and state-recognized tribes without a land base (a reservation and/or off-reservation trust land) but with an area that has been associated with the tribe. The Census Bureau replaced the all-inclusive Historic Areas of Oklahoma with tribal jurisdiction statistical areas (TJSAs). Because tribes in Oklahoma have, for the most part, continued to live on and conduct tribal activities upon the lands that were former reservations, most of the 1990 TJSAs delineated by the tribes have boundaries that are very similar to the former reservation boundaries. The 1990 criteria established by the Census Bureau included a statement that TJSAs cannot include any reservation or trust lands. In fact, most of the tribes in Oklahoma do have trust lands but because the parcels are small and in many cases scattered, the 1990 program allowed tribes to identify as TJSAs a larger contiguous area associated with their tribe, generally constituting a former reservation.

Census 2000

For Census 2000, the Census Bureau continues to work with tribal governments and federal and state agencies, as well as the Census Advisory Committee on American Indian and Alaska Native Populations, to improve its geographic identification of AIANAs. For federally recognized tribes, instead of using updated boundaries obtained from the BIA, the Census Bureau offers programs to collect updated boundaries directly from the tribal governments. In 1997, it undertook the Tribal Review Program, to enable officials of all federally recognized American Indian tribes with a land base to review and update the maps used for Census 2000 for their jurisdictions. This involved checking the boundaries of reservations and/or off-reservation trust lands shown in the Census Bureau's geographic data base (Topologically Integrated Geographic Encoding and Referencing System (TIGER)) as provided to the Census Bureau for the 1990 census by the BIA, providing suggestions for Census 2000 block boundaries in the Block Definition Project, and updating and correcting the road and other base features shown on the census maps. The Tribal Review Program also gave tribes in Oklahoma the opportunity to review the delineation of their OTSAs, formerly TJSAs (generally defined by the boundaries of former reservations).

Beginning in 1998, the Census Bureau made federally recognized American Indian tribes with a land base part of its annual BAS. ANRCs also were included in the 1999 BAS. All American Indian entities included in the BAS will also be included in the Census 2000 Boundary Validation Program. This program will enable governmental officials responsible for legal entities to review and provide any corrections to the January 1, 2000, boundaries (the boundaries used for census statistical data tabulation). Boundary validation is scheduled to begin April 2000 and extend through July 2000. Also, to support tribal requests for data by administrative subdivisions, the Census Bureau will offer tribal officials the opportunity to delineate their chapters, communities, or districts as American Indian tribal subdivisions (similar to the 1980 subreservation areas).

In addition to offering the above programs, the Census Bureau has introduced a new geographic entity, the SDAISA, and has made some changes to the criteria for TDSAs and OTSAs (formerly TJSAs). See below for details.

Criteria

A. Legal Entity Criteria for Census 2000

1. The Census Bureau will use the following criteria for AIANAs that are legal entities for Census 2000.

a. Alaska Native Regional Corporations (ANRCs)

ANRCs are corporate entities organized to conduct both the business and nonprofit affairs of Alaska Natives pursuant to the Alaska Native Claims Settlement Act. Alaska is divided into 12 ANRCs that cover most of the state. The ANRC boundaries have been established by the Department of the Interior in cooperation with Alaska Natives. Each ANRC is designed to include Alaska natives with a common heritage and common interests. A thirteenth ANRC represents Alaska Natives who do not live in Alaska and do not identify with any of the 12 corporations. As part of the 1999 and 2000 BAS, representatives of the 12 nonprofit ANRCs are offered the opportunity to review and update the ANRC boundaries.

b. American Indian Reservations

The federal government and some state governments have established American Indian reservations as territory over which American Indians have primary governmental jurisdiction. Boundaries are established by treaty, statute, and/or executive or court order. A reservation of a tribe recognized by the federal government may be located in more than one state, but state-recognized reservations must respect state boundaries. The Census Bureau obtains changes to the boundaries of federally recognized American Indian reservations and off-reservation trust land directly from the tribes through the annual BAS. Acceptance of boundary changes requires legal documentation, such as copies of the deeds putting the land into trust, supporting any, and all, changes to the 1990 census boundary as certified to the Census Bureau by the BIA, as well as the absence of any litigation involving these boundaries. Any changes to the inventory of reservations for federally recognized tribes will be based upon BIA designation of the reservation. If there is a question about the status of the 1990 boundary, the Census Bureau will consult with other responsible federal agencies for resolution of the matter. A designated state liaison will provide the Census Bureau with the boundaries of state-recognized American Indian reservations.

c. American Indian Off-Reservation Trust Lands

American Indian trust lands are tracts and/or parcels of land held in trust by the federal government for either a tribe recognized by the federal government (tribal trust land) or an individual member of that tribe (individual trust land). Trust land can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior or his/her authorized representative. Trust land is always associated with a specific federally recognized reservation and/or tribe, and it may be located on or off a reservation. The Census Bureau, however, recognizes and tabulates data separately only for off-reservation trust lands because primary tribal governmental jurisdiction is attached to lands within the legal boundaries of a federally recognized reservation whether the lands are held in trust status or not. Primary tribal governmental jurisdiction is generally not attached to tribal lands located off the reservation until the lands are placed in trust. The Census Bureau does not identify or compile data for other types of off-reservation American Indian land, such as restricted land and fee land (land in fee simple status). These lands are owned by individuals and have an individual's name on the title of the land. (The compilation of land ownership information by individuals is not within the mission of the decennial census.) The Census Bureau collects the boundaries of off-reservation trust lands where the surface estate is held in trust. It does not collect the boundaries of parcels and/or tracts of land where only the subsurface estate has been placed in trust. The Census Bureau collects the boundaries of American Indian off-reservation trust lands through its annual BAS. The tribes are required to provide legal documentation to support any, and all, legal boundary changes since the BIA provided the boundaries to the Census Bureau that reflected the status for census purposes as of January 1, 1990.

d. American Indian Tribal Subdivisions

Some American Indian reservations and/or off-reservation trust land areas have administrative subdivisions variously designated as areas, chapters, communities, districts, and so forth. These entities are internal units of tribal self-government or administration that serve social, cultural, and/or economic purposes for the American Indians on the reservation. Federally recognized tribes interested in data from Census 2000 by such administrative entities will be offered the opportunity to delineate these subdivisions only on their land base (reservation and/or off-reservation trust land). The Census Bureau can report only one administrative level of subdivisions within a reservation and/or off-reservation trust land area. Tribes that have multiple levels of administrative units should submit the lowest level. If the reservation or off-reservation trust lands are discontinuous, the tribal subdivisions will be discontinuous. The Census Bureau will collect information for American Indian tribal subdivisions in the 2000 BAS.

2. Changes in the Legal Entity Criteria for Census 2000

Most provisions of the legal entity AIANA criteria remain unchanged from those used in conjunction with the 1990 census, with the few exceptions summarized below.

- The Census Bureau will contact all federally recognized tribes directly to obtain updates and supporting documentation on the boundary information rather than obtaining updated boundary information from the BIA.
- American Indian tribal subdivisions are new for Census 2000 in the sense that the Census Bureau did not identify or report data for them in conjunction with the 1990 census. However, they are similar in many respects to the American Indian subreservation areas of 1980. One difference is that the 1980 subreservation areas sometimes included territory located beyond the reservation and/or off-reservation trust land boundaries, whereas the tribal subdivisions for Census 2000 must not extend beyond the boundaries of reservations or off-reservation trust lands.

B. Statistical Entity Criteria for Census 2000

The Census Bureau will recognize and publish data for the area identified by a tribe or tribes, or by a state liaison (for state-recognized tribes) solely for census statistical purposes.

1. With the exception of the OTSAs, formerly TJSAs, census block boundary criteria apply to all AIANAs that are statistical entities for Census 2000. The Census Bureau will publish data for and recognize the area identified by a tribe or tribes solely for census statistical purposes.

Because they are statistical entities, the boundaries of ANVSAs, SDAISAs, and TDSAs will be census block boundaries. Census block boundaries should follow visible, perennial natural and cultural features such as roads, rivers, canals, railroads, and above-ground high-tension power lines. Other features acceptable as census block boundaries are the boundaries of:

- Counties and statistically equivalent entities.
- County subdivisions.
- Incorporated places.
- Federally recognized American Indian reservations and/or off-reservation trust lands.
- State-recognized American Indian reservations.
- Military reservations.
- National parks.

When these features are not available for selection, the Census Bureau, at its discretion, may approve other nonstandard visible features, such as ridge lines, pipelines, intermittent streams, fence lines, and so forth. Additionally, the Census Bureau may accept, on a case-by-case basis, the boundaries of selected nonstandard and potentially nonvisible features, such as the boundaries of local and state parks and forests, cemeteries, other special land-use properties, and the straight-line extensions of visible features or other lines-of-sight.

2. The Census Bureau will use the following criteria for AIANAs that are statistical entities for Census 2000.

a. Alaska Native Village Statistical Areas (ANVSAs)

An ANVSA represents the concentrated settlement of an ANV established as part of the Alaska Native Claims Settlement Act of 1972. ANVs usually have no definite legal boundaries and often include many square miles of land used by Alaska Natives for hunting and fishing. ANVSAs are delineated or reviewed by officials of the ANV or the ANRC in which the ANV is located for the purpose of presenting census data. An ANVSA may not overlap the boundary of another ANVSA or an American Indian reservation or TDSA.

b. State Designated American Indian Statistical Areas (SDAISAs)

The purpose of SDAISAs, a new geographic statistical area established for Census 2000, is to differentiate between state-recognized tribes without a land base and tribes recognized by the federal government without a land base. (In 1990, all such tribes were identified as TDSAs.) There are no minimum population size requirements, but a SDAISA should encompass compact and contiguous areas in which a concentration of persons who identify with the tribe reside and in which there is identifiable tribal activity. Examples of the latter include: tribal headquarters buildings or meeting areas, cultural or

religious areas of significance, tribal service centers, or tribally owned commercial areas. The SDAISA is not intended to identify all lands once claimed by a particular tribe. A SDAISA may not be located in more than one state, and it may not include area within a reservation, off-reservation trust land, ANVSA, TDSA, or OTSA. A state liaison identified by the Governor will delineate SDAISAs.

c. Tribal Designated Statistical Areas (TDSAs)

The purpose of TDSAs is to provide data for tribes recognized by the federal government outside the State of Oklahoma that do not have a land base. To be considered for a TDSA, a tribe must be recognized by the federal government. There are no minimum population size requirements, but a TDSA should encompass compact and contiguous areas in which a concentration of persons who identify with the tribe reside and in which there is identifiable tribal activity. Examples of the latter include: tribal headquarters buildings or meeting areas, cultural or religious areas of significance, tribal service centers, or tribally owned commercial areas. The TDSA is not intended to identify all lands once claimed by a particular tribe. A TDSA may be located in more than one state, but it may not cross the boundaries of any reservation, off-reservation trust land, ANVSA, SDAISA, or OTSA.

d. Oklahoma Tribal Statistical Areas (OTSAs), Formerly Tribal Jurisdiction Statistical Areas (TJSAs)

The purpose of OTSAs is to provide data for tribes recognized by the federal government in the State of Oklahoma that do not currently have an existing reservation. The OTSA program was designed to give the tribal governments in the State of Oklahoma an opportunity to delineate an identifiable land area as tribal lands. There are no minimum population size requirements, but an OTSA should encompass a compact and contiguous area in which a concentration of persons who identify with the tribe reside and in which there is identifiable tribal activity. This area will be recognized as an OTSA. Because most tribes in Oklahoma had or resided upon former reservations, and continue to do so to this day, the boundaries of the OTSAs generally reflect the boundaries of those former reservations.

In addition to changing the name because of confusion created by use of the word ''jurisdiction,'' the Census Bureau has made one other change to this program for Census 2000: an OTSA must contain territory within Oklahoma, but it may extend into a state bordering Oklahoma. An OTSA may not cross: the boundaries of any reservation; off-reservation trust land belonging to the Osage Tribe, which is based in Oklahoma, or any tribe not based in Oklahoma; or any SDAISA or TDSA. The boundaries of an OTSA, since many reflect former legal reservation boundaries, are not required to conform to a visible feature or other acceptable feature required of other statistical tribal entities.

In determining its definition for Census 2000, the Census Bureau is clarifying that an OTSA can include trust lands; however, a tribe must choose to identify only one type of geographic area for use in the reporting of census data. Therefore, a tribe that resides upon a land area in Oklahoma (or in the immediately surrounding states) can identify that area as an OTSA or can submit to the Census Bureau the boundaries for their tribal and individual trust lands; a tribe cannot identify both an OTSA and trust lands. Specified trust lands will not be shown as included within an OTSA but will be separately identified the same as for tribes in other states that do not have a reservation but only trust lands.

Most of the 1990 TJSAs (now designated OTSAs) share a common boundary to the north, south, east, and west with neighboring TJSAs. For Census 2000, if a tribal government wishes to adjust a boundary that is shared by more than one OTSA there must be agreement for the adjustment from all tribal governments affected by the change. This is also true for those OTSAs occupied by more than one tribe. All boundary/occupancy adjustments must be acceptable to all the tribal governments involved before the Census Bureau will make revisions. If for any reason an acceptable resolution cannot be reached by the tribes, the Census Bureau will designate the area under dispute as an Oklahoma tribal statistical ''joint use area,'' implying an area of shared occupation and/or tribal activity, and will hold to the boundaries submitted during the 1990 census.

3. Designation of Names for American Indian and Alaska Native area (AIANA) Statistical Entities for Census 2000

The Census Bureau will identify the American Indian and Alaska Native statistical areas with a name generally following the suggestion of the tribe(s) proposing the statistical area. Where a tribe(s) cannot agree on a name for the statistical entity, the Census Bureau will designate a name that has been historically used, or commonly known for the area encompassed by the AIANA statistical area; or if such cannot be determined, the Census Bureau will establish a name comprised of the name(s) of the tribe(s) with a substantial number of individuals who identify with the tribe(s) in the area, in the order of population size from the preceding census for the area.

4. Changes in the Statistical Entity Criteria for Census 2000

Most provisions of the AIANA criteria for statistical entities remain unchanged from those used in conjunction with the 1990 census, with the few exceptions summarized below.

- The TDSAs for Census 2000 will apply only to federally recognized tribes. State-recognized tribes without a land base, including those that were TDSAs in 1990, will be identified as SDAISAs, a new geographic entity.
- Alaska Native tribes and/or villages not established as Alaska Native villages under the Alaska Native Claims Settlement Act of 1972 may be delineated as TDSAs provided that they are recognized by the federal government and do not have a land base.
- For Census 2000, a TDSA may cross a state boundary. In 1990, TDSAs had to respect state boundaries.
- The OTSAs, formerly TJSAs, for Census 2000 may cross the boundaries of Oklahoma and include territory in a neighboring state. In 1990, they had not been allowed to extend beyond Oklahoma. In addition, boundaries for OTSAs do not have to meet the visible feature requirements for census block boundaries.
- The Census Bureau has clarified how AIANA statistical entities will be named.

Dated: October 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–27524 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Continuation of Antidumping Duty Order: Anhydrous Sodium Metasilicate from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Anhydrous Sodium Metasilicate from France.

SUMMARY: On February 4, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on anhydrous sodium metasilicate from France would likely lead to continuation or recurrence of dumping. *See Final Results of Expedited Sunset Review: Anhydrous Sodium Metasilicate From France* (''Final ITA Results''), 64 FR 56310 (February 4, 1999). On September 27, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on anhydrous sodium metasilicate from France would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Final Results of Expedited Sunset Review: Anhydrous Sodium Metasilicate From France* (''Final ITC Results''), 64 FR 52104 (September 27, 1999). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on anhydrous sodium metasilicate from France.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: October 21, 1999.

Background

On October 1, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 52683 and 63 FR 52748, respectively) of the antidumping duty order on anhydrous sodium metasilicate from France pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked. *See Final ITA Results.*

On September 27, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on anhydrous sodium metasilicate from France would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Final ITC Results* and USITC Pub. 3235, Inv. No. 731–TA–25 (Review) (September 1999).

Scope

Imports covered by the order are shipments of anhydrous sodium metasilicate (''ASM''), a crystallized silicate (Na2 SiO3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules of the United States (HTSUS) item numbers 2839.11.00 and 2839.19.00. The HTSUS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on anhydrous sodium metasilicate from France. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order or suspension agreement will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than September 2004.

Dated: October 18, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27568 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–853]

Notice of Postponement of Preliminary Antidumping Duty Determination: Bulk Aspirin From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 21, 1999.

FOR FURTHER INFORMATION CONTACT: Marian Wells or Rosa Jeong, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–6309 or 482–3853, respectively.

Postponement of Preliminary Determination

On June 23, 1999, the Department of Commerce (the Department) published its notice of initiation of antidumping investigation of bulk aspirin from the People's Republic of China (PRC). *See Initiation of Antidumping Duty Investigation: Bulk Aspirin From the People's Republic of China*, 64 FR 33463. The initiation notice stated that we would issue our preliminary determination by November 4, 1999. On October 8, 1999, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), Rhodia, Inc., the petitioner, requested that the Department postpone the issuance of the preliminary determination in this investigation. The petitioner's request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, we are postponing the deadline for issuing the preliminary determination until no later than December 21, 1999.

This extension and notice are in accordance with section 733(c) of the Act.

Dated: October 15, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27572 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–833]

Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 21, 1999.

FOR FURTHER INFORMATION CONTACT: Gabriel Adler or Steven Presing, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–5288, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations refer to the regulations last codified at 19 CFR part 351 (April 1998).

Final Determination

We determine that live cattle from Canada are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins are shown in the *Continuation of Suspension of Liquidation* section of this notice.

Case History

The preliminary determination in this investigation was issued on June 30, 1999. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Live Cattle from Canada,* 64 FR 36847 (July 8, 1999) (*Preliminary Determination*). Since the publication of this determination, the following events have occurred.

On July 12, 1999, respondent Schaus Land and Cattle Company (Schaus) filed a letter stating that it was ceasing its participation in this investigation. On July 16, 1999, the Department issued an amended preliminary determination, including a recalculated preliminary margin for Schaus that relied on data filed by the respondent on the eve of the issuance of the preliminary determination. *See Amended Antidumping Determination: Live Cattle from Canada,* 64 FR 39970 (July 23, 1999) (*Amended Preliminary Determination*). See also Schaus Sales Comment 1 (Facts Available), below.

In July 1999, we conducted on-site verifications of the questionnaire responses submitted by Cor Van Raay Farms Ltd. and Butte Grain Merchants Ltd. (Cor Van Raay); Pound-Maker Agventures, Ltd. (Pound-Maker); Riverside Feeders Ltd. and Grandview Cattle Feeders Ltd. (Riverside/Grandview); Jameson, Gilroy and B & L Livestock Ltd. (the JGL Group); and Groenenboom Farms, Ltd. (Groenenboom).

On August 13, 1999, we received case briefs from (1) the Ranchers-Cattlemen Action Legal Fund (R–CALF or the petitioners), (2) the Canadian Cattlemen's Association (CCA) and the named respondents in this investigation, and (3) the Free Market Beef Council (FMBC), an alliance of U.S. packers that import live cattle from Canada. On August 20, 1999, we received rebuttal briefs from the same parties. On August 30, 1999, the petitioners filed a letter alleging that Canadian producers of the subject merchandise were engaged in a scheme to reimburse importers for antidumping duty deposits relating to subject merchandise. We held a public hearing on September 1, 1999. At the hearing, the Department requested that parties submit comments regarding the allegation of reimbursement of duty deposits. The petitioners and the CCA filed such comments on September 10, 1999. *See* Sales Comment 3 (Reimbursement of Dumping Duty Deposits) below.

Scope of Investigation

The scope of this investigation covers live cattle from Canada. For purposes of this investigation, the product covered is all live cattle except imports of (1) bison, (2) dairy cows for the production of milk for human consumption, and (3) purebred cattle and other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is classifiable as statistical reporting numbers under 0102.90.40 of the *Harmonized Tariff Schedule of the United States (HTSUS),* with the exception of 0102.90.40.10, 0102.90.40.72 and 0102.90.40.74. Although the *HTSUS* subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1997, through September 30, 1998. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition (*i.e.*, November 12, 1998).

Fair Value Comparisons

To determine whether sales of live cattle from Canada to the United States were made at less than fair value, we compared the export price (EP) to the normal value. Our calculations followed the methodologies described in the *Preliminary Determination,* except as noted below and in company-specific analysis memoranda dated October 4, 1999, which have been placed in the file.

Export Price

JGL Group

We did not rely on the U.S. sales data reported by Prairie Livestock, one of the three collapsed parties comprising the JGL Group. *See* JGL Group Comment 2 (Facts Available) below.

Pound-Maker

We used the live quantities as reported for Pound-Maker's home market sales (whereas in the preliminary determination, we had made an adjustment for ''negative shrink''). *See* Pound-Maker Comment 1 (Negative Shrink) below.

Normal Value

JGL Group

1. We excluded from the home market sales database certain paper transactions involving the ''sale'' and ''repurchase'' of cattle. *See* JGL Group Comment 1 below (Misreported Sales).

2. We did not rely on the home market sales data reported by Prairie Livestock, one of the three collapsed parties comprising the JGL Group. *See* JGL Group Comment 2 (Facts Available) below.

3. We did not add various reported income items to the reported gross unit price, as those income items were already included in the reported price. *See* JGL Group Comment 4 (Sales Revenue Items) below.

Cost of Production

JGL Group

We increased JGL's reported acquisition cost to reflect the producers' cost of production (COP), by applying the ratio of the five suppliers' aggregate net loss on cattle over their net cattle revenues. *See* Cost Issues, JGL Group Comment 1 (Traded Cattle) below.

Pound-Maker

1. We adjusted feed costs to allocate costs to certain by-products used in

production. *See* Cost Issues, Pound-Maker Comment 1 (By-Product Costs) below.

2. We adjusted feed costs to correct an error in the allocation ratio. *See* Memorandum Regarding Cost of Production and Constructed Value Adjustments for the Final Determination, dated October 4, 1999.

3. We adjusted the denominator used to calculate the general and administrative expenses rate and financial expenses rate to reflect costs on the company's financial statements. *See* Cost Issues, Pound-Maker Comment 2 (Cost of Sales Denominator) below.

Riverside/Grandview

1. We adjusted feeder cattle costs for cost offsets and other cost adjustments identified at verification. *See* Cost Issues, Riverside/Grandview Comment 4 (Accounting Errors) below.

2. We adjusted feed costs for cost adjustments identified at verification. *See* Id.

3. We adjusted other costs to exclude a submitted offset. *See* Cost Issues, Riverside Grandview Comment 2 (Claimed Cost Offset) below.

4. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

5. We adjusted the financial expense calculation by including bank penalties incurred during the cost reporting period and by adding arms-length interest expenses on non-interest bearing loans to shareholders. *See* Cost Issues, Riverside Grandview Comment 3 (Bank Penalties) below. *See* also General Cost Issues Comment 2 (Shareholder Advances) below.

Groenenboom

1. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

2. We adjusted the financial expense calculation by adding arms-length interest expenses. *See* General Cost Issues Comment 2 (Shareholder Advances) below.

Cor Van Raay

1. We adjusted the respondent's single reported cost to take into account cost differences associated with gender. *See* General Cost Issues Comment 3 (Gender Adjustment) below.

2. We adjusted the financial expense calculation by adding arms-length interest expenses. *See also* General Cost Issues Comment 2 (Shareholder Advances) below.

Currency Conversions

As in the preliminary determination, we made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, in accordance with section 773A of the Act. We relied on exchange rates certified by the Federal Reserve Bank.

Interested Party Comments

Industry Support

The Canadian Cattlemen's Association (CCA) argues that the Department should not have initiated this antidumping duty investigation. According to the CCA, the petition did not meet industry support requirements set by statute, and the Department's estimation of industry support was flawed.

The petitioners argue that the Department should not consider challenges to industry support determinations at this stage of the proceeding, and that in any event, the Department's measurement of industry support to initiate was conservative and sound.

DOC Position: Section 732(c)(4)(E) of the Act provides that, after the administering authority determines that it is appropriate to initiate an investigation, the determination regarding industry support shall not be reconsidered. Therefore, we have not reconsidered our determination regarding industry support. We refer interested parties to our notice of initiation and companion memorandum, which set forth in detail the methodologies followed in establishing industry support. *See Initiation of Antidumping Duty Investigations: Live Cattle from Canada and Mexico*, 63 FR 71885 (December 30, 1998); *see also* Memorandum Regarding Determination of Industry Support, dated December 22, 1998.

Sales Issues—General

1. Date of Sale

The petitioners contend that the Department erred in basing the date of sale for U.S. and home market sales made pursuant to futures contracts on the date that prices were ''locked in.'' According to the petitioners, the date of contract is a more appropriate date of sale.

The petitioners contend that in previous cases where prices were set by contract and subject to change per an agreed formula, the Department has based the date of sale on the date of contract, because no more negotiation is necessary in order to determine the essential terms of sale.

The respondents also object to the Department's use of the ''lock-in'' date as date of sale for the transactions in question. However, the respondents contend that the date of invoice or shipment, depending on the circumstances,[1] is more appropriate as the date of sale for these transactions.

According to the respondents, the Department's regulations establish a rebuttable presumption for the use of date of invoice as the date of sale, and there is no reason to depart from the use of the date of invoice (or, as appropriate, the date of shipment) in this case. The respondents contend that contracts are entered into for future delivery months in advance, and the month of delivery is an essential factor in establishing the price of cattle. According to the respondents, two contracts entered into on the same date will have different prices depending on the month of delivery, since monthly cattle prices vary according to seasonal trends. Further, the respondents argue that the material terms of sale are subject to change even after prices are ''locked in.''

In their rebuttal comments, the petitioners argue that the respondents' concerns about monthly price fluctuations are irrelevant, since the Department's practice in antidumping investigations is to compare POI average prices. The petitioners contend that if the Department rejects the date of contract as the date of sale, it should continue to rely on the date that prices are ''locked in,'' since the terms of sale are specified on that date.

In their rebuttal comments, the respondents do not address the precedent cited by the petitioner in support of the use of the date of contract as date of sale. Instead, the respondents contend that the petitioners' proposal to rely on the date of contract is contrary to the statutory mandate to measure price discrimination, because it ignores that cattle prices made pursuant to contracts on a given date will vary in price depending on the date of delivery.

DOC Position: As in the preliminary determination, we have continued to rely on the lock-in date as the date of sale for the transactions in question. For the reasons explained below, we continue to believe that the lock-in date is the date on which the essential terms of sale are set.

The Department's regulations provide that the date of invoice is the presumptive date of sale, except where the material terms of sale are established

[1] For certain sales, the respondents do not generate invoices, but rather receive settlement reports after the date of shipment. For such sales, the respondents argue for reliance on the date of shipment.

on some other date. *See* 9 CFR 351.401(i). In this case, the evidence on the record indicates that on the date of contract the respondents (*i.e.,* the sellers) agree to deliver a specified number of head of cattle in a specified month, at a price to be determined by the respondents by reference to the Chicago Mercantile Exchange Board's future cattle prices. From the time that the contract is signed until a specified number of days prior to delivery, the respondents/sellers retain control over price with their ability to ''lock in'' a specific future cattle price. Under this fact pattern, it is evident that on the date of contract the respondents have not yet set the price of the cattle. The case precedent referenced by the petitioners, involving reliance on the date of contract as the date of sale, is distinguishable, because in those cases the sellers did not retain any discretion to set prices after the date of contract. *See Final Determination of Sales at Less Than Fair Value: Emulsion Stryrene-Butadiene Rubber from Mexico,* 64 FR 14972, 14879 (March 29, 1999) (date of contract was date of sale where price terms of long-term contracts were based on set formula of published monthly prices for major inputs that were outside either contracting party's control); *see also Final Determination of Sales at Less Than Fair Value: Offshore Platform Jackets and Piles from Japan,* 51 FR 11788, 11793 (April 7, 1986) (at the time contract was issued, contract price was determinable since there was nothing more on which the parties to the contract needed to agree).

The evidence on the record of this case further establishes that on the lock-in date, the respondents (the parties whose alleged price discrimination is at issue in this investigation) select a price that is binding on both parties. On this date, all the essential terms of sale are known, and are altered only rarely. Therefore, we believe that the lock-in date is the date on which the essential terms of sale are set, and is a more appropriate date of sale than the date of invoice.[2]

We note that the respondents have raised concerns that on any given lock-in date the prices for cattle to be shipped in different months will vary, and that therefore the use of the lock-in date is distortive. As the respondents themselves concede, these concerns are not relevant to an antidumping investigation, where prices are averaged across the entire period of investigation, but may have implications for an eventual administrative review. Whatever the implications of this issue for a review, they do not impinge on this segment of the proceeding.

2. Reimbursement of Antidumping Duty Deposits

The petitioners allege that U.S. packers are forcing Canadian producers and exporters of subject merchandise to absorb the costs of antidumping duty deposits, and that such deposits should be deducted in calculating export value. According to the petitioners, Canadian producers of subject merchandise have indicated at meetings in Canada that an antidumping duty order on cattle would have no effect because the Canadian producers absorb the cost of any duties. The petitioners contend that the reimbursement of the deposits would be considered a reduction to price in any future review, and that the cash deposit rate applied in the investigation should reflect such reimbursements, even if they did not occur during the POI. The petitioners further argue that the Department routinely modifies cash deposit rates in countervailing duty cases where a program-wide change has occurred, and should take similar account of the alleged post-POI price change in the instant antidumping proceeding. Finally, the petitioners argue that, while its arguments and accompanying evidence were submitted after the normal deadline, the Department has the discretion to extend this deadline. The petitioners contend that the evidence in question was only discovered after the filing of case and rebuttal briefs, and that given its implications, the Department should consider it.

The CCA argues that the Department should not consider the petitioners' factual information and argument regarding alleged reimbursement because the Department's regulations require the return of untimely filed information. The CCA further argues that reimbursement concerns are not applicable to investigations, since the Department's regulations regarding reimbursement apply only to duties assessed after the imposition of an antidumping duty order. According to the CCA, there is no legal basis to adjust cash deposit rates at this stage of the proceeding to account for alleged pricing changes after the POI. The CCA contends that any number of changes to both U.S. and home market prices may take place after the POI, and that one cannot assess the effect of any one change in isolation. The CCA further contends that the CVD post-POI modification regulation does not have a counterpart in the antidumping duty regulations.

Finally, the CCA argues that the documentation submitted by the petitioner does not evidence the reimbursement claimed, but rather indicates that a Canadian producer/exporter is acting as importer of record, and thus paying antidumping duty cash deposits. According to the CCA, the Department has held in recent cases that when the exporter and the importer are the same legal entity, there can be no duty reimbursement.

DOC Position: We have accepted into the record the petitioners' submission alleging reimbursement of cash duty deposits, as the allegation was based on information that became available only after submission of the case and rebuttal briefs, and could not have been made prior to the normal deadline. However, the reimbursement regulation applies only to duty assessments, not cash deposits. *See Stainless Steel Sheet and Strip in Coils from France: Notice of Final Determination of Sales at Less Than Fair Value,* 64 FR 30820, 30833 (June 8, 1999); *see also Stainless Steel Round Wire from Taiwan: Notice of Final Determination of Sales at Less Than Fair Value,* 64 FR 17336, 17341 (April 9, 1999). Therefore, adjustment of the cash deposit rate is not appropriate. In the event that an antidumping order is issued in this case, the Department will examine allegations of reimbursement of antidumping duty cash deposits at the appropriate time. This notice also serves as a reminder to the importing public of the regulatory provisions regarding reimbursement of antidumping duty assessments, set forth in 19 CFR 351.402(f). We further note that, if we find the exporter, by acting as the importer of record, is absorbing dumping duties on behalf of the U.S. customer, we may consider the duties absorbed to be a selling expense.

Sales Issues: Company-Specific

Schaus

1. Facts Available

The petitioners argue that the Department should calculate the dumping margin for respondent Schaus based at least in part on Schaus' own data, so as to ensure that the ''all others rate'' reflects Schaus'' margin. The petitioners allege that Schaus deliberately withdrew from this investigation in anticipation that its data would reveal high dumping margins, and in expectation that by withdrawing and receiving a dumping margin based entirely on facts available, it would

[2] We note that for certain sales where prices were locked-in on the date of the contract, the ''lock-in'' date and the contract date are the same.

avoid inclusion of its dumping margin in the calculation of the all others rate.[3]

The petitioners argue that the pricing data submitted by Schaus are not on their face unreliable, and that the Department has the discretion to rely on those data even absent verification. According to petitioners, the exercise of that discretion is particularly appropriate when the complete rejection of submitted data might actually leave the respondent in a better position, and the statute was not intended to create a loophole for respondents to manipulate the final margins.

The petitioners further note that at the outset of the case they had argued for the selection of a pool of respondents including all major Canadian producers/exporters of subject merchandise, and that the CCA, by contrast, had argued to limit the pool of respondents to no more than six companies. According to the petitioners, the Department's acceptance of a respondent pool limited to six respondents enabled the CCA to manipulate the all others rate through selective withdrawal of high-margin respondents.

The petitioners request that the Department rely on Schaus' submitted U.S. data, and base normal value on adverse facts available (either the highest alleged normal value in the petition, or the highest normal value submitted by Schaus for any product). The petitioners argue that, at a minimum, the Department should rely on the margin found in the preliminary determination for purposes of the final determination.

Schaus argues that its final dumping margin should be excluded from the calculation of the all others rate. According to Schaus, the statute requires that the Department reject information that was not verified, and instead rely on the facts available; further, the statute requires that margins based entirely on facts available be excluded from the calculation of the all others rate. Schaus argues that since none of its data was verified, its dumping margin must be based entirely on facts available, and cannot be included in the calculation of the all others rate.

Schaus further argues that the statutory requirement that margins based entirely on facts available be excluded from the all others rate calculation is balanced by the requirement that *de minimis* margins also be excluded from that calculation. Schaus notes that the petitioners have not argued for the inclusion of Pound-Maker's preliminary *de minimis* margin in the calculation of the all others rate.

Schaus also contends that its final deposit rate should be no higher than its amended preliminary determination rate, which was based on Schaus' own data. According to Schaus, the adoption of the amended preliminary determination rate would constitute a reasonable application of adverse facts available, since it is more adverse than the highest margin calculated in the petition.

DOC Position: The facts surrounding Schaus' decision to withdraw from participating in this proceeding are unusual and have significant ramifications for the agency's administration of the antidumping law. At the outset of this case, faced with an overwhelming number of Canadian producers of the subject merchandise, the Department sought to limit its investigation to only as many producers and exporters as was administratively feasible within the statutory time limits. While the petitioners sought the investigation of dozens of producers, we accepted the proposal by the CCA that we investigate only the 5 or 6 largest producers or exporters, one of which was Schaus. The results of our investigation of these six producers must be applied to ''all other'' producers. Thus, the ''all others'' rate, which would apply to the majority of exports in this highly fragmented industry, will be a critical component in the effectiveness of the antidumping remedy should the investigation lead to an antidumping duty order.

On June 30, 1999, the day on which the Department was scheduled to issue its preliminary determination, Schaus submitted a supplemental response and pre-verification corrections that, among other things, substantially altered its reported costs. These corrections were accompanied by certifications as to their completeness and accuracy by Schaus' president, and Schaus' legal counsel certified that he had no reason to believe the submission contained any material misrepresentation or omission. Schaus and its counsel knew or should have known that the preliminary determination which the Department was scheduled to issue based on the earlier submission—and which would set the bonding rate in effect during the provisional measures period—would substantially understate the margin applicable to Schaus (and, consequently, the ''all others'' rate). Nevertheless, at no point prior to filing its revised response did Schaus or its counsel notify the Department that substantial revisions to its costs were appropriate.[4]

Given the timing of the submission, the Department had no opportunity to incorporate these corrections into its preliminary determination. Nevertheless, the Department stated in its preliminary determination that its initial examination of the Schaus data indicated that the antidumping rate calculated using such data may differ significantly from the preliminary rate of 5.43 percent applied to Schaus based on the original submission. *See Preliminary Determination* at 36848. The Department announced its intention to ''examine this [revised] data further and, if we find that the errors corrected result in a rate that differs substantially from the rates as calculated for this preliminary determination, we may issue an amended preliminary determination * * *.'' *Id.*

On July 1, 1999, the Department confirmed that the corrections filed by Schaus, including cost items that had been omitted from the original submission, resulted in a substantial increase in its antidumping rate from 5.43 percent to 15.69 percent. On July 9, 1999, counsel for Schaus verbally notified Department staff that Schaus had decided to decline verification and withdraw all questionnaire responses from the record of the investigation. As explained in a subsequent letter, counsel stated that

> Schaus has determined that, despite its best efforts and its nonstop preparatory work * * *, the Department's methodology in this investigation and its verification standards for certain accounting requirements cannot be satisfied when applied to Schaus, a small, family-owned business that does not have internal accountants or computerized sales and cost record-keeping. The way that Schaus conducts its business and maintains its books and records in the ordinary course of its business has led Schaus to conclude reluctantly that it cannot participate in verification.

See Letter from Blank Rome Comisky & McCauley LLP to Secretary of Commerce, dated July 12, 1999.

On July 20, 1999, the Department issued its determination that amendment of the preliminary determination was appropriate. *See Amended Preliminary Determination* at 39970. The Department stated that Schaus' withdrawal from the proceeding did not preclude correction of the preliminary determination to accurately

[3] Section 735(c)(5)(A) of the Act provides that the all others rate shall exclude any zero and *de minimis* margins, as well as any margins determined entirely on the basis of facts available.

[4] As indicated throughout the antidumping questionnaire and as a matter of administrative practice, parties are required to notify the official-in-charge immediately where significant issues or corrections are identified.

reflect the corrected information which Schaus had submitted on the day of the determination. As the Department explained, ''To do otherwise would allow manipulation of the administrative process in a manner that prevents the determination of accurate antidumping rates, and would thwart the proper administration of the antidumping law.'' *Id.* As a result, the Department amended its preliminary determination to revise the antidumping rate for Schaus to 15.69 percent and to make a corresponding correction to the ''all others'' rate from 4.73 percent to 5.57 percent.

If the Department were to base Schaus' final margin on the facts available rather than the proprietary information in its questionnaire responses, Schaus' margin would be excluded from the calculation of the ''all others'' rate, in accordance with section 735(c)(5)(A) of the Act. Thus, regardless of the reasons for Schaus' decision to cease participating in this proceeding, its desire to withdraw its questionnaire responses from the record could seriously undermine the effectiveness of the antidumping remedy in this case should the investigation result in an antidumping order. Thus, the Department has examined whether it is appropriate to deny Schaus' request to withdraw its business proprietary information from the record of the proceeding given that substantially all exports will fall under the ''all others'' rate and respondent's withdrawal would significantly distort that rate. For the reasons discussed below, the Department determines that Schaus' information should remain on the record and form the basis for its final margin.

The Department is tasked with administering the antidumping law and possesses the inherent authority to protect the integrity of that process. In determining whether to permit Schaus to withdraw information, the agency must weigh competing interests, both of which are important to administration of the antidumping law. The Department must balance any potential negative impact that refusing to allow a respondent to withdraw information may have on its ability to obtain business proprietary information in future proceedings, against any negative impact on the integrity of the proceeding if withdrawal is permitted, and determine where the public interest lies.

The Department does not have subpoena power. The submission of information is voluntary. To administer the antidumping law, the Department depends heavily upon the willingness of the parties to provide extensive business proprietary information. As a result, there is a public interest in preserving the trust of companies subject to its proceedings that such information will have limited use and will remain largely within the control of the companies submitting such information. However, once a party voluntarily submits business proprietary information in an antidumping proceeding, the submitting party relinquishes some control over that information to the Department. For example, after the Department issues a final determination, a submitting party may not withdraw its proprietary information. Once the record of a proceeding is closed, no information may be added to, or withdrawn from, the administrative case record.

Equally compelling is the public's interest in the agency enforcing the antidumping law and preserving the integrity of its proceedings. While there is no statutory provision expressly dealing with the withdrawal of business proprietary information once it has been submitted, the courts have recognized ''the inherent power of an administrative agency to protect the integrity of its own proceedings.'' *Alberta Gas Chemicals, Ltd. v.* Celanese Corp., 650 F.2d 9, 12. Thus, the agency has the discretion to deny a respondent's request to withdraw information where it is necessary to preserve the fundamental integrity of the process and the remedial purpose of the law.

In practice, the Department has allowed submitting parties to withdraw their business proprietary submissions from the administrative record. *See, e.g., Silicomanganese From Brazil,* 59 FR 55,432, 55,434; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From France,* 58 FR 6203, 6204 (Jan. 27, 1993); *Certain Hot-Rolled Carbon Steel Flat Products from Japan,* 58 FR 7103, 7104 (Feb. 4, 1993); *Certain Small Business Telephone Systems from Japan,* 54 FR 42541, 42542 (Oct. 17, 1989); and *Industrial Belts from Israel,* 54 FR 15509, 15512 (Apr. 28, 1989). In such cases, the Department bases the company's margin on facts available, using an adverse inference where warranted. It is the Department's ability to use adverse facts available that ensures that a company will not benefit by a refusal to participate in a proceeding.[5] Because the investigated companies normally account for substantially all exports to the United States, the elimination of the non-cooperative company from the ''all others'' rate in that situation is likely to be of marginal significance. Thus, the adverse facts available rule normally enables the Department to permit withdrawal of proprietary information while protecting the integrity of the process.

In the present case, however, the adverse facts available rule cannot serve that function. Substantially all future exports of live cattle, which will be subject to the ''all others'' rate if an antidumping duty order is issued, would inappropriately benefit from Schaus' refusal to participate. Section 735(c)(5)(A) provides that the ''estimated all others'' rate shall be:

> an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 1677e of this title.[6]

The Department has expressed particular concern that the ''all others'' rate is susceptible to manipulation. Thus, for example, the Department excludes voluntary respondents from the calculation of the all-others rate ''to prevent manipulation and maintain the integrity of the all-others rate.''[7] The withdrawal of Schaus' data raises similar concerns. If Schaus' business proprietary information is withdrawn, the Department must base its margin entirely on facts available and eliminate Schaus' margin from the ''all others'' rate. As a result, the withdrawal of Schaus' corrected information would have the effect of significantly distorting the rate that will apply to substantially all exports of the subject merchandise to the United States.

Given that withdrawal of Schaus' data would significantly distort the ''all others'' rate and that the ''all others'' rate will apply to substantially all exports of the subject merchandise, the Department has determined that retention of that data is necessary to preserve the integrity of the process and the remedial purpose of the law. Therefore, the Department has based Schaus' margin on its revised questionnaire response and included

[5] ''The Department's potential use of [facts available] provides the only incentive to foreign exporters and producers to respond to the Department's questionnaires.'' *See* SAA at 868.

[6] This provision reflects a similar requirement in Article 9.4 of the Agreement on Implementation of Article 6 of GATT 1994 (the Antidumping Agreement) that the rate applicable to non-examined exporters or producers shall not include margins determined based upon the facts available.

[7] *Antidumping Duties; Countervailing Duties; Proposed Rule,* 61 Fed. Reg. 7307, 7315 (Feb. 27, 1996); *see also Antidumping Duties; Countervailing Duties; Final Rule,* 62 Fed. Reg. 27295, 27310 (May 19, 1997).

that margin in the calculation of the ''all others'' rate.

We disagree with Schaus that its corrected information must be rejected because it was not verified. While section 782(i) requires that the Department verify information relied upon in making its final determination, the statute does not define what constitutes sufficient verification. *Micron Technology, Inc.* v. *United States,* 117 F.3d 1386, 1394. *Cf. American Alloys, Inc.* v. *United States,* 30 F.3d 1469, 1475 (Fed. Cir. 1994)(''the statute gives the Department wide latitude in its verification procedures''). Similarly, the Department's implementing regulation is general in nature and does not specify any methods, procedures or standards to be used for verification. *See* 19 CFR 351.307(1998). The purpose of verification is to test information provided by a party for accuracy and completeness, and does not require that the Department audit every figure in a response. *See Bomont Indus.* v. *United States,* 733 F. Supp. 1507, 1508 (CIT 1990). Moreover, while the agency's practice is to conduct on-site verifications of each investigated company, there are circumstances in which the agency may verify only a limited sample of the investigated companies.[8] Thus, in limited circumstances, data not specifically verified may be used in an investigation to calculate a company's dumping margin.

In the present case, the information at issue was voluntarily submitted by Schaus and the company certified that the information was complete and accurate. Because Schaus submitted this information knowing that it would substantially increase its dumping margin, we find the information is much like a statement against interest and, therefore, highly credible. Moreover, there is no evidence on the record to suggest that the data submitted by Schaus, when compared to the pricing and cost data submitted by other respondents, as well as to general industry trends during the period, are aberrational or suspect on their face. As a result, given the circumstances presented in this investigation, the Department finds that the information submitted by Schaus is reliable, and we have continued to rely upon it for purposes of this final determination.

[8] *See* 19 CFR § 351.307(b)(3)(1998).

JGL Group

1. Misreported Sales

The petitioners note that the Department found at verification that certain reported home market transactions involved the ''sale'' and ''repurchase'' of cattle, and that the nature of these transactions was such that they should not have been included in the submitted sales database. The petitioners contend that unless the Department is certain that the transactions in question can be adequately identified and excluded from the sales listing and the calculation of costs, it should deem the JGL Group's data to be generally unreliable and rely on adverse facts available.

The JGL Group agrees that the transactions in question should be excluded from the sales listing, and contends that all such transactions have been properly identified. The respondent also contends that these transactions did not affect the calculation of unit costs for cattle that it produced, and also did not affect the calculation of unit costs for traded cattle.

DOC Position: We agree with both parties that the transactions in question should not have been reported. At verification, we obtained a listing of these transactions, and performed several tests to confirm that the listing was complete. Satisfied that the listing provided was complete, we have excluded these sales from the reported database. We are also satisfied that the transactions in question did not affect the reported unit costs for cattle.

2. Facts Available

The petitioners argue that the Department should calculate JGL's dumping margin in part on the basis of facts available, given the pervasive and systematic errors found at verification with respect to data submitted by Prairie Livestock, one of the Canadian producers of live cattle that has been collapsed with the JGL Group. According to the petitioners, the Department found errors on every one of the pre-selected transactions examined at verification, as well as on additional transactions selected on-site.

The petitioners further contend that the errors systematically understated home market prices and overstated U.S. prices, thus favoring the respondents. The petitioners propose that the Department assign to sales by Prairie (and include in the weighted average JGL Group margin) the highest margin found in the petition, or alternatively rely on either (1) the average margin in the petition or (2) the highest margin found for any other respondent.

The JGL Group concedes that the Prairie data contained errors, but argues that these were clerical in nature and minor in scope. According to the JGL Group, the errors contained in the preselected sales were identified and corrected at the outset of verification, and the additional errors found during verification were promptly corrected. The JGL Group contends that total quantity and value of its reported sales data was verified in the aggregate without exception.

Further, the JGL Group argues that the Department should gauge its cooperation on the basis of all the companies that comprise the JGL Group, rather than on Prairie alone. According to the JGL Group, the clerical errors identified by other JGL companies did not all favor the respondent, and in the aggregate, the effect of the errors was negligible.

DOC Position: We agree with the petitioners that the use of partial, adverse facts available is appropriate with respect to the sales data submitted by Prairie. As explained below, the errors found at verification were sufficient in number and magnitude to call into question the general reliability of the Prairie data, and we have not relied on those data.

At the outset of verification, we requested that the JGL Group companies identify any clerical errors in their submitted sales data. Prairie provided us with a list of such errors, which involved the reported gross unit price, sales expenses, customer identification, and product identification for specific sales. We noted that these errors affected almost all of the sample transactions preselected for verification several weeks prior to the start of verification. We asked company officials whether such errors might affect the remainder of the database, and they replied that they had checked the database, and had not found the errors to be pervasive.

Given the high incidence of errors affecting the preselected transactions, we examined a number of additional Prairie sales and found that there were several systemic errors affecting those sales. These included a significant error that, contrary to the statements made by Prairie at the outset of verification, also applied to the preselected sales, and in fact extended to half of all U.S. sales reported by Prairie. These errors involved the reporting of the gross unit price and multiple expense and other income items. The errors are described in detail in the Department's verification report. *See* Memorandum

Regarding Verification of JGL Sales Data, dated August 10, 1999, at 1 and 9–10.

On the whole, verification revealed a troubling incidence of error in the compilation of the Prairie sales data. If we could be sure that the database contained only those errors identified at verification, we would consider correcting those errors based on record data. However, the extent of the errors found with respect to the Prairie sales data at verification was such that we cannot reach such a conclusion with any degree of confidence. Therefore, for purposes of this final determination, we have not relied on the Prairie sales data.

We do not conclude, as argued by the petitioners, that the record evidence establishes an attempt by Prairie to systematically manipulate dumping margins, inasmuch as certain of the errors made by the respondent were against interest. At the same time, the statute requires that respondents act to the best of their ability in providing information to the Department, and we do not believe that the respondent did so in reporting the Prairie sales data. At verification, Prairie acknowledged that it had made inadvertent errors in the compilation of those data but claimed that they were due to inexperience with the company's record-keeping. While this may be the case, the extent of the errors found at verification indicate that the respondent did not, in reporting the Prairie sales data, act to the best of its ability.

We have determined that it is appropriate to rely on partial, rather than total, facts available in calculating a dumping margin for the JGL Group, given that (1) the other JGL Group companies were able to provide support for their sales data at verification, and otherwise cooperated in this investigation, and (2) the total quantity and value of Prairie's U.S. sales was confirmed, on the aggregate, at verification. *See id.* at 7–8. As partial facts available, we have assigned to the sales of Prairie the highest margin calculated for any respondent (*i.e.*, the 15.69 percent margin calculated for Schaus). We relied on the data submitted by the other JGL Group companies to calculate a weighted-average margin for the JGL Group, exclusive of Prairie. We then averaged the two rates, weighted by the relative total value of sales to the United States.

3. Feeder Cows and Bulls

The JGL Group argues that the Department should distinguish cull cows and bulls that are sold to be fed prior to slaughter (''feeder cows and bulls'') from other cull cows and bulls that are sold for immediate slaughter. According to the JGL Group, it demonstrated early on in the investigation that there are significant physical and commercial differences between the two types of cattle, and these differences should have been recognized in the Department's model match hierarchy.

The JGL Group contends that feeder cows and bulls are cull animals with the capacity to gain at least 300 or 400 pounds of weight. According to the JGL Group, feeder cows and bulls sell for higher prices than other cull cattle, but for lower prices than normal feeder animals (*i.e.*, heifers and steers). The JGL Group contends that the Department should therefore treat feeder cows and bulls as separate and distinct from normal feeder animals.

The petitioners argue that the respondent's argument is predicated on untimely data provided during verification, in the guise of verification exhibits, and should therefore be rejected. The petitioners also argue that, at any rate, feeder cows and bulls are not sufficiently distinct to be treated as separate products. The petitioners contend that feeder cows and bulls are sold at prices approximately equal to the prices of normal cull animals, and that feeder cows and bulls are not necessarily fed long before being slaughtered, especially in times of high cull prices.

DOC Position: For this final determination, we have not differentiated between feeder cows/bulls and regular cull cows and bulls. At the outset of this case, interested parties submitted detailed proposals on product characteristics to be used for matching purposes. The CCA made only very brief mention of a possible distinction between feeder cows/bulls and regular cull cattle. *See* letter from the CCA to the Department of Commerce, dated January 20, 1999, at 7–8. The Department, in establishing the product matching criteria in this investigation, was unpersuaded by the CCA's argument, and did not incorporate this distinction. JGL provided certain evidence at verification that on occasion cull cattle are sold for additional feeding prior to slaughter. However, there is insufficient evidence on the record to establish that feeder cows/bulls have distinctly different physical characteristics, cost differences, or sales prices. Should this investigation result in an antidumping duty order, the Department will revisit this issue in the context of an administrative review.

4. Sales Revenue Items

The JGL Group alleges that the Department overstated normal value because it added to the unit price certain revenue items that were already included in that price. According to the JGL Group, the Department confirmed this at verification.

The petitioner argues that the Department examined the error in question only with respect to one of the three companies that comprise the JGL Group (JGL itself), and that any correction made with respect to this error should be limited to that company.

DOC Position: We agree with the JGL Group that the error in question should be corrected. The error arose because of conflicting statements in the JGL section B and C questionnaire responses, submitted on April 20, 1999. At page B–20, the respondent stated that the gross unit price included all revenue items. However, at page B–35, the respondent provided a formula indicating that the revenue items were not included in the gross unit price. The Department relied on the latter statement. At verification, the Department determined that the formula in question was incorrect, and that for sales by JGL and Iron Springs, the revenue items had indeed been included in the reported sales price. *See* Memorandum Regarding Verification of JGL Sales Data, dated August 10, 1999, at 9. As the error applied to sales by JGL and Iron Springs, and we have corrected the error for these companies.

5. Traded Cattle Sales

The JGL Group argues that the Department should exclude sales of traded cattle (*i.e.*, cattle purchased and resold by the JGL Group) in calculating margins for the final determination. According to the JGL Group, the antidumping statute contemplates producer-specific rates. JGL argues that although the Department analyzed separately the JGL Group's sales of traded and own-produced cattle, it calculated impermissibly a single weighted-average cash deposit rate that reflected the dumping margins on these distinct sets of sales.

The JGL Group contends that the Department has determined in past cases (such as *Pasta from Italy*) not to include sales of traded products in its calculations, noting the potential for circumvention, particularly when the reseller rate is lower than the all other rate. Further, the JGL Group argues that a producer is deemed the appropriate respondent when it has knowledge that its merchandise is destined for the United States, and the Department is unable, based on the record, to make

such a determination with respect to the producers of any cattle traded by the JGL Group.

The JGL Group argues that, in the event that the Department determines it appropriate to calculate margins for its traded cattle, it should calculate separate margins for own-produced and traded cattle. For this purposes, JGL proposes that all sales of traded cattle be included in the calculation of a single dumping margin, regardless of the specific producer.

The petitioners argue that the Department should include sales of traded cattle in its analysis, inasmuch as the dumping margin assigned to the JGL Group should be representative of all facets of the respondent's selling activities.

DOC Position: We have continued to include sales of traded cattle in the calculation of a single dumping margin assigned to all sales by the JGL Group.

The Department regards a producer of subject merchandise as a respondent provided, *inter alia,* that the producer has knowledge that its merchandise is destined for the United States. If the producer, without knowledge of the ultimate market of destination, sells its merchandise to another company in the comparison market, which in turns sells the merchandise to the United States, the Department looks to the latter company as a potential respondent. In the instant case, if a respondent were able to demonstrate that its resales involve cattle purchased from a supplier that had knowledge of the ultimate destination of the cattle, the Department would exclude such sales from its analysis. The JGL Group has not provided evidence that any of its suppliers were aware that their cattle were destined for the U.S. market. On the contrary, the JGL Group has argued in other contexts that because it purchases cattle in the Canadian market at auction, it is generally unable to identify the supplier. *See* JGL Group Section A Questionnaire Response, dated March 23, 1999, at A–3. Thus, based on the record, and absent evidence of knowledge of destination by the ultimate supplier, we find that the JGL Group is the appropriate respondent for the sales in question.[9]

Similarly, we do not believe it would be appropriate to calculate a separate dumping margin for sales of own-produced versus traded cattle. The record establishes that the JGL Group is the appropriate respondent for all the transactions in question, since the cattle were sold by JGL and there is no evidence that the producer knew that the cattle were destined for the United States. Consistent with the Department's practice, we have continued to calculate a single weighted-average margin for the respondent.

6. Affiliation

The JGL Group argues that Kirk Sinclair's cattle operations should not be collapsed with the respondent because Kirk Sinclair is not affiliated with the JGL Group as a whole. According to the JGL Group, the Department does not normally collapse a company with a group of affiliated/collapsed companies simply because it is affiliated with one company in that group. The JGL Group contends that Kirk Sinclair is affiliated with Prairie Livestock, but not with the other companies that make up the JGL Group, and thus does not meet the requirements for collapsing.

The petitioners argue that Kirk Sinclair, through Prairie Livestock, purchases, custom feeds, and sells finished cattle for the JGL Group as a whole. The petitioners contend that, given this, Kirk Sinclair is in a position to control the JGL Group, and should therefore be considered an affiliate of and collapsed with the JGL Group.

DOC Position: We agree with the petitioners that Kirk Sinclair meets the test for collapse with the JGL Group. The JGL Group is comprised of four operating companies, owned and operated by a handful of individuals. Kirk Sinclair is the majority owner of Prairie, one of the four operating companies of the JGL Group. Through Prairie, Mr. Sinclair also purchases, custom feeds, and sells finished cattle for the JGL Group as a whole. Given this, he is affiliated with Prairie through section 771(33)(E) of the Act (*i.e.,* affiliated through stock ownership), and is affiliated with the JGL Group as a whole through section 771(33)(G) of the Act (*i.e.,* affiliated through control, defined to exist where one party is ''legally or operationally in a position to exercise restraint or direction over the other person,'' as evidenced by his integral role in purchasing, custom feeding, and selling finished cattle for the JGL Group as a whole).

The Department's regulations provide for the treatment of affiliated producers as a single entity where: (1) Those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) The Department concludes that there is a significant potential for the manipulation of price or production. *See* 19 CFR 351.401(f)(1). In identifying a significant potential for the manipulation of price or production, the Department may consider such factors as: (i) The level of common ownership; (ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers. *See* 19 CFR 351.401(f)(2). These factors are illustrative, and not exhaustive.

Kirk Sinclair's position within the JGL Group is such that he meets both prongs of this test. First, his facilities allow for the production of cattle indistinguishable from other cattle produced by the JGL Group. Second, Mr. Sinclair, in his capacity as manager and principal owner of Prairie, is engaged in the purchase, fattening, and sale of cattle for the JGL Group as a whole, such that he and his partners in the JGL Group share sales and production information, and his operations are intertwined with those of the JGL Group. Therefore, if this investigation should result in the imposition of an antidumping order, the JGL Group's cash deposit rate would apply to any entries of cattle produced by Kirk Sinclair.[10]

Pound-Maker

1. Negative Shrink

The petitioners argue that the Department should not rely on Pound-Maker's reported live quantities for sales involving ''negative shrink'' (*i.e.,* sales in which the cattle appear to have gained weight in transit from the feedlot to the packing plant). The petitioners assert that we should continue to use

[9] This case is distinguishable from *Pasta from Italy,* where the Department excluded resales where evidence demonstrated that the producer had knowledge that the pasta was destined for the United States. In that case, the Department found that ''* * * the producer of the purchased pasta would have knowledge that the product was destined for the U.S. because it had vitamins added (vitamin enriched pasta is usually sold in the U.S.) and because the packaging would clearly indicate that it was destined for the U.S. market.'' *See* Memorandum Regarding Treatment of Purchased Pasta, dated July 31, 1998, in case A–475–818. In this case, by contrast, the producers of the cattle sell their merchandise at auction, and do not know the ultimate destination.

[10] We note that although Kirk Sinclair meets the test for collapse with the JGL Group, we have not included his sales in our analysis. The Department explicitly instructed the JGL Group that in view of the small volume of sales by Kirk Sinclair to unaffiliated parties, those sales need not be reported. *See* supplemental questionnaire to the JGL Group, issued on May 14, 1999, at 28.

the reported feedlot weight for these sales, as we did at the preliminary determination, and that we should apply an average shrink factor to these sales. Alternatively, the petitioners argue that we should disregard all reported live quantities, and use the full weight at the packing plant less a standard five percent shrink for all home market sales.

Pound-Maker contends that negative shrink was verified by the Department, and that we should accept its live quantities as reported on these sales for purposes of the final determination.

DOC Position: We agree with Pound-Maker. The live weight for the cattle sales in question was verified to be accurately reported based on what the cattle weighed at the packing plant as indicated on the settlement report.

2. Commission Payments to Affiliates

Pound-Maker argues that the Department has no legal basis for adjusting the reported commission paid to one of Pound-Maker's sales agents that was found by the Department to be affiliated with Pound-Maker. Pound-Maker contends that the company in question is not affiliated with Pound-Maker within the meaning of the Act. Although Pound-Maker agrees that it is affiliated with the president and owner of the company in question because he is on Pound-Maker's board, the respondent asserts that the affiliation does not extend to the company that is wholly-owned by that board member and his two sons. Furthermore, Pound-Maker argues that even if the company in question is an affiliate of Pound-Maker, we still should not adjust the commission rate because (1) There is no material ownership relationship between the affiliate and Pound-Maker, and (2) There is no statutory or regulatory basis to adjust selling expenses paid to an affiliated party.

The petitioners contend that the Department properly adjusted the commission rate on sales made through the company in question. The petitioners agree with the Department that the company is an affiliate of Pound-Maker per section 771(33)(B) of the Act (which provides that any director of an organization and such organization are affiliated), and assert that the only issue is whether the commissions paid to the affiliated party were arms-length transactions. The petitioners further allege that the respondents have submitted information on the record indicating that the transactions in question were not at arms-length.

DOC Position: We disagree with Pound-Maker that there is no statutory or regulatory basis to adjust selling expenses paid to an affiliated party. *See Floral Trade Council* v. *United States,* Slip Op. 99–10 (May 26, 1999) at 10 (sustaining the Department's practice of treating commissions paid to an affiliated trading company as an intra-company transfer). At the same time, because whether the adjustment is made or not is immaterial, we have not adjusted the reported commission paid to this sales agent for the final determination.

Riverside/Grandview

1. Facts Available

The petitioners assert that we should draw an adverse inference based on a verification finding involving an understatement of live quantity in a single shipment of cattle that contained both Riverside-owned cattle and Grandview-owned cattle. The single shipment was reported to the Department as two sales transactions (one Grandview sale and one Riverside sale), and the error was reflected in one of the two transactions. The petitioners claim that we reviewed too few sales to determine whether this error was systemic and that we should therefore make an upward adjustment to total quantities for all shipments involving a mix of both Riverside and Grandview cattle.

The respondents assert that we obtained the relevant information to correct any such errors, and no adverse inference is warranted.

DOC Position: We agree with respondents. After verification, the Department is satisfied that the error in question was isolated. Contrary to the petitioners assertion, we reviewed a significant number of sales at verification, including 20 preselected sales and numerous additional sales selected on site, and found no evidence to indicate that the error in question was systemic. We have therefore corrected the error discovered at verification, and have drawn no adverse inferences in this regard.

Cost Issues—General

1. Collapsed Entities

The petitioners argue that permitting the JGL Group, Riverside-Grandview, and Cor Van Raay's collapsed entities to eliminate inter-company transactions and to report the collapsed entity's cost of production net of inter-company revenues and expenses violates the language and intent of the statute. The petitioners maintain that section 773(f)(1)(A) of the Act requires the Department to use the costs from the normal books and records of the ''producer,'' unless the records are not consistent with generally accepted accounting principles (GAAP) or do not reasonably reflect costs associated with the production of subject merchandise. The petitioners note that these three respondents departed from their normal accounting records and collapsed their operations by eliminating inter-company transactions.

The petitioners argue that this collapsing of the various entities' costs violates the language and intent of the statute by permitting collapsed respondents to obtain a lower cost than would be found between unaffiliated parties. The petitioners maintain that the Department may ignore the transfer price between affiliated parties only when the charges do not fairly reflect the amount usually charged between unaffiliated parties. The petitioners contend that, in the instant case, the amounts reflected in the normal books and records of the exporter or producer are arm's length and above cost, such that the exceptions do not apply.

The petitioners argue further that, in the case of JGL, the collapsing memorandum did not indicate that Thompson and JGL or Thompson and Iron Springs were collapsed, and should be considered to be merely affiliated parties.

Finally, the petitioners contend that there is no reason to extend the practice of collapsing affiliated parties beyond normal accounting practice. The petitioners complain that this collapsing of records was used by companies that are not wholly-owned subsidiaries, who are not consolidated for accounting purposes, and are affiliated, in some cases, in only an indirect manner. The petitioners argue that while the Department has calculated entity-wide costs of production in circumstances where the affiliated parties are corporate divisions, the rules of collapsing should not be allowed to trump the statutory scheme of valuing affiliated transactions at arm's length prices. The petitioners conclude that sections 773(f)(1)(A) and 773(f)(2) and (3) make no distinction between affiliated companies that are or are not collapsed.

The respondents contend that it is the Department's well-established practice to treat collapsed companies as a single entity, and to disregard inter-company transactions in determining the single entity's weight average cost of production. The respondents note that the petitioners are urging the Department to treat each company within the collapsed JGL Group as individual companies for cost reporting purposes, but to combine them as a group for purposes of the sales

comparison for calculating and applying one single dumping margin. The respondents contend that both the Department and the court have rejected such inconsistent treatment, and cite *AK Steel Corp.* v. *United States,* 34 F. Supp. 2d 756, 765–66 (CIT, 1998); and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Korea,* 63 FR 40404, 40421 (July 29, 1998)(Comment 7) (''[T]reating affiliated producers as a single entity for dumping purposes obviates the application of the major-input rule and transactions-disregarded rule because there are no transactions between affiliated persons'').

The respondents further argue that the petitioners are ignoring the fact that, for a collapsed group of producers, ''the exporter or producer'' is the collapsed group of producers, and not each producer individually. The respondents contend that if the Department were to regard each individual producer as the ''exporter or producer'' within the meaning of the statute, it would have no basis for examining sales of all members of the Group, or in applying a single weighted average dumping margin to the entire group. According to the respondents, the courts have held that the ''transactions disregarded'' provision of the statute is inapplicable in the case of collapsed producers because that provision applies only between the collapsed ''exporter or producer'' and its affiliated suppliers.

Finally, respondents argue that it has never been the Department's policy to extend the cost side of the collapsing of affiliated parties beyond companies that are consolidated for accounting purposes, and that such an idea is inconsistent with the Department's regulation governing the issue and is not supported by any sound policy basis. The respondents argue that, moreover, when the Department collapses affiliated companies for sales comparison purposes, it also collapses for costs purposes because it recognizes the underlying commercial reality that inter-company profits are not a cost to the overall collapsed group.

DOC Position: We agree with the respondents that it is proper, when reporting sales and cost data, to eliminate inter-company transactions between companies that the Department is treating as a single entity (*i.e.,* is making a single antidumping duty rate determination for). While sections 773(f)(2) and (3) of the Act, the ''transactions disregarded'' and ''major input'' rules, allow the Department to review whether transactions between affiliates are at market prices or above cost, respectively, it does not follow that these rules should be applied to collapsed entities. The transactions disregarded and major input rules apply to transactions between the respondent and an affiliated raw material supplier or service provider. Also, sections 773(f)(2) and (3) of the Act refer specifically to ''affiliated persons,'' which is a term defined in the statute. Therefore, use of an accounting or consolidation standard of affiliation is inappropriate. In applying the collapsing rule for reporting sales and cost data, not only must the parties be affiliated under the statute, but they must both be producers of the subject merchandise. This requirement limits the application of the collapsing rule, including the reporting of costs, to a few specific cases. Moreover, the transactions disregarded and major input rules still apply to all other suppliers or service providers affiliated to the collapsed entity.

Once the Department decides to collapse two or more producers into one entity and to apply one margin to their combined sales, the inter-company sales and costs must be eliminated because the home market sale prices of the group must be above the actual cost of production of the group. In short, it would be illogical to include inter-company profits in the actual cost of production of the group. The Department's collapsing policy was upheld by the court in *AK Steel Corp. et al.* v. *United States,* 34 F. Supp. 2d 756, 763–66 (CIT, 1998) (the Department's decision to treat affiliated parties as a single entity necessitates that transactions among the parties also be valued based on the group as a whole and as such, among collapsed entities the fair-value and major input provisions are not controlling). Further, as noted by the CIT, ''to treat collapsed parties as no longer separate affiliates for purposes of 19 U.S.C. section 1677B(f)(2)–(3)'' is ''not only permissible but preferable as a more logical, integrated application of the statute.''

As for the petitioners' suggestion that the Department never explicitly recognized Iron Springs and Thompson Livestock to be collapsed with the JGL Group, we note that from the outset of this proceeding that the JGL Group has appropriately responded to the Department's questionnaires on behalf of an entity that included these companies. Since the record evidence clearly supported the collapsing of Iron Springs and Thompson Livestock with the JGL Group (given their affiliation, interchangeable production, and potential for manipulation),[11] and since no interested party objected to this treatment, the Department did not issue a formal memorandum approving of the ''self-collapse'' of these parties. The Department has continued to regard these parties as a single collapsed entity for the final determination.

Given the above, we have relied on actual costs in determining the cost of manufacturing (COM) for each of the collapsed entities in the final determination.

2. Shareholder Advances

Respondents Riverside-Grandview, Pound-Maker, Groenenboom, and Cor Van Raay argue that the Department should treat non-interest bearing shareholder advances to the respective companies as equity rather than debt, and therefore should not calculate interest expenses on these advances. The respondents assert that the touchstone of the distinction between debt and equity is whether a repayment obligation exists. *See Porcelain-On-Steel Cooking Ware from Taiwan,* 51 FR 36425, 36432 (October 10, 1986), in which the Department found no reason to classify loans as equity ''since repayment of the principal was part of the terms for these loans.'' The respondents claim that the Department's practice is to focus on repayment obligations, citing *British Steel PLC* v. *United States,* 936 F. Supp. 1053, 1069 (CIT, 1996), in which ''Commerce argues its classification * * * as debt is supported by substantial evidence first because '[t]he hallmark of debt is the obligation to repay.' '' The respondents also cite *Inland Steel Industries, Inc.* v. *United States,* 967 F. Supp. 1338, 1355 (CIT, 1997), in which the CIT noted that, ''plaintiffs fail to point to any record evidence which definitively establishes the existence of a repayment obligation * * * [A]s defendant notes, the record contains 'no evidence of loan or repayment agreements, payment schedules or actual principal or interest payments being made, nor was there any other evidence tending to show that the GOF or Usinor Sacilor contemplated a repayment obligation.' ''

The respondents argue that the Department has also considered other factors in determining how to treat advances by shareholders. In *Low-Fuming Brazing Copper Rod and Wire from South Africa; Final Determination of Sales at Less Than Fair Value,* 50 FR 49973, 49975 (December 6, 1985), the

[11] Iron Springs is a cattle producing consortium that is operated entirely by the JGL Group; Thompson Livestock is principally owned by members of the JGL Group, through a holding company.

Department determined that advances from shareholders were not traditional debt instruments primarily because of the indeterminate duration of the transactions and their treatment as equity in respondent financial statements. The respondents note that the Department has concluded that certain advances, even if subordinated to other debt, should still be identified as debt if they have a specific maturity date and require the payment of interest, citing *Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Review,* 64 FR 37737, 37741 (July 13, 1999). The respondents argue that GAAP and the Department's past practice make clear that funds provided by shareholders to respondents should be treated as equity unless the record evidence shows an actual genuine obligation to repay the advance. The respondents assert that they had no obligation to repay, and thus the advances received from shareholders should be treated as equity, not debt.

The petitioners note that the Department normally relies on data from a respondent's normal books and records where those records are prepared in accordance with the home country's GAAP, and where they reasonably reflect the cost of producing the merchandise, consistent with Section 773(f)(1)(A) of the Act. The petitioners claim that the issue under consideration is whether the shareholder advances created an obligation of repayment of principal, or whether the advances established a right or claim to share in any dividends or other disbursements and the right to share in assets of the company in the event of liquidation, as set forth in *Interpretation and Application of Generally Accepted Accounting Principles 1998* (Delaney, Epstein, Adler, and Foran 1998). The petitioners argue that if, in the ordinary company books, the shareholder advances were not treated as equity or, more importantly, if the advances did not change the shareholder's rights and did not increase its share of the company, then the advances should not be treated as equity.

The petitioners claim that advances by Riverside-Grandview shareholders should be treated differently from those by Pound-Maker shareholders. The petitioners note that cash advances by Pound-Maker shareholders were treated as equity on the company's books and financial statements and, in return for the funds, the shareholders presumably obtained some additional claim on corporate assets or control. In contrast, the petitioners argue that advances to Riverside-Grandview, although subordinated to other loans, were not treated as equity on the company's books, but rather as liabilities or loans. The petitioners note that the balance of shareholder advances decreased during the POI, suggesting that repayment by Riverside-Grandview had occurred. The petitioners argue that there is no evidence that shareholders making the advances obtained a greater stake in Riverside-Grandview and that the record indicates that these advances are loans. The petitioners contend that advances to Groenenboom by its shareholders were not treated as equity in the company books and records, nor is there any evidence that the parties intended to create or increase shareholder claims to corporate assets.

DOC Position: We agree with the petitioners. In the instant investigation, there is no evidence that a repayment schedule exists for shareholder advances made to any of the four respondents. However, the absence of such a schedule, in and of itself, does not prove that a repayment obligation does not exist, or is not anticipated by the parties. The absence or existence of a repayment obligation may be determined from the manner in which a respondent has recorded the amounts received from shareholders in its accounting records.

The advances made to Pound-Maker by its shareholders are classified as equity in its audited financial statements. For Pound-Maker, there is no evidence of a repayment schedule or obligation, and there is no evidence that either principal or interest payments have been made. Since we do not have any basis for changing Pound-Maker's classification of these advances, we have determined that they should be treated as equity rather than debt and we have not included any interest expenses related to these advances in Pound-Maker's cost of production.

Conversely, on Riverside's audited financial statements and on Grandview's reviewed financial statements, the advances to Riverside and Grandview from their shareholders have been classified as liabilities, rather than equity. In addition, the shareholder advances balance outstanding decreased during the cost reporting period, indicating that a portion had been repaid. Furthermore, we disagree with the respondents that the lender's subrogation of these loans to the bank's debt virtually converts the loans into equity. To the contrary, the fact that a bank required the parties to sign subrogation agreements indicates that, from the bank's perspective, these advances reflect an obligation for the companies to the lenders. Presumably, the bank would not have required the subrogation agreements if this were not the case. Accordingly, we have no reason to believe that the respondent's normal classification of these advances as debt is inappropriate. Therefore, as in the preliminary determination, we have treated these advances as debt, consistent with Riverside-Grandview's classification.

As demonstrated in *Shop Towels from Bangladesh; Final Results of Antidumping Duty Administrative Review,* 60 FR 48966, 48967 (September 21, 1995), our practice is to impute interest expense on transactions when the rate charged by a related party lender does not reflect a fair market rate. In this case, we do not consider the respondents' interest-free related party loans to be reflective of the fair market rate in Canada since such loans typically involve some cost to the borrower. Therefore, we calculated interest expenses on the advance balances using a market rate.

We have also determined that the shareholder advances related to Groenenboom and Cor Van Raay should be classified as debt, and therefore we calculated interest expense on these balances using market rates of interest. The discussion of the advances to Groenenboom and Cor Van Raay involves proprietary information. *See* Memorandum from William Jones to The File, dated October 4, 1999.

3. Gender Adjustment

Riverside-Grandview notes that the Department adjusted its reported costs in the preliminary determination to account for cost differences associated with the gender of the cattle, and that the adjustment was based upon the average cost differences for finished steers and heifers reported by other respondents. The respondent argues that since it provided the cost data available from its own records, and since cost data by gender is not available for the entire cost calculation period, the Department should not make any gender adjustment for the final determination. Further, the respondent argues that it was inappropriate to rely, as facts available, on gender-specific costs of companies located in different provinces and operating under different circumstances. Riverside-Grandview notes that the cost differences indicated by its own data for representative sample lots of steers and heifers, which was obtained and reviewed by the Department at verification, are not significant. Riverside-Grandview further argues that, if the Department decides to make a gender adjustment to its costs,

it should do so based upon its own gender-specific data. Finally, Riverside-Grandview argues that if the Department applies a gender adjustment for the final determination, it should be sure that total costs after adjustment do not exceed the total actual costs of production.

Cor Van Raay and Groenenboom also argue that if the Department applies a gender adjustment to their costs for the final determination, it should be sure that total costs after adjustment do not exceed their total actual costs of production.

The petitioners argue that the need for a gender adjustment is compelled by the failure of Riverside-Grandview, Cor Van Raay, and Groenenboom to submit information in the form and manner requested by the Department. The petitioners assert that Riverside-Grandview admits that its own data is not the most reliable basis for calculating gender cost differences as the records are incomplete and did not calculate actual costs. The petitioners argue that the average differences shown by the submissions of other respondents or the CanFax data provide a more reliable basis for adjusting the submitted costs. The petitioners also claim that the Department properly resorts to facts otherwise available in a manner that may increase the cost of production. The petitioners argue that there is no reason to abandon the gender adjustment simply because, on an aggregate basis, such an adjustment would increase total costs.

DOC Position: As in the preliminary determination, we have continued to make an adjustment for cost differences relating to gender. When a respondent's submitted costs do not account for cost differences associated with physical characteristics due to limitations in its production records, the Department's practice is to adjust the submitted costs using a non-adverse facts available approach to more accurately reflect the product-specific cost of production. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12949 (March 16, 1999) (Comment 19).

In the instant investigation, we adjusted Riverside-Grandview's costs as the respondent claimed that in the ordinary course of business it did not account for cost differences associated with the gender physical characteristic. *See Preliminary Determination* at 36850. We confirmed at verification that Riverside-Grandview normally does not account for such differences in its accounting records. However, we obtained and reviewed company documentation which indicates the approximate cost differences due to gender and we have used those records to adjust Riverside-Grandview's costs for the final determination.

Since Cor Van Raay and Groenenboom did not provide similar data, we have made a gender adjustment to their costs based on the average gender cost differences experienced by the respondents for whom such differences could be determined. We agree with the respondents that it would be unreasonable to allocate more costs to cattle than were actually incurred and have taken this into account in making our adjustments.

4. Cost Test

The FMBC, an interested party, presented the economic argument that the live cattle markets in the U.S. and Canada are highly developed, regulated commodity markets and, consequently, the Canadian cattlemen are price takers. Therefore, the FMBC argues that when the Department performs its sales below cost test, it should ignore periodic market fluctuations and focus instead on multiple year economic cycle specific to the cattle industry.

The petitioners argue that the FBMC would have the Department redefine ''fair value'' and ''normal value'' to fit a definition that FBMC characterizes as a ''fair return.'' The petitioners argue that in the absence of evidence that cattle are a highly perishable commodity, there is no basis to redefine terms explicitly defined by Congress. The petitioners argue that the use of the cost test described under section 773(b)(2)(C)(ii) of the Act (*i.e.,* a comparison of the weighted average unit price of all sales to the weighted average cost) applies only in instances where the product under investigation is highly perishable. *See* Statement of Administrative Action at 832. The petitioners argue that beyond the scheduled production date, cattle do not spoil, wilt or otherwise become unsaleable.

DOC Position: We agree with the petitioners and have applied the substantial quantities test in accordance with section 773(b)(2)(C)(i) of the Act. The Department has found that live cattle are not a highly perishable commodity and, therefore, there is no basis to apply the substantial quantities test in accordance with section 773(b)(2)(C)(ii) of the Act. The SAA, at 832, indicates that ''This latter rule closely corresponds to the current Commerce practice of determining substantial quantities of sales below cost for highly perishable agricultural products.'' Finally, section 773(b)(2)(B) of the Act states that the phrase within an extended period of time ''means a period that is normally one year, but not less than six months.

Cost Issues—Company-Specific

JGL Group

1. The Cost of Production for Traded Cattle

The petitioners argue that the submitted costs of five JGL Group suppliers are, at best, incomplete and are particularly inadequate with respect to labor costs, and that the Department lacks adequate costs to properly apply the cost test to sales of traded cattle. Therefore, they assert, the Department cannot rely upon home market sales of traded cattle and must resort to facts available for normal value. As facts available, the petitioners argue that the Department should compare U.S. sales of traded cattle to the estimated normal values provided in the petition. However, the petitioners argue that, if the Department believes the JGL Group suppliers were uncooperative, it should apply facts available by using the higher of the average normal values in the petition for sales of the same gender and weight, or the suppliers' costs adjusted to account for the numerous deficiencies found at verification.

The petitioners disagree with the JGL Group's assertion that its cattle acquisition value should be used as the COP and constructed value (CV) of the traded cattle. The petitioners argue that the use of acquisition costs contradicts the rationale set forth in past cases. However, the petitioners suggest that the JGL Group's acquisition costs could be used as facts available, if they are first adjusted to reflect the difference between the suppliers' costs (including labor) and the acquisition price of the JGL Group.

The petitioners argue that whether or not the sample of suppliers was statistically valid or not, the Department must rely on facts available (*i.e.,* the suppliers' cost) to complete the proceeding within the statutory deadlines. The petitioners contend that, because of the substantial number of cattle suppliers to the JGL Group, it was clear from the outset that any cost data would, at best, be proxy costs. Further, the petitioners contend that because it was never practicable for the Department to obtain the necessary information, under subsection 776(a)(1) of the Act, it was appropriate for the Department to resort to facts otherwise available by sampling five of the JGL Group's suppliers. According to the petitioners, section 776(a)(1) of the Act does not require statistical sampling.

The petitioners point out that the JGL Group is subject to this investigation at the insistence of the CCA and that it is ironic for the CCA to assert that a sample is not statistically valid, given that its own position at the outset of this investigation was for the Department to select the largest producers and not to use a statistically valid sample to choose respondents.

The JGL Group argues that there are insurmountable practical problems that preclude the Department from calculating accurate dumping margins on its traded cattle sales using cost data obtained from the JGL Group's cattle suppliers. The respondent argues that the Department simply has no usable cost of production data from suppliers, as a result of: (1) the huge number of suppliers to the JGL Group; (2) the inevitable time pressures of the investigation; (3) the simple inability of family farmers to provide meaningful data, due to the limitations of their businesses and record keeping; and (4) the Department's failure to follow statutory requirements for sampling. Therefore, the JGL Group argues that, if the Department decides to use the traded cattle sales, the only valid, complete product-specific cost data available are the JGL Group's verified acquisition costs.

The JGL Group argues that supplier data obtained by the Department is incomplete because it only covers three of the 14 products sold in both Canada and the United States. The JGL Group notes that it sold 55 different products in Canada. Moreover, the JGL Group claims that six product-specific costs obtained by the Department are critically flawed because they are not in fact product-specific, but rather are the weighted average cost per pound of all types of cattle produced by the individual supplier. The JGL Group argues that the reported supplier costs do not reflect a lack of cooperation, but rather the fact that no small producers can or do track costs on an animal-specific basis. On the other hand, the JGL Group argues that, as the Department observed, buyers like the JGL Group purchase many animals at auction and the exact weight, gender and type of each animal is known and is reflected in the price paid.

The JGL Group argues that the sample selected by the Department is not statistically valid and that the resulting data is not representative of the greater population. The JGL Group asserts that under Sections 777 f-1(a) and (b) of the Act the Department must use only ''statistically valid samples.'' In addition, the JGL Group contends that due process requires samples to be representative, citing *National Knitwear & Sportswear Ass'n* v. *United States*, 779 F. Supp. 1364, 1373 (CIT, 1991), where the court stated, ''The representativeness of the investigated exporters is the essential characteristic that justifies an ''all others'' rate based on the weighted average for such respondents.''

In regard to the statistical validity of the sample, the JGL Group asserts that the Department failed to use a sound sampling methodology in its selection process. The JGL Group asserts that: (1) The Department's sample was too small given the size and heterogeneity of the relevant producer universe (*i.e.*, five out of thousands of suppliers) and the corresponding variance in products and costs; (2) the sample suffered from a lack of strict sampling procedures; and, (3) even the minimal sampling procedures that were described were not followed. The JGL Group concludes that the Department's sample therefore violates the statutory requirement that any samples selected be statistically valid.

Furthermore, the JGL Group asserts that the Department deprived it of its procedural rights as delineated in the statute by failing to consult with exporters and producers regarding the selection method to be employed. The JGL Group asserts that under Sections 777 f–1(a) and (b) of the Act the Department is required ''to the greatest extent possible, to consult with the exporters and producers regarding the method to be used to select exporters, producers or types of products.'' The JGL Group states that at no stage of the selection process was it consulted by the Department on the supplier selection methodology. Moreover, the JGL Group asserts that to the extent that it was advised as to how the suppliers would be selected, the Department failed to adhere to its stated methodology, as it failed to identify or select from the largest producers.

The JGL Group argues that if the Department nonetheless decides to include sales of traded cattle in the antidumping analysis, then, as contemplated in its April 8, 1999, decision memorandum, it should use the JGL Group's acquisition costs as a non-adverse surrogate for the producer's cost. The JGL Group argues that the acquisition costs are product-specific (*i.e.*, providing a cost for each unique combination of weight band, gender and type), as verified by the Department. Further, the JGL Group argues that no provision in the statute requires the Department to use the COP of producers in applying the cost test to sales made by resellers.

Moreover, the JGL Group argues that economic theory supports the use of acquisition cost as a conservative estimate of production costs. The respondent argues that in competitive markets, such as the cattle market, the market price for any given animal will be reflective of the industry's average cost, plus a return on equity. Thus, the JGL Group argues that, rather than reflecting the costs of a single supplier, as gathered by the Department, market prices reflect the costs of the industry as a whole, and are a better indicator of production costs. The JGL Group argues that the Department's findings relating to the five suppliers support these economic principles, since although some of the suppliers showed marginal losses, most showed profits, and for the five overall, revenues exceeded costs. The JGL Group argues that the Department should use its cattle acquisition costs as a reasonable proxy for the cost of production as non-adverse facts available.

Further, the JGL Group asserts that the results of the Department's limited sampling confirms the appropriateness of using acquisition costs to conservatively estimate production costs. The JGL Group argues that overall revenues for the five suppliers selected by the Department were in excess of their costs and their revenues correspond to the JGL Group's acquisition costs, therefore the Department should use the acquisition values in the below cost test for the final determination.

Finally, the JGL Group argues that in order to perform a below cost test on sales of traded cattle, the Department could use the JGL Group's own production costs as a proxy for the supplier costs. The JGL Group further argues that the cost of production data for cull cows and bulls (i.e., culled cattle) is not at issue, as the supplier's cost is zero since culls are typically used as production assets for other types of products (*e.g.*, milk from dairy cows or calves for breeder cattle). The JGL Group argues that the value of such ''cull'' by-products is the acquisition price paid by the JGL Group (*i.e.*, the supplier's sale price).

DOC Position: In addition to the sale of its own self-produced cattle, JGL purchased and resold a large number of cattle produced by other Canadian cattle operations. Because the suppliers of JGL's traded cattle did not appear to have had knowledge of the ultimate destination of the cattle they supplied to JGL, we decided to include JGL's traded cattle sales in the calculation of JGL's weighted average margin. For a discussion of the Department's decision

to include the traded cattle sales in the final determination, *see* JGL Group Sales Comment 5 above (Traded Cattle Sales). Once it was determined that these traded cattle sales were to be included in our analysis, in order to obtain the actual cost of producing these cattle, it was necessary to obtain the supplier's actual production costs. Accordingly, the Department solicited cost of production information from a sampling of JGL's suppliers.

We agree with both parties that the per-unit costs submitted by the producers of the traded cattle are unusable for purposes of determining whether the home market sales of traded cattle were made at prices above their cost of production. The Department verified three of the five selected traded cattle producers and found that, while they had cooperated to the best of their ability, what books and records they did maintain did not allow them to track and report product-specific costs. Additionally, we found that the various cattle types were raised together in the same lots, making it difficult for the producers to separate costs by cattle type or weight. As a result, the per-unit costs supplied by the producers/suppliers are critically flawed because they are not product-specific costs, but rather are simply the weighted average cost per pound of all types of cattle produced.

While we concede that a larger sample could have achieved a greater cross representation of the population of the traded cattle suppliers, two factors prevented us from expanding our sample: (1) The inability to sample traded cattle suppliers who sold to JGL through auction houses, and (2) The large size of the population of suppliers. In our discussions with the JGL Group, the respondents informed the Department that their traded cattle suppliers number in the thousands, and that the overwhelming number of these traded cattle are purchased by the JGL Group at livestock auctions. The JGL Group also stated that because the auction houses handle the paperwork between buyer and seller and they do not maintain these records in an accessible format, it would be nearly impossible to identify the individual producers of cattle purchased at auction. Thus, it was not possible to select a sample of the entire population of the producers of JGL Group's traded cattle sales.

Moreover, faced with a population of thousands, and the limited time between the submission of the JGL Group's questionnaire responses and the preliminary determination, the Department determined that it would select only a manageable number of the JGL Group's direct suppliers of traded cattle. The reasonableness of this limited sample is supported by the fact that the CCA had to hire outside accountants to assist these small farmers/cattlemen in responding to the Department. A larger sample of producers of traded cattle would simply have overwhelmed both the Department and the JGL Group. It was thought at the time that a limited sample of the JGL Group's suppliers would provide a reasonable picture of the cost structure and profitability of the farmers/cattlemen. Unfortunately, the Department found that these suppliers' limited records did not allow them to provide product-specific costs by weight band, gender, and cattle type.

However, the issues raised about our sample obscure the larger point that regardless of the sampling technique used in this case, it appears that the responding cattle suppliers would still not have been able to provide usable data. That is, we believe that if the Department had selected a larger, more scientific sample, the selected farmers/cattlemen would similarly have been unable to provide usable data. As stated above, we agree with respondents that, at this level in the industry, the farmer/cattlemen's limited records and ranch size did not allow them to provide costs by weight band, gender, and cattle type. Therefore, no matter what sampling technique or sample size the Department chose, we would still be faced with using facts otherwise available to determine actual production costs.

We disagree with the respondents' arguments that the Department violated their procedural rights and that we failed to follow our intended procedures. First, we are surprised that the respondents have concluded that they were not consulted by the Department. Contrary to their assertion, the Department was in frequent contact with respondents' counsel on this specific issue. Not only did we specifically request and obtain JGL's accounts payable listing, but we subsequently requested that JGL provide information on a short list of 50 direct suppliers of traded cattle. We also had several discussions concerning the problems of obtaining data from auction houses. Moreover, section 777A(b) states that ''[t]he authority to select averages and statistically valid samples shall rest exclusively with the administering authority.'' Thus, the final decisions on how large a sample should be and how the sample should be selected rest exclusively with the Department. Second, despite the respondents' erroneous assumption that we intended to sample JGL's largest suppliers, it is obvious that such an approach would have been impossible. As JGL asserted, it was impossible even to identify the suppliers from whom JGL purchased cattle though auction houses, let alone to identify the largest of such suppliers.

In any event, the Department is obligated to complete its investigation within the statutory deadlines, and must determine a cost of production of cattle for the JGL Group's suppliers. Unlike *Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Norway,* 56 FR 7661, 7672 (1991), the producers' actual costs are not available in this case. Section 776(a)(1) of the Act authorizes the Department to use facts otherwise available where the ''necessary information is not available on the record.'' In selecting the facts otherwise available for this case, the Department finds that, given the cooperation of the JGL Group and its five selected traded cattle producers, the application of non-adverse facts available is warranted. Also, we believe that the suppliers of traded cattle that we selected are representative of the larger population in terms of farm/ranch size and sophistication of records, and that much of the aggregate financial data is representative. Therefore, we have adjusted the JGL Group's reported acquisition price of traded cattle to reflect the producers' cost of production. Since the acquisition prices are the revenues of the suppliers, we have increased the acquisition prices by the average loss of the five producers to obtain the cost of the average supplier. The aggregate financial data supplied by the five producers do not suffer from the problems reflected in the per-unit data. In addition, the acquisition prices are product-specific and are available for all of the products reported on the sales databases.

2. Cost Adjustments for Traded Cattle

The petitioners argue that the use of incomplete or estimated production costs for the suppliers, based upon the data verified, could have the effect of rewarding respondents with a lower margin by virtue of the fact that their accounting records do not track all costs. Moreover, petitioners argue that labor expenses should be included in the cost of production of the traded cattle. The petitioners cite the SAA at 835, noting that the Department computes a ''representative measure of the materials, *labor,* and other costs, including financing costs, incurred to produce the subject merchandise'' (emphasis added). The petitioners also

cite *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72249 (December 31, 1998) (*Mushrooms from India*) (Comment 1), where the Department stated that when a respondent's normal accounting practices result in a mis-allocation of production costs, it will adjust the respondent's costs or use alternative calculation methodologies to more accurately reflect the actual costs incurred to produce the merchandise. Thus, the petitioners argue that the ranchers incur a real economic cost through their own labor and that the Department should recognize the labor costs for purposes of the antidumping law. The petitioners argue that the Department imputes a cost to family labor since the owner of a business expects a minimum return for his labor as well as a return on his investment, and wages and costs should not be excluded from the cost of production simply because it was not a grower's practice to pay wages to family members; in support, the petitioners cite *Final Determination of Sales at Less Than Fair Value: Fall-Harvested Round White Potatoes From Canada,* 48 FR 51669 51674 (November 10, 1983); and *Final Determination of Sales at Less Than Fair Value: Fresh Kiwifruit from New Zealand,* 57 FR 13695, 13705 (April 17, 1992).

The petitioners further question various other cost elements within the suppliers' cost build-ups, such as the depreciation expense for breeder cattle. The petitioners note that with respect to the JGL Group, both the Sorensons and Mr. Anderson included some depreciation costs for their breeder cows; however, the two differed significantly on the period of depreciation. The petitioners contend that neither party included any depreciation expense for bulls and recommend the inclusion of the expense using the average life. Specific to the Sorensons, the petitioners contend that no costs were assigned for slough hay or green feed. The petitioners claim that this issue was not addressed in the cost verification report. The petitioners indicate that additional errors were noted in the cost verification report which they claim could effect the reliability of the submitted data.

Regarding Mr. Anderson, the petitioners noted that because the grain market prices used in calculating normal value were misquoted from the Saskatchewan Department of Agriculture's data, the Department should use the correct data in the COP and CV calculations for the final determination. Finally, the petitioners argue that the conclusions made by the Department for the three verified JGL Group suppliers should be applied to the two unverified suppliers.

The JGL Group contends that if the Department does decide to use the limited supplier cost data, although several adjustments would be necessary to the calculation of costs, there is no basis for imputing a labor cost for any of the chosen suppliers as they are all sole proprietor farmers. The JGL Group argues that under tax and accounting rules sole proprietors are discouraged from paying themselves wages. Furthermore, the JGL Group argues that such treatment is reasonable since none of the suppliers incur any actual labor cost, but rather as the owners of their farms take their return on investment as profits. Moreover, they assert that the Department has no clear statutory authority to impute such labor expenses for sole proprietor farmers, since farm and the sole proprietor are the same entity, and thus the affiliated party transactions rules under section 773(f)(2) of the Act would not apply.

The JGL Group argues that the suppliers provided separate cost data for 1997 and 1998, but the Department requested that they focus on calendar year 1998, as it more closely corresponded to the POI. Respondents assert, however, that in the case of Edward Steinke it is more appropriate to use 1997 costs, as all sales to the JGL Group occurred in 1997. Additionally, in the case of Sorenson, the JGL Group maintains that 1998 costs should only be used for backgrounded cattle, and that 1997 reported costs should be used for weaned cattle. In this regard, the JGL Group suggests that unless the Department uses 1997 cost data as indicated above, there will be a mismatch between the products sold to the JGL Group and the calculated costs.

In the case of Brian Donison, respondents contend that computing interest expense on a ''cost of goods sold'' basis is distortive, as it does not consider borrowing costs for land. The JGL Group argues that land, a family farmer's primary production asset, is not reflected in the cost of goods sold. Therefore, under the Department's traditional approach to interest expense, no interest expense is allocated to the purchase of land. The JGL Group suggests that it would be reasonable to allocate interest expense between Donison's grain farming and cattle feeding operations based on the asset acquisition cost methodology previously submitted by Donison.

DOC Position: As noted in JGL Cost Comment 1 above, we resorted to the use of non-adverse facts available for the costing of the JGL Group's traded cattle sales. However, in order to rely on the aggregate financial data provide by the five suppliers we have adjusted the data to account for minor problems found at verification.

We increased the reported cost of manufacturing for each of the suppliers to account for labor supplied by the owner. We consider labor supplied by the owners of the farms or ranches to be affiliated transactions as covered under section 773(f)(2) of the Act. In this case, the farmer-cattleman is the owner of the farm-ranch and therefore is affiliated. In accordance with section 773(f)(2) of the Act, we tested the labor cost charged between the affiliates to determine if that element of value fairly reflects the amount usually reflected for sales of that element in the market under consideration. We do not consider zero labor costs to be reflective of an arm's length price. Thus, we have adjusted the suppliers' reported production costs to include a market value for the owner's labor.

With respect to the depreciation expense calculations for Sorenson and Anderson, we agree with the petitioners that a cost should be included for the depreciation of bulls. Specific to Sorenson, we note that pasture costs were addressed in the cost verification report and certain expenses have been included in the reported costs for hay and green feed. See Verification Report on the Cost of Production Data submitted by the Sorenson Brothers from Taija Slaughter to Neal Halper, dated August 3, 1999, at 8. Additionally, the report notes a minor adjustment for repairs and maintenance expenses which should be included in Sorenson's cattle costs of manufacturing. Specific to Anderson, we agree with the petitioners that the market grain prices which were misquoted in the COM calculation should be corrected. Regarding Donison's interest expense calculation methodology, we disagree with the respondent that the interest expense should be allocated on an asset-based methodology. We point to *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile,* 63 FR 31411, 31430 (June 9, 1998) (Salmon), where we ''recognized that [our] normal method of calculating financial expenses on the basis of cost of goods sold, without special allocations to specific divisions or assets, provides a reasonable measure of the cost incurred for the merchandise.'' Thus, for this final determination, we have maintained our practice to calculate financial expenses based on the cost of goods sold denominator.

We disagree with the JGL Group's argument that certain of the suppliers' data should be based on the 1997 cost data instead of the POI or 1998 data, the closest corresponding year. The Department's general policy is to use the cost of producing the merchandise during the POI or POR, rather than the cost of the sales during that period. In accordance with section 773(b)(3) of the Act, we calculate average costs incurred ''during a period which would *ordinarily permit* the production of that foreign like product in the ordinary course of business.'' (emphasis added) We note that section 773(b)(3) does not direct the Department to use the cost of goods sold, but rather, the cost of production. Consistent with this provision, we normally require respondents to report their cost of production for the subject merchandise during the period of investigation or review (*i.e.*, the cost to produce the merchandise during the period in which they are making sales, as opposed to the cost to produce each individual product sold during the reporting period).

While we recognize that we have deviated from this general policy in a few instances, these departures were due to unique circumstances surrounding the particular cases. For example, in the *Salmon from Chile* case, the Department did not calculate a cost of cultivation for the POR because a one-year period is insufficient to capture the costs of production of that foreign like product in the ordinary course of business as required by section 773(b)(3)(A), since the growing period for salmon averages from between two and three years. The Department therefore had to extend the cost calculation period to include the entire growing period most recently completed (i.e., the period which would permit the production of the product). In the instant case, feeders are usually fed for a half to a full year before being sold, such that the ordinary production period does not extend outside the POI.

In *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 61 FR 38166 (July 23, 1996) (*LNPP*), we computed the COP and CV based on the specific costs incurred for each sale. However, since these are custom-made products, with no two newspaper presses being the same, we had no option but to use the cost incurred for each POI sale, even though some of the costs stray outside the POI. With cattle being a commodity-type product, the reasons for deviation from our normal practice in *LNPP* clearly do not apply.

In summary, the Department has a consistent and predictable practice regarding the proper cost calculation period for COP and CV; that is, to use the actual cost of manufacturing incurred during the period of investigation or review. Only in unusual circumstances has the Department deviated from this approach. We found no similar circumstances in the cattle case. We do not consider the JGL Group's argument sufficient grounds for deviating from our normal practice.

Pound-Maker

1. By-Product Costs

In the process of producing fuel grade ethanol from wheat, water, enzymes, and yeast, Pound-Maker also produces wet distillers grain (WDG) and thin stillage (TS). The company transfers all of the WDG and TS produced in the ethanol division to its cattle division where it is used in cattle feed to reduce the amounts of barley, other grains, and silage that would otherwise be consumed. In its normal accounting system, Pound-Maker records the transfers of WDG and TS using a formula tied in part to the average monthly price of barley. These transfers are eliminated by Pound-Maker in the preparation of its audited financial statements. The petitioners and Pound-Maker disagree as to whether a cost for WDG and TS should be included in Pound-Maker's COP.

The petitioners argue that the Department's cost verification report makes it clear that there is a market value for WDG and TS, despite assertions to the contrary by Pound-Maker. The petitioners submit two publicly-available documents in support of their claim that WDG and TS are sold in the U.S. market as feed. The petitioners argue that the inter-divisional transfer prices recorded by Pound-Maker do not appear to be distorted. The petitioners note that in the preliminary determination the Department accepted Pound-Maker's claim that WDG and TS are by-products of ethanol production and have zero costs, citing *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from South Africa*, 60 FR 22500, 22556 (May 8, 1995) (*Furfuryl Alcohol*). The petitioners argue that this case is not applicable as the Department accepted the *Furfuryl Alcohol* respondent's assignment of zero costs to a product not because it was a by-product, but rather because the cost was effectively captured elsewhere. The petitioners claim that, in the instant investigation, Pound-Maker's use of WDG and TS reduces the feed costs that the respondent would otherwise incur to feed cattle, and that the use of zero costs for these products would understate its actual cost of production.

Pound-Maker argues that its accounting treatment of WDG and TS as by-products with zero costs is fully justified. Pound-Maker claims that this treatment should be accepted since the Section 773 (f)(1)(A) of the Act requires the Department to compute costs of production using the company's own records, unless the Department concludes that Pound-Maker's accounting departs from GAAP or does not otherwise reasonably reflect production costs. Pound-Maker claims that the Department distinguishes between co-products and by-products based on their relative sales value and that by-products are assigned zero costs of production while common costs are allocated among co-products. *See Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33547 (June 28, 1995) (*OCTG from Argentina*). Pound-Maker argues that there is unrebutted record evidence that TS, in the form produced by the company (*i.e.*, five to seven percent solids), has no commercial value and is not sold anywhere in Canada. Pound-Maker states that it provided the Department with a letter from a Canadian ethanol producer that produces and sells TS, but notes that the ethanol producer further processes its TS into a concentrated syrup (20 percent solids) before it is sold. Pound-Maker argues that significant capital investment in the form of additional equipment was necessary for this company to produce the concentrated syrup and that Pound-Maker cannot produce the same TS product. Pound-Maker argues that the estimated sales value of WDG is insignificant in relation to ethanol and thus is properly treated as a by-product. Pound-Maker notes that it provided the Department with a letter from a Canadian brewery that sold a product similar to WDG known as ''brewer's spent grains'' and the market value of this product is minor in relation to the value of ethanol. Pound-Maker claims that one of the documents submitted by the petitioners supports the respondent's classification, since it refers to distillers grains as by-products. Pound-Maker argues that *Furfuryl Alcohol* also supports its assignment of zero production costs, since both *Furfuryl Alcohol* and the instant case involve a respondent that treated a low-valued product, produced by one production process and consumed in another, as a by-product. Pound-Maker

argues that, if the Department were to determine that WDG or TS is a co-product rather than a by-product, the Department should allocate the costs of the wheat input based on the relative sales values of ethanol, WDG and TS. Pound-Maker claims that there is no legal basis for using its inter-divisional transfer price to value WDG and TS as it does not reflect any actual costs, but rather a value that is arbitrarily assigned based on hypothetical estimated costs for a substitute product.

DOC Position: This is a situation where as a result of the ethanol production process, two residual products, WDG and TS, are generated. Even though there is a market for these general type of products, they are not sold by the company. Instead, they are consumed by Pound-Maker's cattle operations. In the normal course of business, Pound-Maker assigns a value to the inter-divisional transfers of WDG and TS; however, for financial statement purposes, Pound-Maker does not allocate any of the costs to produce ethanol to the WDG and TS.

The Department's long-standing practice, now codified at section 773(f)(1)(A) of the Act, is to rely on a company's normal books and records if such records are in accordance with home country GAAP and reasonably reflect the costs associated with production of the merchandise. *See Final Determination of Sales at Less than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil,* 64 FR 38756, 38787 (July 19, 1999) (Comment 47). Where we determine that a respondent's normal accounting practices result in an unreasonable allocation of production costs, the Department will make certain adjustments or use alternative methodologies to more accurately capture the costs incurred. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews,* 64 FR 12927, 12949 (March 16, 1999)(Comment 19).

While we agree with Pound-Maker that the WDG and TS are appropriately classified as by-products of the ethanol production process, we disagree with Pound-Maker's claim that no value should be assigned to the inter-divisional transfers for use in the production of cattle. The WDG and TS are closely tied to Pound-Maker's cattle feeding operations in that WDG and TS account for a significant portion of cattle feed and TS represents the only source of water for three of Pound-Maker's six feedlot wings. To assign no value to these residual products consumed by its cattle feeding operations would result in an unreasonable allocation of costs between its two divisions. Clearly, the cattle operations are deriving a benefit from the by-products generated from the ethanol plant. This situation is akin to transfers of by-products between different operations in a steel mill. For example, coke gas is generated from a coking plant and is a by-product of the coke production process. If this coke gas is consumed in a blast furnace, the coking mill process will receive a credit for the estimated value of the gas, and the operation consuming the gas, the blast furnace in this example, will be charged the same estimated value. *See Management Accountants' Handbook* at 11–31 (Keller, Bulloch, Shultis, 4th ed. 1992). Accordingly, we have determined that it would be distortive to assign no value to the WDG and TS consumed by Pound-Maker's cattle feeding operations, and have determined that an adjustment to its reported costs is appropriate.

We disagree with Pound-Maker's assertion that the Department's decision in *Furfuryl Alcohol* supports assignment of zero cost to WDG and TS. In that case, we accepted a respondent's assignment of zero costs to bagasse, which is used in furfural production, not because it was a by-product, but rather because its cost was effectively captured in the respondent's reported coal costs.

Since we have determined that it is appropriate to assign value to the WDG and TS, the next issue is to decide on the most appropriate allocation method. The *Management Accountants' Handbook* at 11–25 offers suggestions on how to value by-products under different scenarios, including situations where there is an established market price for the by-products, situations where the by-product is an alternative to the main product being produced, and most appropriately for this case, instances where by-products are usable as substitutes for other materials. The textbook reads, ''Here the value placed on by-products is determined by working from the price of the material replaced.''

In the instant case, because the WDG and TS are being used as substitutes for barley and other grains fed to cattle on Pound-Maker's feedlots, it would be appropriate to assign costs to the WDG and TS using the value of the grains replaced in the feed mixture. An example of such treatment is provided in the *Management Accountants' Handbook* at 11–31. The text describes a steel plant that uses by-products of its coke operations in the production of other products, and values the by-products based upon the equivalent units of inputs (*e.g.,* fuel oil, coal) that are replaced. As noted earlier, Pound-Maker assigns values to transfers of WDG and TS, but these values are eliminated for purposes of its financial statements. According to Pound-Maker, these transfers ''reflect values arbitrarily assigned by PMA * * * based on hypothetical estimated costs for a substitute product * * *.'' *See* Pound-Maker rebuttal brief at 37. Although Pound-Maker seems to indicate that the arbitrary nature of the assigned values is a defect that would factor against the use of these transfer values, the *Management Accountants' Handbook* at 11–9 states that ''an allocation method must be found that, though *arbitrary*, allocates the costs on as *reasonable* a basis as possible'' (emphasis added).

We have reviewed the formula and methodology used to derive the transfer values and have determined that the amounts initially recorded for these transfers represent a reasonable value for the cattle feed replaced by WDG and TS. Pound-Maker has referred to the amounts recorded as ''theoretical protein-equivalent transfer prices.'' *See* Section D response of April 28, 1999, at D–31. The formula used to derive these amounts ''calculates an amount (value) based on the dry matter content of the by-products relative to the value of feed barley.'' *See* Section D supplemental response of June 4, 1999, at SD–10. The transfer prices thus represent Pound-Maker's own estimate of the value of cattle feed, and represent the most appropriate value to be assigned to the WDG and TS consumed during the POI.

In addition, we found that there are certain costs to produce WDG and TS that are incurred *after* the split-off point, and we, therefore, assigned those costs to the WDG and TS used in Pound-Maker's cattle feed.

2. G&A Expenses and Financial Expenses—Cost of Sales Denominator

Pound-Maker argues that the Department erred in its recalculations of Pound-Maker's general and administrative (G&A) expense rate and financial expense rate for the preliminary determination. Pound-Maker claims that in these rate calculations, all categories of cost that are in the cost of goods sold (COGS) denominator must also be in the per-unit COM figures to which the ratios are applied, and vice versa. According to Pound-Maker, the Department improperly included costs in its COM that were not included in the COGS denominator.

Pound-Maker states that, for sales of its own-produced cattle, the COGS reflects the full cost of those cattle,

including the purchase cost of the input feeder cattle and all costs associated with fattening the cattle. Pound-Maker notes, however, that its COGS also includes the cost of providing custom-feeding services to outside investors, who purchase feeder cattle and pay a fee to Pound-Maker for fattening their cattle. According to Pound-Maker, the COGS for these custom-feeding services includes only the costs of fattening the cattle, and does not include the cost of the original input feeder cattle. Pound-Maker claims that since the calculated G&A and financial expense rates are to be applied to a COM figure that includes the full cost of fattened cattle, the company adjusted its COGS denominator to include the input feeder cattle costs for custom-fed cattle that were reported in Pound-Maker's sales databases.

Pound-Maker claims that the Department erroneously denied this adjustment for the preliminary determination, producing a distortive result that allocated more G&A and financial expenses than Pound-Maker actually incurred. Pound-Maker argues that either the COM for custom-fed cattle should exclude feeder cattle costs, or the G&A and financial expense rates should be calculated using an adjusted COGS figure that includes feeder cattle costs for custom-fed cattle.

Further, Pound-Maker argues that the Department routinely permits adjustments so that the COM and COGS are on the same basis. In support, Pound-Maker cites *Mushrooms from India* at 72247, in which the Department stated, ''In order to put both the G&A rate and the financial expense rate on the same basis as the per-unit cost of manufacturing, we excluded certain expense items from the cost of goods sold used by Agro Dutch as the denominator in its calculations.''

The petitioners argue that the Department properly rejected Pound-Maker's submitted adjustment to allocate G&A and financial expenses to sales of custom-fed cattle on the basis of its own COGS, plus the value of feeder cattle that it fed but did not own. The petitioners argue that the Department's long-standing practice is to ''compute G&A and interest expenses on a company-wide basis as a percentage of cost of sales,'' and cite *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 FR 40461, 40472 (July 29, 1998). The petitioners assert that Pound-Maker sought to artificially inflate its COGS of custom-fed cattle by adding in the acquisition cost of the feeder cattle, thus reducing the G&A and financial expenses allocated to its sales of own-produced cattle. The petitioners argue that *Mushrooms from India* and other cases cited by Pound-Maker may support the Department's practice of adjusting COM or COGS, but the petitioners note that in none of Pound-Maker's cited cases was the Department asked to adjust COGS by adding costs that the respondent company did not incur and that are not recorded in its financial statements. The petitioners also note that nothing in the statute requires that COM and COGS be on the same basis.

The petitioners argue that the constructed value of custom-fed cattle should properly include all expenses that were incurred by the actual owners of the cattle and the absence of such expenses makes irrelevant Pound-Maker's arguments that the Department allocated more costs than the respondent incurred. The petitioners claim that the Department should remove Pound-Maker's overstated sales that were identified at verification and should also revise the denominator for allocating per-unit feeder cattle costs as indicated in the cost verification report.

DOC Position: We agree with Pound-Maker that the denominator in the G&A and financial expense rate calculations should be on a similar basis to the COM values to which the rates will be applied. However, Pound-Maker is incorrect when it states that we improperly applied the G&A and financial expense rates to a COM value that is not on the same basis as the COGS denominator used to derive the rates. Pound-Maker provides custom-feeding services to outside parties, and the COGS for these services includes only the costs of fattening the cattle (feed and other miscellaneous expenses). However, contrary to Pound-Maker's assertions, the cost of the input feeder cattle is *also* in Pound-Maker's COGS denominator. In its March 12, 1999 submission, Pound-Maker stated, ''Virtually all of our custom feeders purchase their feeder cattle from PMA.'' Therefore, the COGS denominator already includes the cost of custom-fed feeder cattle and Pound-Maker's proposed adjustment is unnecessary. As in the preliminary determination, we have adjusted the denominators in Pound-Maker's G&A and financial expense rate calculations to reflect the COGS shown on its financial statements.

Riverside-Grandview

1. Head-Days Allocation Methodology

The petitioners argue that Grandview used an unreasonable methodology to allocate certain costs between its own-produced cattle and cattle which it custom-feeds for other parties. The petitioners state that this methodology, which is based upon head-days (*i.e.*, the number of days a head of cattle was on the company's feedlot), does not, on its face, appear to be unreasonable. The petitioners cite to *Mushrooms from India* at 72248, where the Department allocated costs between co-products on a weight or volume basis. However, the petitioners claim that Grandview's head-days allocation methodology, even if mathematically accurate, produces unreasonable results and thus should be rejected by the Department. A table containing proprietary information was submitted by the petitioners in support of their claim.

The petitioners argue that the Department should neutralize the impact of this methodology by allocating costs to non-Riverside custom fed-cattle on a sales value basis.

Riverside-Grandview argues that the petitioners' arguments should be rejected. Riverside-Grandview claims that the proprietary exhibit submitted by the petitioners is incorrect in a number of respects. Riverside-Grandview claims that the Department addressed this issue previously at the preliminary determination, and Riverside-Grandview notes that it did not take issue with the Department's conclusion at that time. Riverside-Grandview argues that the petitioners' proposed methodology would substantially over-allocate costs to Riverside-Grandview.

DOC Position: We agree with Riverside-Grandview. We have reviewed the methodology used by the respondent to allocate certain costs and have determined that it is reasonable. Since Riverside-Grandview provides the same feed and services to its own cattle and to custom-fed cattle, we believe the number of head-days is a logical and appropriate allocation method. As we noted previously, the petitioners' analysis contains certain mathematical errors. *See Issues Summary for the Preliminary Determination*, dated June 30, 1999, at page 7. We believe that reasonable results are produced when these errors and the respondent's need to cover its variable costs are taken into account. Therefore we have continued to accept the head-days allocation methodology for purposes of calculating Riverside-Grandview's COP.

2. Claimed Cost Offset

Riverside-Grandview argues that the Department should accept its submitted cost offset for a ''disaster claim.'' Riverside notes that (1) The claim relates to its November 30, 1998, fiscal

year, (2) Its auditors determined that Riverside-Grandview qualified for the payment, and (3) The Department verified Riverside-Grandview's receipt of the claimed amount. Riverside-Grandview argues that, since its outside auditors have confirmed that, in accordance with GAAP, the claim should have been reflected in its financial statements, and since the claim relates to the cost reporting period, the Department should not exclude this offset.

The petitioners argue that the statue directs the Department to first consider the company books prepared in the normal course of business prior to the antidumping investigation. The petitioners claim that such records carry the presumption of correctness and the added safeguard that they were not likely designed to minimize exposure under antidumping laws. The petitioners argue that Riverside-Grandview seeks to reduce its production costs by deducting a cost offset that was not recorded in its normal accounting records during the POI because the funds were not received until after the POI. The petitioners argue that Riverside-Grandview's failure to record the claim is not necessarily erroneous, simply because the auditors now state that recording the claim would have been consistent with GAAP. The petitioners argue that GAAP permits companies to elect how to treat various items, and if the expenses in question were not extraordinary, there is no basis to offset those expenses by income received in a later period.

DOC Position: We agree with the petitioners. The Department normally relies on costs recorded in a company's accounting records as long as they are recorded in accordance with GAAP and reasonably reflect the costs of production. *See* section 773(f)(1)(A) of the Act. The disaster claim that Riverside-Grandview seeks to apply as an offset to its costs was not recorded in Riverside-Grandview's normal books and records, or in its audited financial statements, and we have no basis for applying this offset to reduce its costs of production. Despite the description used for the claimed offset, Riverside-Grandview did not incur any abnormal or unusual costs during the cost reporting period and thus its submitted costs, without the claimed offset, properly reflect its normal costs of producing the subject merchandise. Further discussion of this issue involves proprietary information. *See* Memorandum from William Jones to The File, dated October 4, 1999.

3. Bank Penalties

Riverside-Grandview claims that, during the cost reporting period, it incurred penalties charged by a bank because of the respondents' early repayment of debt. The respondent argues that these penalties relate primarily to long-term loans with maturity dates beyond the cost reporting period and that outside auditors determined that a substantial portion of the bank penalties should have been recorded in the financial statements as prepaid interest with deferred recognition of the expense. According to Riverside-Grandview, full inclusion of the bank penalties would distort their costs by treating a payment that relates to future interest expenses on long-term debt as if it were a cost on the particular day when the bank penalties were paid. The respondent argues that to be consistent with GAAP, and avoid the distortion of costs, such future expenses should be matched to the time periods covered by the loans to which they related. Riverside-Grandview claims that this approach is analogous to the approach taken by the Department with respect to foreign exchange losses on long-term loans, were such losses are amortized over the remaining life of the loans; the respondent cites *Fresh Atlantic Salmon from Chile, Notice of Final Determination of Sales at Less Than Fair Value,* 63 FR 31411, 31430 (June 9, 1998).

The petitioners argue that Riverside-Grandview seeks to change its actual accounting practice in order to obtain more favorable treatment solely for purposes of this investigation. The petitioners claim that the Department verified that the early payment penalties were expensed in the cost reporting period, as they appear in the audited financial statements in accordance with Canadian GAAP. The petitioners argue that although GAAP permits such costs to be amortized over a period of time, it does not require such treatment. The petitioners argue that respondent's reference to foreign exchange losses is inapposite since the Department permits foreign exchange losses to be amortized over the remaining life of loans that continue to be repaid, whereas the bank penalties in the instant case relate to long-term loans that have already been paid off. Therefore, the petitioners claim, there is no reason to depart from the treatment of these expenses in Riverside-Grandview's financial statements.

DOC Position: We agree with the petitioners. Our normal practice is to rely on a respondent's normal accounting records if those records are in accordance with GAAP of the home country and reasonably reflect the costs of production. *See* section 773(f)(1)(A) of the Act. These penalties were assessed by the bank because of the respondents' decisions to pay off their loans before they were due. The fact that these loans would have extended into future periods if they were not paid early is of no significance here. The bank penalties were, in fact, expensed by the respondents in their audited financial statements covering this period, in accordance with Canadian GAAP, as they relate to events which occurred during that fiscal year. Since the loans were paid off in the current period, we see no reason to adjust these costs to reflect a hypothetical payout schedule which no longer applies. The analogy to foreign exchange losses is inappropriate for the reasons cited by the petitioners.

4. Accounting Errors

Riverside-Grandview argues that the Department should adjust its reported costs based upon verified cost offsets and other cost adjustments. Riverside argues that since most of the custom work income that it claimed as an offset relates to work that it performed for Grandview, and since the expense was reported by Grandview in the submitted costs, the Department should allow Riverside's submitted offset. Riverside-Grandview also argues that the Department should reduce its submitted costs for: (a) An accrual that was inadvertently recorded twice; (b) Wages, utilities, and telephone costs that were reported as indirect selling expenses; (c) Cattle purchases that were related to a prior period; and, (d) Revenue items that should have been reflected in the submitted costs. Riverside-Grandview also asserts that the Department should increase the reported costs for barley purchases that were not properly accrued and expense items that should have been reflected in the submitted costs.

The petitioners argue that the Department should not permit the various cost offsets that Riverside-Grandview failed to claim in their responses prior to verification, claiming that these offsets were not submitted on a timely basis.

DOC Position: We agree with Riverside-Grandview. Although most of the claimed adjustments were not explicitly reported in the respondent's submissions, we identified certain income and expense items at verification through our routine testing. After further inquiry and analysis, we determined that these miscellaneous income and expense items are

appropriate for inclusion in the calculation of COP and have therefore included them in the COM for the final determination.

Cor Van Raay

1. Cost Test for Partnership Sales

The petitioners note that Rick Paskal, one of the three entities collapsed into respondent Cor Van Raay, entered into partnerships with producers outside Cor Van Raay to feed and sell live cattle. The petitioners argue that such sales should be compared to Rick Paskal's costs of own-produced cattle, rather than to the average cost of Cor Van Raay as a whole reporting entity. The petitioners argue that in the alternative, the Department should recalculate the Cor Van Raay average costs to reflect the additional sales of partnership cattle.

Cor Van Raay argues that the Department should not compare partnership sales to Rick Paskal's costs of own-produced cattle, because (1) the Department did not require that the cost of production incurred by the partners be reported, (2) there is no evidence that the costs incurred by Rick Paskal are any more representative of the partners' costs than the costs incurred by other companies collapsed with Cor Van Raay, and (3) in fact, other companies collapsed in the Cor Van Raay respondent entity (*i.e.*, Butte Grain Merchants) were also involved in these sales. Further, the respondent argues that, for these same reasons, it would be inappropriate to increase the average cost of the Cor Van Raay consolidated entity to reflect Rick Paskal's involvement in the partnership sales.

DOC Position: We agree with the respondent. The Department requested that the partnership sales in question be reported, but did not require that the partners submit a cost response. While, given the circumstances of these sales, we believe that it is appropriate to include them in our dumping margin analysis, there is no justification for comparing the sales prices to Rick Paskal's costs alone, as there is no evidence that Rick Paskal's costs are any more representative of the partner's costs than the weighted-average costs of Cor Van Raay as a whole. We have therefore continued to compare the sales prices in question to the latter costs.

Groenenboom

1. Currency Hedging Losses

Groenenboom claims there is no relation between its currency hedging losses and the purchase of any inputs used in the production of the subject merchandise. Groenenboom argues that the Department confirmed this at verification by reviewing monthly statements from the company that manages its currency hedging account. Groenenboom asserts that its gains or losses from currency hedging are wholly unrelated to any G&A activities associated with its production or sales and these gains and losses should not be treated as such in the final determination. Groenenboom cites to *Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber From the Republic of Korea,* 64 FR 14865, 14871 (March 29, 1999)(*ESBR from Korea*) where the Department excluded foreign exchange gains and losses because such gains and losses are typically included only if they ''are related to the cost of acquiring debt.'' The respondent argues that it is apparent from the documents reviewed at verification that the hedging contracts were not associated with any specific sale or group of sales to the United States. Further, Groenenboom argues that foreign exchange contracts may be taken into account for purposes of adjusting sales prices only to the extent that they are directly linked to a particular sale, and cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France; et al; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28413 (June 24, 1992).

The petitioners argue that Groenenboom recorded losses in a currency trading account during the POI and that these losses should be added to its G&A expenses. The petitioners claim that trading losses that are not tied to specific sales in the U.S. market or to the purchase of inputs should be analyzed for purposes of the antidumping law using the logic that is applied to any incidental income or loss to the business. The petitioners argue that Groenenboom is dedicated solely to the production of cattle, such that the funds that were traded to produce hedging gains or losses were generated in the cattle business, and that any gains or losses on such hedging affect Groenenboom's working capital, if not directly related to sales in foreign currency. The petitioners claim that if Groenenboom had taken funds and deposited them in a bank in Canada, short-term interest earned on such deposits would have been deducted from G&A expenses under normal Department practice.

Further, the petitioners argue that where a respondent invests current cash from its operations and loses money, those losses should be included in G&A expenses. The petitioners argue that Groenenboom's cite to *ESBR from Korea* is misplaced as that case involved exchange gains and losses on sales. The petitioners cite to *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea,* 60 FR 33561, 33567 (June 28, 1995) in arguing that hedging gains or losses are properly included in G&A expenses. The petitioners also argue that Groenenboom's normal accounting practice is to treat gains and losses from currency hedging as part of G&A expenses and that respondents have shown no basis to depart from this treatment.

DOC Position: The Department's practice has been to not include investment-related gains, losses and expenses in the calculation of G&A expenses for purposes of the COP or CV calculations. In calculating COP and CV, we seek to capture the cost of production of the foreign like product and subject merchandise, and to exclude the cost of unrelated production or investment activities. The Department accounts for a respondent's investment activities that relate to the financing of working capital as part of its financial expenses, which are calculated on a consolidated basis. The record indicates that these currency hedging activities were strictly for investment purposes and, therefore, we have excluded Groenenboom's currency hedging losses from its G&A expenses.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue suspending liquidation of all entries of live cattle from Canada, except for subject merchandise produced and exported by Pound-Maker (which continues to have *de minimis* weighted-average margins), that are entered, or withdrawn from warehouse, for consumption on or after July 8, 1999 (the date of publication of the preliminary determination in the **Federal Register**). The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the United States price, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin percentage
Cor Van Raay	4.53

Exporter/producer	Weighted-average margin percentage
Groenenboom	3.86
JGL Group	5.10
Pound-Maker	[1] 0.62
Riverside/Grandview	5.34
Schaus	15.69
All Others	5.63

[1] De minimis

Section 735(c)(5)(A) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely on the basis of facts available under section 776 of the Act, from the calculation of the ''all others'' rate. We have excluded the dumping margin for Pound-Maker (which is *de minimis*) from the calculation of the ''all others'' rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: October 12, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27410 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–815]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Welded ASTM A–312 Stainless Steel Pipe From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 21, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on Welded ASTM A–312 Stainless Steel Pipe from Taiwan, covering the period December 1, 1997 through November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Juanita Chen or Karla Whalen, AD/CVD Enforcement Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230, telephone (202) 482–0409, or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION: On January 25, 1999, the Department initiated this administrative review of the antidumping duty order on welded ASTM A–312 Stainless Steel Pipe from Taiwan (64 FR 3682). Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department may extend the deadline for completion of the preliminary results of an administrative review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days after the last day of the anniversary month for the relevant order. On July 21, 1999, the Department extended this case sixty days (64 FR 41382, July 30, 1999). However, the Department has determined that it is not practicable to complete the preliminary results of the administrative review within that statutory time limit. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, dated September 30, 1999.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until December 15, 1999.

Dated: October 30, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–27571 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 13, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers one producer/exporter, Saha Thai Steel Pipe Co., Ltd. (''Saha Thai'') and the period March 1, 1997 through February 28, 1998.

We gave interested parties an opportunity to comment on the preliminary results as discussed in the ''Analysis of Comments'' section below. Based on our analysis of comments received, we have made certain changes for the final results. The final weighted-average dumping margin is listed below in the section ''Final Results of the Review.''

EFFECTIVE DATE: October 21, 1999.

FOR FURTHER INFORMATION CONTACT: John Totaro, AD/CVD Enforcement Group III, Office VII, Room 7866, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1374.

APPLICABLE STATUTE: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to those codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on welded carbon steel pipes and tubes from Thailand (51 FR 8341). On March 11, 1998, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 1997

through February 28, 1998 (63 FR 11868). In response to requests by two importers, Ferro Union Inc. (''Ferro Union'') and ASOMA Corp. (''ASOMA''), and four domestic producers, Allied Tube and Conduit Corporation, Sawhill Tubular Division—Armco, Inc., Wheatland Tube Company, and Laclede Steel Company (collectively, the ''domestic producers'' or ''petitioners''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand. This review covers Saha Thai, a Thai manufacturer and exporter of subject merchandise to the United States. The period of review (''POR'') is March 1, 1997 through February 28, 1998. The Department published a notice of initiation of this antidumping duty administrative review on April 24, 1998 (63 FR 20378). Because the Department determined that it was not practicable to complete this review within statutory time limits, on November 27, 1998, we published in the **Federal Register** our notice of extension of time limits for the preliminary results of this review (63 FR 65573). On April 13, 1999, the Department published in the **Federal Register** the preliminary results of its administrative review of this antidumping order covering the period March 1, 1997 through February 28, 1998 (64 FR 17998). Because the Department determined that it was not practicable to complete this review within statutory time limits, on August 18, 1999, we published in the **Federal Register** our notice of extension of time limits for the final results of this review (64 FR 44892) The Department has now completed this review in accordance with section 751(a) of the Act.

Changes From the Preliminary Results

We modified our preliminary position with respect to Saha Thai's claim for duty drawback to allow Saha Thai a partial duty drawback adjustment. This change is explained in our response to Comment 1. We also changed our method of determining exchange rate fluctuations in this case, as described in our response to comment 2. As detailed in our response to Comment 6 and in our final results Analysis Memorandum, we modified the weights assigned to certain of the physical characteristics used in our model match program. Also, as explained in our response to Comment 7, in the preliminary results we incorrectly excluded a deduction for imputed credit from our calculation of constructed value. We agree that imputed credit should be deducted from constructed value and have done this for the final results. Finally, as discussed in our response to Comment 8, our preliminary results incorrectly stated that we verified only sales data, when, in fact, we examined sales and cost of production data.

Scope of the Review

The products covered by this administrative review are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as ''standard pipe'' or ''structural tubing,'' are hereinafter designated as ''pipe and tube.'' The merchandise is classifiable under the Harmonized Tariff Schedule (HTS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Act, from January 25 through January 29, 1999 we verified sales and cost of production information provided by the respondent, Saha Thai, using standard verification procedures, including examination of relevant financial records and analysis of original documentation used by Saha Thai to prepare responses to requests for information from the Department. Our verification results are outlined in the public version of the verification report (*See* Memorandum to the File from Steve Bezirganian and Marlene Hewitt, February 24, 1999) (''Saha Thai Verification Report''), on file in the Central Records Unit, Room B–099 of the Department (''CRU'').

Analysis of Comments

Saha Thai, Ferro Union and ASOMA (collectively ''Saha Thai'') and the petitioners submitted case briefs on May 13, 1999, and rebuttal briefs on May 18, 1999.

Comment 1: Duty Drawback Adjustment

Saha Thai requests that the Department increase export price by the amount of duties imposed by the Government of Thailand on raw material imports used in the production of subject merchandise, which were rebated or not collected because subject merchandise incorporating those raw materials was subsequently exported to the United States. Saha Thai asserts that documents on the record from Thai Customs authorities demonstrate the existence of import duty rebates received from the Government of Thailand for every reported U.S. sale.

Saha Thai claims that it benefitted from Thailand's duty drawback system in three ways: (1) By receiving a cash rebate for duties paid when importing hot rolled coil or zinc used in the production of subject merchandise subsequently exported to the U.S. (''cash duty drawback''); (2) by receiving a credit against a bank guarantee that it was obligated to post with Thai Customs instead of actually paying duties on imported coil or zinc (''guaranteed duty drawback''); and (3) by receiving an exemption from duties that would have normally been imposed on coil and zinc imports, but which were neither collected nor guaranteed at the time of importation because Saha Thai had entered the subject merchandise into a bonded warehouse, processed it and exported it to the U.S. (''suspended duties''). Saha Thai maintains that it has complete documentation on the record to justify the granting of its claimed duty drawback adjustment. Saha Thai argues that the Department rejected its claim because either it incorrectly believed, based on verification, that all of Saha Thai's drawback claims were based on cash payments and refunds of import duties, or it believed that a duty drawback is only warranted under the law if duties are paid in cash. Saha Thai suggests that the Department examined one ''randomly chosen'' import entry of raw materials and because it could not verify that duties were paid as opposed to guaranteed, determined that this finding undermined Saha Thai's entire claim. *See* Saha Thai case brief at 5–6.

Saha Thai cites the Department's two-prong test to determine, in cases in which import duties on raw materials are paid and then rebated, whether to grant a duty drawback adjustment: (1) Whether the import duty and rebate are directly linked to, and are dependent upon, one another, and (2) whether imported raw materials are sufficient to account for the duty drawback received on the exports of the manufactured products. Saha Thai states that in cases in which the import duties are not paid, but are suspended, the first prong of this test then becomes whether the import duties are actually not collected because the subject merchandise is exported to the United States. In no instance, Saha Thai asserts, does the Department require either that the specific input be traced from importation through exportation or that duties actually be paid and cash rebated before granting an adjustment for drawback. *Citing Carbon Steel Wire Ropes from Mexico,* 63 FR

46753, 46755–56 (September 2, 1998); *Certain Welded Carbon Standard Steel Pipes and Tubes from India,* 62 FR 47632, 47634 (September 10, 1997); *The Torrington Company* v. *United States,* 881 F. Supp. 622 (CIT 1995); and *Far East Machinery Co.* v. *United States,* 12 CIT 972, 974 (1988).

With regard to the first prong of the test, Saha Thai argues that the Thai law administered by Thai Customs: (1) Makes entitlement to cash duty drawback contingent upon both the payment of import duties and the subsequent exportation of the subject merchandise; (2) makes entitlement to guaranteed duty drawback contingent upon both the posting of a bank guarantee and the subsequent exportation of the subject merchandise; and (3) makes entitlement to the suspension of duties contingent upon establishing a bonded warehouse according to Thai law, entering the imported materials into that bonded warehouse and subsequently exporting merchandise incorporating such materials. Saha Thai argues that if the Department has denied duty drawback based upon a determination that the duties were not paid or properly suspended, then such a finding is ''a general indictment of Thailand's duty drawback system.''

Saha Thai points out that the Department had already accepted duty drawback claims under Thailand's duty drawback system in previous cases. *Citing Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan,* 56 FR 31765 (July 11, 1991) and *The Torrington Company* v. *United States,* 881 F. Supp. 622 (CIT 1995). Moreover, Saha Thai argues that in past administrative reviews of this same order, the Department verified and accepted Saha Thai's duty drawback claim. *Citing Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 63 FR 55578, 55588 (October 16, 1998) (final results); *Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 61 FR 56515, 56518 (November 1, 1996) (final results); *Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 61 FR 1328, 1333 (January 19, 1996) (final results); *Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 56 FR 26648 (June 10, 1991) (preliminary results); and *Certain Welded Carbon Steel Pipes and Tubes from Thailand,* 55 FR 42596,42597 (October 22, 1990) (preliminary results).

With regard to the second prong of the test, Saha Thai stated that it imported sufficient raw materials to account for the duty drawback received and duties suspended. Saha Thai asserts that each duty drawback claim granted by Thai customs enumerates the imported goods by entry which were subsequently used for the production of exported products. Thus, Saha Thai argues that it has met the requirements of the Department's two-prong test. Saha Thai also stated that it based part of its claim for a duty drawback adjustment upon import duties that were not paid, guaranteed or collected because the imported raw materials entered its bonded warehouse, and subject merchandise made from those materials was subsequently exported. Saha Thai argues that it remained liable for payment of duties on coil and zinc imports entered into its bonded warehouse if such raw materials were not used in production which was then exported. Saha Thai stated that it failed to claim in its questionnaire responses a duty drawback adjustment related to its bonded warehouse entries, but that this omission was an oversight. Saha Thai stated that it included this claim in its March 11, 1999 submission to the Department.

Petitioners argue that none of respondent's claims for duty drawback adjustments are justified because Saha Thai failed to substantiate its claims during verification. According to petitioners, Saha Thai failed to produce documents to support its cash-based duty drawback claim, and failed to describe either its bank guarantee-based or its bonded warehouse-based drawback adjustment claims. Therefore, petitioners contend, these drawback claims could not be accurately substantiated or verified. Petitioners also argue that Saha Thai has placed no data on the record regarding the fees Saha Thai paid for bank guarantees and has not indicated any offset to its claims for drawback adjustments for such fees. Similarly, petitioners allege that nothing on the record describes, or even mentions, Saha Thai's bonded warehouse operation as a basis for a drawback adjustment claim.

Petitioners argue that Saha Thai's claims for bank guarantee-based and bonded warehouse-based duty drawback adjustments do not meet the first prong of the Department's test for linking the drawback to the export of merchandise. According to petitioners, Saha Thai failed to give a detailed explanation of these programs. Citing the Department's determination in *Certain Welded Carbon Steel Pipes and Tubes from India,* 63 FR 32825, 32829 (June 16, 1998), petitioners assert that when a respondent fails to provide an explanation of the direct link between drawback claimed and exports as well as the details of the drawback program, the claimed drawback adjustment should be denied. Moreover, petitioners note that in this review, the deadline for the submission of factual information was 140 days from the last day of the anniversary month. However, petitioners argue, Saha Thai's first mention of bank guarantee and bonded warehouse operations was at verification, after the deadline. Consequently, petitioners argue that Saha Thai's submissions after the deadline are untimely and the Department should exclude them from the record of this review.

Department's Position: Pursuant to section 772 (c)(1)(B) of the Act, export price shall be increased by the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States. We have recognized, in previous segments of this proceeding as well as in other proceedings, that Thailand operates a duty drawback system and that valid claims for adjustment to U.S. price may be allowed in administrative reviews pursuant to this system. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 63 FR 55578, 55588–89 (October 16, 1998); *Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 61 FR 56515, 56518 (November 1, 1996); *Certain Textile Mill Products From Thailand: Final Results of Countervailing Duty Administrative Review,* 61 FR 2797, 2799 (January 29, 1996). Therefore, recognition of Thailand's duty drawback system is not the issue in this review.

However, the Department must analyze the facts presented in each segment of a proceeding to determine the accuracy and completeness of the duty drawback adjustment claim made by each respondent in each segment of a proceeding. The Department will grant a duty drawback adjustment if we determine: (1) That the import duty and rebate are directly linked to, and dependent upon, one another; and (2) that imported raw materials are sufficient to account for the duty drawback received on the exports of the manufactured product. *See Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review,* (''*Wire Rope From Mexico*'') 63 FR 46753, 46756 (September 2, 1998) (*citing Far East Machinery Co.* v. *United States,* 12 CIT 972, 974 (1988)).

In the preliminary results of this review, we rejected Saha Thai's claim for a duty drawback adjustment to export price, both cash-and guarantee-

based drawback, because we were ''unable to verify that the claimed adjustment accurately reflects the actual amount of duty drawback received.'' *See Certain Welded Carbon Steel Pipes and Tubes from Thailand; Preliminary Results of Antidumping Duty Administrative Review* 64 FR 17998, 18000 (April 13, 1999). In the most recently completed administrative review, the Department examined information similar to that provided by Saha Thai in its questionnaire responses in this review regarding cash-and guarantee-based duty drawback, and allowed Saha Thai's claimed drawback adjustment because the Department found that both information on the record and the verification supported the accuracy of Saha Thai's claimed duty drawback adjustment. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review,* 63 FR 55578, 55588–89.

In this review as well, certain information in Saha Thai's questionnaire responses and certain information examined at verification indicate that Saha Thai participates in cash-and guarantee-based duty drawback programs with Thai customs authorities, and that it received the claimed amount of drawback. Although certain documents appeared to support Saha Thai's claim, other information examined at verification, as well as the inconsistent explanations of Saha Thai's participation in the various drawback programs provided at verification, undermine the apparent completeness of the documentation Saha Thai submitted in its questionnaire responses. For example, as petitioners note, Saha Thai stated at verification that it pays banks a fee for taking on the risk of guaranteeing payment of the duties on Saha Thai's imports of hot-rolled coil and zinc. Payment of this fee, which would decrease the amount of Saha Thai's duty drawback adjustment claim, was not incorporated into Saha Thai's claim for a duty drawback adjustment.

In addition, at verification, we asked Saha Thai to provide support for its duty drawback claims related to a purchase of imported hot-rolled coil that was managed by one of Saha Thai's brokers. As shown in the verification report, Saha Thai's explanation was far from clear. For this one transaction, we asked for proof that duties had been paid for the coils in question. At various points in the verification, Saha Thai stated: (1) That it paid its broker the amount of import duties on this entry, (2) that these coils were delivered to Saha Thai's bonded warehouse and thus Saha Thai was not required to pay import duties, (3) that the line item for import duties on the broker's statement represented VAT tax, not import duties, and (4) that neither Saha Thai nor its broker had paid import duties on this merchandise, because Saha Thai had arranged for a bank guarantee which would permit Saha Thai to be exempt from paying import duties, pending export of Saha Thai merchandise containing the imported coil. Verification Report at 14–15.

Saha Thai stated in its case brief that the Department examined only one import entry at verification, and that this entry was not part of Saha Thai's claimed cash/guarantee duty drawback calculation. *Saha Thai Case Brief,* fn. 9. As an initial matter, the Department examined two import entries, the different quantities of which can be seen in Verification Exhibit 9, (pages 1–4 and pages 5–9). Contrary to Saha Thai's statement, one of these entries does relate to the claimed drawback amount, though the relationship between those documents and the claimed amount was only partially explained. Our examination of the other entry, though not a part of Saha Thai's claimed amount, is nonetheless illustrative as an import of raw material on which Saha Thai either paid duty or posted a bank guarantee in anticipation of receiving some form of drawback. *See Memorandum to the File from John Totaro: Analysis of the Claim for a Duty Drawback Adjustment Made by Saha Thai Steel Pipe Co., Ltd.* (August 11, 1999) (''Duty Drawback Memorandum'') at 3–4, on file in the CRU.

Therefore, we find that although there is enough record evidence to indicate that Saha Thai participates in cash-and guarantee-based duty drawback programs and thus to allow an adjustment for cash-and guaranteed-based duty drawbacks, Saha Thai failed at verification to describe and document the accuracy of its claimed duty drawback adjustment. As a result, we cannot allow the duty drawback adjustment as claimed by Saha Thai. Therefore, for purposes of these final results, we determine, in accordance with section 776(a)(2)(D) of the Act, that the use of facts available is appropriate as the basis of our adjustment to U.S. price for duty drawback. As facts available, on those sales for which Saha Thai claimed a cash-or guarantee-based duty drawback adjustment, we are allowing an adjustment to export price equal to the simple average of the reported per-ton duty drawback amounts that Saha Thai had calculated by export invoice. See August 3, 1998 QR at Exhibit 3 (public version on file in the CRU).

With regard to Saha Thai's claimed adjustment for suspended duties, Saha Thai argues that, under the laws of Thailand, a manufacturer may establish a bonded warehouse and, if certain conditions are met, be exempt from paying import duties on materials entered into that warehouse. *See* Saha Thai Case Brief at 9. In cases where the import duty is not collected, the first prong in the test for granting a duty drawback adjustment then becomes whether ''import duties were actually not collected by reason of the exportation of the subject merchandise to the United States.'' *See Wire Rope From Mexico,* 63 FR at 46756.

In this review, Saha Thai provided no records of any of the import entries of coil or zinc that it claims were exempted from duties because they were entered into Saha Thai's bonded warehouse and later exported as pipe products. Therefore, because there is no record of these imports on the record of this review, or of any import and export clearance documents related to the entry of imported raw materials into a bonded warehouse or export of pipes made from those raw materials, we cannot establish that ''import duties were actually not collected by reason of the exportation of the subject merchandise to the United States.'' *Id.* Therefore, we are not allowing Saha Thai to now claim duty drawback for these sales that were purportedly produced from inputs imported into a bonded warehouse. *See Stainless Steel Bar From Japan: Preliminary Results of Antidumping Administrative Review,* 64 FR 64 FR 10445 at 10445–46 (March 4, 1999); Duty Drawback Memorandum at 4–5.

Petitioners assert that Saha Thai failed to describe the bank guarantee duty drawback program until verification. However, we consider the information first submitted in Saha Thai's initial section C questionnaire response (August 3, 1998) and supplemental sections A, B, and C questionnaire response (September 23, 1998) to be sufficient to determine that Saha Thai participated in the guarantee-based duty drawback program. In particular, Saha Thai's September 23, 1998 supplemental questionnaire response indicates that Saha Thai participated in two duty drawback programs with Thai customs authorities: ''the documents in the exhibit [Exhibit 23] show the duty drawback amounts refunded to Saha Thai as well as the duties exempted. * * * The export report details the duty drawback calculation for each export transaction. * * * The preceding column shows whether the duty was

refunded by check 'C' or as a credit 'G.' '' September 23, 1998 QR at 27–28 (public version on file in the CRU). At verification, Saha Thai explained that these two programs were the cash-based and bank guarantee-based duty drawback systems discussed above. In addition, we believe that our choice of facts available appropriately accounts for any fees associated with the bank guarantee duty drawback process that may have offset Saha Thai's claimed duty drawback adjustment.

Finally, with regard to petitioners' assertion that the information Saha Thai provided on its bonded warehouse operation was untimely, as discussed above, we made our determination to not allow Saha Thai's claim for a duty drawback adjustment for import entries into a bonded warehouse because there was insufficient evidence on the record to meet the first prong of our test to grant such an adjustment when the import duty is not collected. Therefore, the Department did not consider the issue of timeliness.

Comment 2: Currency Conversion

Saha Thai argues that the Department should use actual daily exchange rates for the entire period of the baht's precipitous decline—which Saha Thai defines as July 2, 1997 to January 31, 1998—to convert the Thai baht to the U.S. dollars. The respondent argues that while the Department, in its preliminary results, correctly found that the rapid and unprecedented decline of the Thai baht on July 2, 1997 justified the suspension of its normal practice of applying a forty-day rolling average, or ''benchmark'' rate, for converting foreign currencies to U.S. dollars, it nonetheless failed to apply the actual daily exchange rates during the entire period of the baht's decline. Instead, Saha Thai states that the Department converted baht-denominated prices and costs to their U.S. dollar equivalents using its normal methodology, but utilized as a benchmark the stationary average of the baht to dollar exchange rate for the forty day period from July 2, 1997 to August 27, 1997. For the period after August 27, 1997, the Department reverted to using its normal methodology with the standard, rolling forty-day average benchmark. However, Saha Thai argues that the Thai baht continued to fall precipitously even after the August 27, 1997 cut-off date used by the Department to mark the end of the baht's decline. Because there was a continued decline in the baht even after August 27, 1997, Saha Thai contends that the Department should extend the period during which the baht is considered to be in a sustained decline through January 31, 1998, and that the Department should use actual daily exchange rates for that period.

Moreover, Saha Thai maintains that the methodology the Department used in this review is inconsistent with that used in other recent investigations involving countries which have experienced rapid, sustained devaluations. Saha Thai cites two investigations completed by the Department involving Korea, in which the Department found that a forty percent decline in the value of the Korean won amounted to more than a temporary fluctuation, and in which the Department used actual daily exchange rates to convert home market prices to U.S. dollars. *Citing Emulsion Styrene-Butadiene Rubber from the Republic of Korea* (''*Rubber from Korea*''), 64 FR 14865 (March 29, 1999) (final determination) and *Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444 (March 31, 1999) (final determination).

Petitioners maintain that the respondent's suggestion that the Department use daily exchange rates, notwithstanding fluctuations in the daily rates, would violate the statute. *See* 19 U.S.C. 1677b–1(a) (section 773A(a) of the Act). *See also* Statement of Administrative Action (at 171), House Doc. 316, 103rd Cong. 2d Sess. 841 (1994). Petitioners argue that the Department's currency conversion methodology utilized in this review recognizes the rapid devaluation of the Thai currency by establishing a separate benchmark for the period when such rapid devaluation was occurring. Petitioners emphasize that from July 2 through August 27, 1997, the Department used a stationary benchmark of average daily rates, which recognized the precipitous drop in exchange rates, but ''avoided undue daily fluctuations in exchange rates.'' *Certain Welded Carbon Steel Pipes and Tubes from Thailand; Preliminary Results of Antidumping Duty Review,* 64 FR 17998 (April 13, 1999). Petitioners contend that the Department was correct in using the standard benchmark (a rolling forty-day average) for the period in which fluctuation was still occurring.

Department's Position: We do not agree with Saha Thai's request for the use of actual daily exchange rates to convert Thai Baht to U.S. dollars for the entire period of the baht's decline from July 2, 1997 to January 31, 1998.

As stated in the preliminary results, we made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. *See* Change in Policy Regarding Currency Conversions, 61 FR 9434 (March 8, 1996); *see also Preliminary Results of Antidumping Duty Administrative Review; Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide From the Netherlands,* 64 FR 36841, 36843 (July 8, 1999), *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand,* 64 FR 30476, 30480 (June 8, 1999).

Effective July 2, 1997, the Thai government ended its restrictions on the movement of the dollar-baht exchange rate and allowed the rate to be determined by market supply and demand. Our analysis of Federal Reserve exchange rate data shows that the value of the Thai baht in relation to the U.S. dollar fell on July 2, 1997, by more than 18 percent from the previous day, a decline which was many times more severe than any single-day decline during several years prior to that date, and did not rebound significantly in a short time. As such, we determine that the decline in the baht from July 1 to July 2 following the change in the Thai government's exchange rate policy was of such a magnitude that the dollar-baht exchange rate cannot reasonably be viewed as having simply fluctuated at that time, *i.e.,* as having experienced only a momentary drop in value, relative to the normal benchmark. While we previously found a large and precipitous decline where the Korean won declined more than 40 percent, that decline occurred over a two-month period. Here, the decline was smaller, but occurred in a single day. Therefore, for these final results, we continue to find that there was a large, precipitous drop in the value of the baht in relation to the U.S. dollar on July 2, 1997.

We disagree with Saha Thai's claim that the baht continued to fall precipitously after August 27, 1997, and that only daily rates should be used through January 31, 1998. In its 1996 Policy Bulletin (61 FR 9434; March 8, 1996) on exchange rate methodology,

the Department defined an exchange rate ''fluctuation'' but also stated that it would use daily rates when ''the decline in the value of a foreign currency is so precipitous and large as to reasonably preclude the possibility that it is merely fluctuating.'' The Policy Bulletin did not define a ''precipitous and large'' decline in the value of a foreign currency but left this determination to be made in future cases. In *Rubber from Korea* and other Korean cases, the Department found that a decline of more than 40 percent within a two-month period was sufficiently large and precipitous that use of daily rates was warranted during this two-month period. In contrast, in *Extruded Rubber Thread from Indonesia,* the Department found that a decline of some 50 percent over five months was not precipitous and large and continued to employ its normal exchange rate methodology. *See* 64 FR 14693.

While we have concluded that the drop of more than 18 percent in the dollar-baht exchange rate on July 2, 1997, constitutes a ''precipitous and large'' decline, we do not find that the gradual decline that occurred over nearly seven months, from July 2, 1997, to January 31, 1998, qualifies as a ''large and precipitous'' drop for purposes of our exchange rate methodology.

We have, however, reexamined our methodology for addressing exchange rates following the large and precipitous decline on July 2, 1997. In the preliminary determination, we determined that, because a large and precipitous drop occurred on that one day, it was appropriate simply to begin on that day to use a new benchmark in order to avoid using pre-precipitous drop daily rates in calculating the benchmark for daily rates after the precipitous drop. Accordingly, for exchange rates between July 2 and August 27, 1997, the Department relied on the standard exchange rate model, but used as the benchmark rate a (stationary) average of the daily rates over this period.

As noted above, the gradual decline in the value of the baht over several months after July 2 was not so large and precipitous as to reasonably preclude the possibility that the exchange rate fluctuated from time to time during that period. Therefore, it is appropriate for the Department to use its standard methodology so as to ''ignore'' those fluctuations in accordance with section 773A of the Act. However, we also recognize that, following a large and precipitous decline in the value of a currency, a period may exist during which exchange rate expectations are revised and thus it is unclear whether further declines are a continuation of the large and precipitous decline or merely fluctuations. Under the circumstances of this case, such uncertainty may have existed following the large, precipitous drop on July 2, 1997. Thus, we devised a simple test for identifying a point following a precipitous drop at which it is reasonable to think that exchange rate expectations have been sufficiently revised that it is appropriate to resume using the normal methodology. Beginning on July 2, 1997, we used only actual daily rates until the daily rates were not more than 2.25 percent below the average of the 20 previous daily rates for five consecutive days. At that point, we determined that the pattern of daily rates no longer reasonably precluded the possibility that they were merely ''fluctuating.'' (Using a 20-day average for this purpose provides a reasonable indication that it is no longer necessary to refrain from using the normal methodology, while avoiding the use of daily rates exclusively for an excessive period of time.) Accordingly, from the first of these five days, we resumed classifying daily rates as ''fluctuating'' or ''normal'' in accordance with our standard practice, except that we began with a 20-day benchmark and on each succeeding day added a daily rate to the average until the normal 40-day average was restored as the benchmark.

Applying this methodology in the instant case, we used daily rates from July 2, 1997 through August 4, 1997. We then resumed the use of our normal methodology, starting with a benchmark based on the average of the 20 reported daily rates from July 8 through August 4.

Comment 3: Exchange Losses

Saha Thai maintains that it incurred unanticipated and unprecedented exchange losses in 1997 which fit the definition of ''extraordinary'' established by Department precedent and U.S. GAAP. According to Saha Thai, U.S. GAAP defines: (1) ''Extraordinary'' as ''events and transactions that are distinguished by their unusual nature and by the infrequency of their occurrence'', (2) ''unusual nature'' as ''the underlying event or transaction possesses a high degree of abnormality and is of a type clearly unrelated to the ordinary and typical activities of the enterprise, taking into account the environment in which the enterprise operates'', and (3) ''environment in which the enterprise operates'' as including ''such factors as the characteristics of the industry or industries in which it operates, the geographical location of its operations, and the nature and extent of governmental regulation.'' Saha Thai describes the Government of Thailand's decision to float the baht as ''highly abnormal (it can only be taken once),'' as an event which ''would not reasonably be expected to recur in the foreseeable future'' and as a ''one-time irrevocable * * * government * * * decision to change the fundamental nature of the nation's exchange rate regime,'' and therefore argues that it is consistent with the definition of ''extraordinary'' under U.S. GAAP. Saha Thai asserts that contrary to the Department's memorandum to the file (citing Foreign Exchange Loss Memorandum to The File from Marlene Hewitt, dated March 31, 1999), the decision to float the baht was not a ''usual'' or ''frequent'' move on the part of the Thai Government that could easily be reversed, because prior to the decision to float the baht, the exchange rate was fixed by the Thai government.

Given their extraordinary nature, Saha Thai requests that the Department amortize these exchange losses over a five-year period. The respondent argues that failure to do so distorts the margins for antidumping purposes. Saha Thai cites the following cases in which the Department either excluded entirely or has amortized extraordinary costs over a reasonable period of time: *Stainless Steel Wire Rod from Taiwan,* 63 FR 40467 (July 29, 1998); *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled from Japan,* 61 FR 38153 (July 23, 1996); *Fresh Cut Roses from Ecuador,* 60 FR 7038 (February 6, 1995); and *Fresh Cut Roses from Colombia,* 60 FR 7001 (February 6, 1995). Saha Thai argues that according to Thai GAAP, Thai companies are permitted to calculate losses based on the difference in the baht value of foreign-currency denominated assets and liabilities between July 2, 1997 and the end of the first accounting period in which the baht was floated, and to report such costs as extraordinary in their financial statements.

Saha Thai argues that, if the Department includes all exchange losses in interest expense or G&A expense, it should allow an offset to cost of production for exchange gains earned on accounts receivable. Saha Thai states that the Department's treatment of exchange rate gains and losses in cost of production calculations should reflect economic and business reality, and that for companies buying and selling in foreign currencies the overall currency position should be determinative of actual costs. Saha Thai asserts that

currency gains on sales are just as much a part of financing costs as currency losses on purchases. Saha Thai believes that the Department's treatment of exchange gains and losses—denying an offset for currency gains on sales on the basis that these gains are sales-related income and not a cost of production, and also denying a circumstance of sale adjustment for foreign currency gains—violates the WTO Antidumping Agreement, which states that price comparisons should be conducted in a fair manner. *See* WTO Antidumping Agreement at Article 2.4.

Saha Thai also argues that it ''self-hedges'' its currency exposure in that its purchases of raw materials in dollars are offset by its sales in dollars, and therefore that the Department should not ascribe to the period of material purchases a ''paper cost''—the exchange rate losses—which is reversed in the following year. Saha Thai argues that to do so would be unreasonable and distortive, and that the Department should exercise its discretion under section 773(f)(1)(A) of the Act in determining the proper allocation of costs.

Finally, Saha Thai argues that, if the Department decides not to treat its 1997 exchange losses as extraordinary and therefore does not amortize these losses over a reasonable period of time, it should follow its past precedent of treating the portion of the loss incurred on raw materials purchases in the same manner as other costs associated with current period raw material purchases. Saha Thai cites several cases in which the Department has treated foreign exchange transaction costs associated with raw materials purchases as a cost of manufacturing. *See Stainless Steel Round Wire from Taiwan,* 64 FR 17336, 17338 (April 9, 1999) (final determination); *Emulsion Styrene-Butadiene Rubber from the Republic of Korea,* 64 FR 14871 (March 29, 1999); *Steel Wire Rod from Trinidad and Tobago,* 63 FR 9181 (February 24, 1998); and *Canned Pineapple Fruit from Thailand,* 63 FR 7392, 7401 (February 13, 1998). Saha Thai argues that the appropriate method for expensing exchange losses on raw materials is to transfer all purchase expenses to current costs.

Petitioners argue that the Department's refusal to amortize Saha Thai's 1997 foreign exchange losses as 1997 losses, which were expressed in Saha Thai's financial statements in accordance with Thai GAAP as a normal business expense, was reasonable and consistent with Department practice because these losses were not extraordinary. *Citing Fresh Chilled Atlantic Salmon from Norway,* 58 FR 37912, 37915 (July 14, 1993); *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from the Netherlands,* 58 FR 37199, 37204 (July 9, 1993).

Petitioners assert that 19 U.S.C. 1677b(f)(1)(A) (section 773(f)(1)(A) of the Act) requires that the Department calculate costs on the basis of a respondent's financial records, provided that such records are maintained in accordance with GAAP and reasonably reflect costs. *Citing Asociacion Colombiana de Exportadores de Flores* v. *United States,* 6 F. Supp. 2d 865 (CIT 1998). Petitioners note that Saha Thai characterized its losses on exchange transactions as a normal business expense during verification, and stated in its case brief that 1997 exchange losses were expensed in the company's financial statements in accordance with Thai GAAP. Consequently, petitioners assert that the Department should treat exchange losses in the same manner they were booked by Saha Thai, because this treatment conforms with the home market's GAAP and represents consistent treatment of these expenses. *Citing Certain Welded Carbon Steel Pipe and Tube from Turkey,* 63 FR 35190, 35199 (June 29, 1998) and *Certain Steel Concrete Reinforcing Bars from Turkey,* 62 FR 9737, 9743 (March 4, 1997).

In response to Saha Thai's request that losses associated with raw material purchases be assessed as a cost of manufacturing, the petitioners argue that Saha Thai's internal bookkeeping on raw material inventories cannot override the treatment of the exchange losses in Saha Thai's audited financial statements. *Citing DRAMS of One Megabit and Above from Korea,* 58 FR 15467, 15464 (March 23, 1993).

Petitioners also argue that the Department should not change its established practice of denying circumstance of sale adjustments for exchange gains on accounts receivable, as Saha Thai requests. Petitioners argue that 19 CFR 351.410 (c) and (d) provide that such an adjustment will be granted for ''direct selling expenses and assumed expenses,'' such as ''commissions, credit terms, guarantees, and warranties.'' Petitioners argue that the Department's ''regulations for such an adjustment require that reason for the circumstance of sale adjustment have an effect on the prices charged. * * *'' *Quoting FAG U.K., Ltd.* v. *United States,* 945 F. Supp. 260 (CIT 1996). Petitioners argue that because Saha Thai failed to demonstrate that its export prices are directly affected by exchange rate gains resulting from the conversion of U.S. dollars into local currency, its circumstance of sale claim should be denied. *Citing Cold-Rolled Carbon Steel Flat Products from Argentina,* 49 FR 48588 (December 13, 1984); *Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Germany,* 58 FR 37136, 37149 (July 9, 1993).

Petitioners further argue that in calculating COP and CV, it is the Department's normal practice to ''distinguish between exchange gains and losses realized or incurred in connection with sales transactions and those associated with purchase transactions.'' *Quoting Stainless Steel Round Wire from Canada,* 64 FR 17324, 17334 (April 9, 1999); *citing Steel Wire Rod from Trinidad and Tobago,* 63 FR 9177, 9181 (February 24, 1998); *Stainless Steel Wire Rod from Japan,* 63 FR 40434, 40441 (July 29, 1998); *Certain Welded Carbon Steel Pipe and Tube from Turkey,* 63 FR 35190, 35198 (June 19, 1998); *Certain Steel Concrete Reinforcing Bars from Turkey,* 62 FR 9737, 9741 (March 4, 1997); and *Certain Pasta from Turkey,* 61 FR 30309, 30324 (June 14, 1996). Petitioners argue that it has been Commerce's long-standing analysis that exchange gains and losses from sales transactions are not related to the manufacturing activities of the company. Petitioners cite the following cases to support their argument: *Stainless Steel Round Wire from Canada,* 64 FR 17334 (April 9, 1999); *Steel Wire Rod from Trinidad and Tobago,* 63 FR 9181 (February 24, 1998); *Fresh Atlantic Salmon from Chile,* 63 FR 31411, 31430 (June 9, 1998); *Circular Welded Non-Alloy Pipe and Tube from Mexico,* 62 FR 37014, 37026 (July 10, 1997); *Polyethylene Tenephthalate Film, Sheet, and Strip from the Republic of Korea,* 56 FR 16305, 16313 (April 22, 1991). According to petitioners, this policy is not inconsistent with the Department's treatment of exchange gains in the context of a circumstance of sale adjustment, and petitioners argue that the Department should maintain such a policy in this review.

Department's Position: We disagree with the respondent that the Thai Government's monetary policy to alter currency regimes has any bearing on the case. Changes in exchange rates, even large ones, are neither unusual in nature nor infrequent events. Additionally, the company did not treat the effect of this event as an extraordinary item in its financial statements.

In addition, we have not amortized certain portions of its POR exchange rate losses over five years, because these losses were incurred on current debt as opposed to long-term foreign currency debt. The Department's practice is to allow the respondent to amortize foreign exchange losses over the remaining life of the loans to which they relate. *See Final Determination of Sales at less than Fair Value: Fresh Cut Roses from Ecuador,* 60 FR 7019, 7039 (February 6, 1995) (losses amortized on a straight-line basis over the life of the loan and included in the net interest expense calculation); and *Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple from Thailand,* 63 FR 43661, 43669 (August 14, 1998).

Furthermore, the Department normally includes in its calculation of COP and CV foreign exchange gains and losses resulting from transactions related to a company's manufacturing operations (*e.g.*, purchases of inputs). *See Final Determination of Sales Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea,* 56 FR 16305, 16313 (April 22, 1991) (comment 16), and *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Trinidad & Tobago,* 63 FR 9177, 9181–82 (February 24, 1998). Saha Thai's foreign exchange losses, which are included in its COP and CV, are for losses resulting from raw materials purchase transactions or borrowing money to support its production operations. Since these activities giving rise to the foreign exchange gains and losses directly relate to the company's production operations, we included them in the COP and CV.

In accordance with section 773 (f)(1)(A) of the Act, the Department normally calculates costs based on the records of the company, ''if such records are kept in accordance with the generally accepted accounting principles of the exporting country * * * and reasonably reflect the costs associated with the production and sale of the merchandise.'' In the instant case, in accordance with Thai GAAP, respondent wrote off the entire amount of the foreign exchange loss associated with foreign debt in the current year. Thus, consistent with Department practice, the Department has not amortized the exchange losses. Rather, for calculating COP and CV, we treated these losses as Saha Thai treated them in its financial statement—as losses expensed in the current financial period—and included all exchange rate losses in G&A or interest expense. Accordingly, there is no justification to grant a COP offset.

In addition, petitioners correctly argue that Saha Thai is not entitled to a circumstance of sale adjustment for foreign currency gains related to its sales transactions. Moreover, we disagree with Saha Thai's assertion that the Department's treatment of exchange gains and losses in the preliminary results violates the requirement of the WTO Antidumping Agreement that price comparisons be conducted in a fair manner. We included Saha Thai's exchange gains and losses in our calculation of COP and CV in a manner consistent with the Act, which is consistent with the WTO Antidumping Agreement.

Comment 4: Date of Sale

In their case brief, petitioners argue that purchase order date, rather than invoice date, better reflects the date upon which Saha Thai established the material terms of sale for export of subject merchandise to the United States. Petitioners note that the Department's regulations establish that date of sale will normally be the invoice date as recorded in the ordinary course of business. Nonetheless, petitioners argue, the record in the instant case supports the Department's use of purchase order date as the date of sale. Petitioners claim that the Department's continued reliance upon invoice date is not an accurate reflection of the facts of the case and that the Department's practice has been to determine the date on which price and quantity for a sale are finalized and establish this as the date of sale. *Citing* 19 CFR section 351.401(i); *Al Tech Speciality Steel Corp.* v. *United States,* Consol. Court No. 97–08–01328, Slip Op. 98–136 (Sept. 24, 1998) citing *Silicon Metal from Brazil,* 61 FR 46763, 46766 (September 5, 1996), and *Titanium Sponge from Japan,* 54 FR 13403, 13404 (April 3, 1989).

Petitioners assert that the Department's regulations establish that the date of sale will normally be the invoice date unless ''a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR Section 351.401(i) and *Standard Line and Pressure Pipe from Germany,* 63 FR 13217, 13226 (March 18, 1998). Petitioners argue that the standard of ''better reflects,'' as laid out in the Department's new regulations, is valid and applicable if the material terms of a sale are usually established on a date other than invoice date. *See Antidumping Duties; Countervailing Duties; Final Rule* (''*Final Rule*''), 62 FR 27296, 27348 (May 19, 1997) (Preamble), and *Circular Welded Non-alloy Steel Pipe from Korea,* 62 FR 64559, 64560 (December 8, 1997) (preliminary results). Petitioners cite to a recent final determination in which the Department emphasized that the regulations allow for flexibility in identifying the appropriate date of sale if the facts of the case show that a date other than invoice date is the date upon which the material terms of a sale are established. *See Circular Welded Non-Alloy Steel Pipe from Korea,* 63 FR 32833, 32835 (June 16, 1998). Petitioners state that the Department can select a date of sale other than the date on which an agreement on the material terms of a sale has been reached if changes to the material terms of the sale are common to the extent that the initial agreement is not binding or definite. *See Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15444, 15449–15450 (March 31, 1999).

Petitioners assert that evidence of the usual date for establishing terms of sale must be ''satisfactory.'' *See Final Rule* 62 FR at 27348; *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan,* 64 FR 12951, 12957 (March 16, 1999); *Canned Pineapple Fruit from Thailand,* 63 FR 43661, 43668 (August 14, 1998). Petitioners argue that evidence in the instant case establishes that the material terms of Saha Thai's U.S. sales are usually set at purchase order date and that the specific evidence to support this is more than satisfactory. Finally, petitioners argue that the record in the case clearly shows that a date other than commercial invoice date better reflects the date on which the material terms of sale for U.S. export transactions are established.

Petitioners contend that during the 1996–1997 administrative review Saha Thai did not respond to the Department's request for information related to date of sale but, instead, argued that the Department's regulations called for the use of invoice date and, therefore, it would not be relevant for Saha Thai to respond to questions related to date of sale. *See Certain Welded Carbon Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review,* (''*1996–1997 Final Results*'') 63 FR 55578 (October 16, 1998). Petitioners argue that the Department, despite the facts on the record in the 1996–1997 review, incorrectly chose invoice date as the date of sale because of the Department's analysis that sample contracts and invoices demonstrated that changes occurred beyond tolerance levels established in an initial contract, between purchase order and invoice

date. *Citing 1996–1997 Final Results,* 63 FR at 55587 and current litigation contesting the Department's determination in *Allied Tube and Conduit Corp.* v. *United States*, Court No. 98–11–03135. Petitioners argue that the facts on the record in the instant review are more definitive than the 1996–1997 administrative review in supporting the use of purchase order date as the date of sale.

Petitioners argue that after Saha Thai and its U.S. customers enter a contract agreement, the customer submits purchase orders for specific products. *See* Memorandum to File from Steve Bezirganian and Marlene Hewitt, Verification of Saha Thai Steel Pipe Co., Ltd., 1997–1998, February 25, 1999 (''Verification Report'') at 20. Petitioners argue further that Saha Thai sells specific, custom lengths to U.S. customers and, therefore, it can be assumed that the purchase orders submitted by U.S. customers initiate a made-to-order transaction. Petitioners argue that the Department's conclusions reached through conducting sales traces at verification support the use of purchase order date as the date of sale.

However, petitioners argue that the Department, for purposes of administrative convenience, chose to use invoice date as date of sale despite overwhelming evidence to the contrary. *See* Verification Report at 37, and *Preliminary Results,* 64 FR at 17999. Petitioners argue that the Department cannot go against its own regulations for the sake of administrative convenience. *See Ferro Union, Inc.* v. *United States,* Slip Op. 99–27, March 23, 1999 at 9–10, n.9 citing *Voge* v. *United States*, 844 F. 2d 776, 779 (Fed. Cir. 1988); *Reuters Ltd.* v. *FCC,* 781 F. 2d 946, 950 (D.C. Cir. 1986).

With regard to matching sales if purchase order date is used as the date of sale, petitioners assert that Saha Thai was well aware during the 1997–1998 administrative review that the material terms of its U.S. sales did not change after the purchase order date and that, accordingly, the Department should apply adverse facts available where sales matching data is inadequate.

The respondent rebuts petitioners' argument that purchase order date is the date upon which the material terms of Saha Thai's sales to the United States are established and asserts that the Department should continue to use invoice date, consistent with the Department's statutory and regulatory framework, for the final determination in the instant case. Furthermore, the respondent argues that the facts on the record demonstrate that the material terms of Saha Thai's sales to the United States are not confirmed until invoice date. Finally, the respondent argues that if the Department changes its date of sale methodology in the instant review, the use of supplemental verified data from the previous review—rather than the application of adverse facts available—would be the only appropriate course of action.

The respondent argues the presumption for the Department to consider invoice date as the date of sale is well established. *Citing* 19 CFR section 351.401(i) (1998) and 62 FR at 27348–49. Given the presumption for the use of invoice date as date of sale, Saha Thai further argues that in a recent antidumping proceeding, the Department also favored the use of a single date of sale for each respondent for purposes of making more efficient use of the Department's resources and enhancing the predictability of outcomes. *Citing Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329, 24335 (May 6, 1999) (final determination). In the context of a recent antidumping proceeding and decision by the Department to use invoice date as date of sale, the respondent argues that for Saha Thai there is no uniform event prior to invoice date that can be used as date of sale because the price and quantity of merchandise may change until the invoice is issued to the customer. *See Stainless Steel Plate in Coils (''SSPC'') from the Republic of Korea,* 64 FR 15444, 15449–15450 (March 31, 1999) (final results).

The respondent cites to a large number of recent cases in which the Department used invoice date as the date of sale even where petitioners argue that another date was more appropriate: *See Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products from Korea,* 64 FR 12927, 12933–12935 (March 16, 1999) (final results); *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan,* 64 FR 24329, 24331–24335 (May 6, 1999) (final determination); *Stainless Steel Plate in Coils from Belgium,* 64 FR 15476, 15478–15482 (March 31, 1999) (final determination); *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada,* 64 FR 2173, 2178 (January 13, 1999) (final results); *Stainless Steel Plate in Coils from South Africa,* 64 FR 15459, 15463–15465 (March 31, 1999) (final determination); and *Emulsion Styrene-Butadiene Rubber from the Republic of Korea,* 64 FR 14865, 14869 (March 29, 1999) (final determination). The respondent argues that petitioners' reliance on *Corrosion-Resistant Flat Products from Japan* as an example of the Department's use of order confirmation date as date of sale is not relevant and is based on facts not present in the instant case. *See* Petitioners Case Brief at 5–6 and *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan,* 64 FR 12951, 12957–12958 (March 16, 1999) (final results). Finally, the respondent argues that the Department, in a recent case, rejected a petitioner's request for use of order confirmation date as date of sale in order to avoid using different dates of sale in the home and U.S. markets. *See Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Germany,* 63 FR 13217, 13226 (March 18, 1998) (final results).

The respondent rebuts petitioners' argument that purchase order date should be used rather than invoice date because evidence on the record shows that the material terms of sales do in fact change between the purchase order and invoice date. Citing to the Department's preliminary results, the respondent argues that the Department has already recognized that while price and quantity for sales to the United States may be established at the date of the purchase order, price and quantity may not be set until invoice date. *Citing Preliminary Results,* 64 FR at 17999.

Saha Thai also rebuts petitioners' argument that the Department's analysis in the preliminary results was based on administrative convenience. The respondent agrees with petitioners' assertion that Saha Thai ships merchandise to customers in the United States under umbrella contracts which establish price and general quantity. However, the respondent argues that a number of the sales traces examined by the Department at verification demonstrate that changes to price and quantity after the purchase order do occur. Furthermore, the respondent argues, the Department noted at verification that Saha Thai utilizes invoice date as its date of sale in its own accounting system. The respondent notes that the Department has found that a respondent's use of invoice date as date of sale in its internal records and financial statements is one reason for the Department to select invoice date, rather than purchase order or order confirmation date, as the date of sale. *See Stainless Steel Plate in Coils from South Africa,* 64 FR 15459, 15464 (March 31, 1999) (final determination).

Finally, the respondent rebuts petitioners' assertion that the Department should apply adverse facts available if the Department chooses to change its date of sale methodology for the final determination. The respondent

argues that it fully complied with the Department's instructions and that it reported all U.S. entries during the POR according to these instructions. Saha Thai argues that, if the Department chooses purchase order date as the date of sale, the Department may request to incorporate a few additional months of home market sales from the previous period of review in order to match home market sales with contemporaneous U.S. market sales. The respondent argues that these sales were verified by the Department in the previous administrative review and, therefore, application of adverse facts available would be unwarranted.

Department's Position: To determine the date of sale for this review, we evaluated, pursuant to section 351.401(i) of the Department's regulations, whether ''a date other than the date of invoice * * * better reflects the date on which the exporter or producer establishes the material terms of sale.''

Saha Thai reported invoice date as the date of sale in its questionnaire responses. August 3, 1998 QR at C–17. The response also provided information that supports the use of invoice date as the date of sale. For example, Saha Thai stated that, ''* * * for sales to Ferro Union (accounting for two-thirds of the quantity sold to the U.S.) the contract notes only the total quantity to be ordered. The specific quantity for each product is set subsequently. *The exact quantity for each sale is not determined until the merchandise is shipped.*'' September 23, 1998 QR at 13 (emphasis added).

At verification, Saha Thai stated that the contracts it enters into with U.S. customers bind the parties to the quantities agreed upon in the contract, within a tolerance. *See Verification Report* at 20. Saha Thai further stated that after a contract is made, it consults with the customer on a production and shipping schedule, after which the customer submits purchase orders to Saha Thai that indicate the specific quantities to be supplied for each product. *Id.* According to Saha Thai, the quantity tolerance in its sales contracts applies to the total quantity on a purchase order (including all products), not to the quantity for each individual product ordered. *Id.*

Saha Thai stated at verification that it typically meets the quantity tolerances (both per purchase order and per the underlying contract), and that between the purchase order and the invoice, neither the agreed upon quantity nor the price itself would change. *Id.* However, Saha Thai also stated at verification that ''between the contract and invoice dates, it is still an open question as to what the quantities will be for a specific product.'' *Id.* In addition, we noted at verification that, for accounting purposes, Saha Thai considers the date of invoice to be the date of sale, and records sales in its accounting system on this basis.

Despite the apparent contradictions presented by the explanations Saha Thai offered in its questionnaire responses and at verification, the facts on the record, namely the actual sales documents, establish invoice date as the most appropriate date of sale. In situations such as this, where an agreement on the material terms of sale has been reached, but is nevertheless subject to change, our practice, as properly cited by petitioners, is to focus our analysis ''on whether changes are sufficiently common to allow us to conclude that initial agreements should not be considered to finally establish the material terms of sale.'' *See Stainless Steel Plate in Coils from the Republic of Korea,* 64 FR 15449–50 (March 31, 1999) We have analyzed five sets of contracts, purchase orders and invoices contained in the record: Saha Thai's July 1, 1998 Sales Documents supplement to its June 29, 1998 Section A questionnaire, and Verification Exhibits 21, 22 and 23. These documents establish a pattern of material changes in quantity occurring in a significant number of sales when purchase order quantity is compared to invoice quantity. We noted that the frequency and degree of the changes in quantity between invoice and purchase order were not identical to that observed in the previous review. Nonetheless, the sales documents in this review reflect the same pattern evident in the previous review: that the quantity in Saha Thai's U.S. sales is not commonly established until the invoice. Therefore we find that the facts support our decision to maintain our date of sale methodology for Saha Thai in this review. A detailed discussion of our analysis is contained in the *Memorandum to the File from John Totaro: Determination of the Date of Sale for Saha Thai Steel Pipe Co., Ltd.* (August 11, 1999) (''Date of Sale Memorandum''), on file in the CRU.

Given that the record evidence indicates that the quantity of subject merchandise invoiced to Saha Thai's U.S. customers varies from the quantities requested in the customers' purchase orders, we find that invoice date is the appropriate date of sale. *See* Preamble to the *Final Rule,* 62 FR at 27348–49. Therefore, our preliminary determination on date of sale is unchanged for these final results.

Comment 5: Duty Reimbursement

Petitioners assert that, as expressed in the Department's Verification Report, Saha Thai assumed the obligation of paying antidumping duties for entries in the U.S. during the POR. Petitioners argue that Saha Thai's assumption of responsibility for the payment of antidumping duties constitutes a nullification of the relief these duties were intended to provide. *Citing* Verification Report at 21 and 34.

Petitioners argue that Saha Thai's actions should be addressed by the Department according to the Department's regulations related to duty reimbursement. *Citing* to 19 CFR section 351.402(f)(1)(A), petitioners urge the Department to deduct the amount of antidumping duties paid directly by Saha Thai on its entries of subject merchandise into the United States.

The respondent rebuts petitioners' assertion that the Department should deduct the amount of antidumping duties paid directly by Saha Thai on its U.S. entries. The respondent asserts that petitioners, in referring to U.S. entries, are referring only to those U.S. transactions in which Saha Thai acted as the importer-of-record and for which Saha Thai posted antidumping duty deposits. *See* Petitioners Case Brief at 11. The respondent argues that the Department's regulations do not support petitioners' argument. The respondent asserts that the plain language of the Department's regulations pertaining to deduction of antidumping or countervailing duty payments from export price or constructed export price clearly establishes that this deduction should only take place if there are two entities—*i.e.,* if an exporter or producer pays duties on behalf of a separate importer. *Citing* 19 CFR section 351.402(f)(1)(A). The respondent claims that, because Saha Thai is the producer, the exporter, and the importer of its U.S. entries in the instant case, the reimbursement section of the Department's regulations is not applicable.

The respondent also rebuts petitioners' argument on the grounds that petitioners do not cite any administrative precedent prior to the completion of the URAA. The respondent points out that the SAA establishes that the Department has no intention of changing its methodology related to the finding of reimbursement. *Citing* SAA at 216. The respondent further argues that the Department has, in recent antidumping proceedings, reaffirmed its interpretation of the regulatory language related to reimbursement. The respondent argues

that in recent cases the Department has not applied its reimbursement regulation to a single entity. *See Circular Welded Non-Alloy Steel Pipe and Tube from Mexico,* 63 FR 33041 (June 17, 1998) (final results) and *Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands,* 64 FR 11825 (March 10, 1999) (final results). The respondent argues, in summary, that the regulation cited by petitioners to support the argument that antidumping duties paid by Saha Thai for U.S. entries should be deducted from export price is not applicable in the instant case.

Department's Position: Section 351.402(f) of the Department's regulations addresses reimbursement of antidumping duties. The section states, in relevant part, that, ''[i]n calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer: (A) Paid directly on behalf of the importer; or (B) Reimbursed to the importer.'' 19 CFR section 351.402(f)(1).

The Department recently addressed an allegation of reimbursement that involved similar facts in *Certain Cold-rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 64 FR 11825 (March 10, 1999). In that case, the manufacturer/exporter was also the importer of record during the remaining part of the period of review. On the issue whether the Department's reimbursement regulation is applicable whenever the foreign producer is also the importer of record, we stated that ''we disagree with petitioners that the reimbursement regulation is applicable where the importer and exporter are the same corporate entity. Our decision as to reimbursement is based upon our regulatory interpretation of 19 CFR 351.401(f) [sic], which is that two separate corporate entities must exist in order for the Department to invoke the reimbursement regulation.'' 64 FR at 11833, *citing Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review,* 63 FR 33041, 33044 (June 17, 1998) (''*Pipe from Mexico*'').

In Pipe from Mexico, the Department was applying the reimbursement provision from its old regulations, 19 CFR section 353.26, which is substantially the same as the current section 351.402(f). In that case, the Department also examined a factual situation in which the respondent was the producer, exporter, and importer of record for U.S. sales of subject merchandise. The Department found that two separate corporate entities must exist to invoke the reimbursement regulation, and that therefore, the reimbursement regulation does not apply where the producer/exporter and the importer are one and the same entity. *See* 63 FR at 33044.

Saha Thai explained at verification that at a certain point in the POR, it became responsible for U.S. Customs clearance, which meant that Saha Thai would pay the import duties on its U.S. sales after that point, including antidumping duties. *See* Verification Report at 34. This statement, as well as other facts on the record of the instant review which cannot be discussed in a public notice due to their proprietary nature, indicate that, like the respondent in *Pipe from Mexico,* Saha Thai is the importer as defined in 19 CFR 351.102(b) because it is ''the person by whom * * * the subject merchandise is imported.'' *See Memorandum to the File from John Totaro: Analysis of Saha Thai Steel Pipe Company, Ltd for the Final Results of the Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from Thailand for the Period March 1, 1997 Through February 28, 1998* (August 11, 1999) (''Final Results Analysis Memorandum'') at 9, on file in the CRU. Because the facts on the record indicate that Saha Thai has neither paid antidumping duties directly on behalf of another entity, nor reimbursed another entity, we find that section 351.402(f) of the Department's regulations is inapplicable. Therefore, we did not deduct the amount of antidumping duties Saha Thai paid on certain U.S. sales from our calculation of Export Price for those sales.

Comment 6: Weighting of Physical Characteristics for Model Match

The respondent argues that the Department incorrectly revised the values for Saha Thai's product characteristics for the preliminary determination and that these revisions do not accurately reflect physical characteristic differences in a number of instances. The respondent requests that the Department, for the final determination, abandon its methodology of grouping all sizes of Saha Thai merchandise into three distinct groups. The respondent argues that the Department's consolidation of its various product sizes into three groups is highly arbitrary and distorts product matching criteria. The respondent proposes that the Department use a methodology for converting actual pipe diameter to a code to be used in product matching by multiplying the actual diameter by a thousand, *i.e.*, ¾ inch pipe would be coded as 750, 1 inch pipe would be coded as 1000.

In addition, the respondent argues that the Department also incorrectly assigned general matching codes to a variety of subject merchandise's wall thicknesses. The respondent argues that, for example, the Department in its preliminary determination identified fence tube as being closer in grade and wall thickness to one grade but, in its analysis, assigned fence tube a GRADEH/U value which ranks it for matching purposes to a different grade of pipe. *See* Verification Report at 23 and Saha Thai product brochure attached to original response as exhibit SR1–A19. The respondent argues that the Department should use the numerical coding for wall thickness/grade that it used in previous administrative reviews. The respondent proposes in its case brief that the Department apply the following numeric designations that it used in previous segments of this proceeding: ''ASTM=10; BS–S=100; BS–L=110; BS–M=120; BS–L=130; fence tube=20.''

Petitioners argue that Saha Thai's suggestion to match wall thickness based on numerical assignments should not be adopted. Petitioners assert that the respondent's suggestion is confusing and does not result in better product matches. Petitioners note that fence tube should not be matched to ASTM specifications because fence tube typically has a light wall appropriately matched to BS light. Hence, matching should continue to be on a wall thickness basis.

Petitioners also reject Saha Thai's comments on matching by size as a way to improve the Department's ability to match products.

Department's Position: The respondent is correct in noting that our product weighting for the size characteristic differed from that in the previous administrative review. A change was necessary because Saha Thai sold its products in a wider array of sizes than in the previous review. However, in reexamining the weights we assigned in the preliminary results, we determined that some of our changes could result in anomalous matches. Therefore, for the final results, we assigned the same weights to the size characteristics as we had assigned in the previous review where possible, but multiplied the previously assigned weight by five. For example, in the 1996–1997 review, we assigned one-inch pipe a weight of 20; in the final results of this review, we assigned one-inch pipe a weight of 100. For the sizes of pipe sold in this review but not in the

previous review, we assigned weights proportionate to the weights derived from the previous review weights. The result is an array of size characteristic weights which is consistent with those assigned in the most recently completed administrative review, and which avoids the possibility of anomalous results presented by the preliminary results size weights. We have modified our preliminary results model match program to reflect this weighting method.

We agree with petitioners that fence tube should not be matched to ASTM specifications because the wall thickness of fence tube is most similar to that of Saha Thai's BS light pipes. Saha Thai incorrectly states in its case brief that ''[i]n its preliminary results, the Department found fence tube to be closer in wall thickness (and therefore grade) to'' a particular grade of pipe. Saha Thai Case Brief at 23. Our preliminary results Analysis Memorandum stated that ''Saha Thai categorized its Galvanized Fence Tube (''GFT'') product as belonging to a 'grade' distinct from ASTM and British Standards * * * Saha Thai's arguments justify our classifying GFT as a separate ''grade * * *'' Preliminary Results Analysis Memorandum from John Totaro to the File, (March 31, 1999) at 7. In addition to Saha Thai's arguments, evidence on the record indicates that Saha Thai's fence tube products are not manufactured to the physical requirements of the grade cited by respondent in its case brief. *See* Final Results Analysis Memorandum at 7–8. We did not discuss the wall thickness of fence tube in our preliminary results. Moreover, contrary to Saha Thai's suggestion, our weighting in terms of wall thickness (WALLS/WALLM) relates strictly to the dimensions of the walls of the subject pipes, without differentiation by grade. Our model match program incorporates a separate weighting variable which provides different weights for each grade of pipe (GRADES/GRADEM). *See* Final Results Analysis Memorandum at 2.

However, Saha Thai's case brief is instructive in that it sets out the wall thicknesses, in millimeters, of Saha Thai's one-inch diameter pipe products. In order of wall thickness (thinnest to thickest), these products are: BS–L (2.6mm), BS–M (3.2mm), ASTM (3.38mm), and BS–H (4.0mm). Saha Thai Case Brief at 23. We have revised our weighting hierarchy of these products in terms of wall thickness to follow this pattern, and we ranked Saha Thai's fence tube in this hierarchy consistent with the wall thickness information contained in Saha Thai's product brochure, and BS–S pipe consistent with the wall thickness description in Saha Thai's questionnaire response. *See* Saha Thai June 29, 1998 QR at 27 and Exhibit 18. We revised the weighting of these products to reflect their relative wall thicknesses. This is a change both from the preliminary results and the 1996–1997 review. In our view, this change will result in a more logical product matching process in that the weighting of Saha Thai's products by wall thickness will relate solely to the physical dimensions of walls of the products, without regard to grade. This characteristic, in combination with the characteristic based on grade, ensures that we select the most similar merchandise for purposes of model matching.

Comment 7: Constructed Value Calculation

The respondent argues that the Department incorrectly omitted the deduction of imputed credit from constructed value despite the Department's recognition that credit should be deducted from constructed value. Saha Thai cites to *Dynamic Random Access Memory Semiconductors from Korea,* 63 FR 50874 (September 23, 1998) (final results) and *Carbon Steel Flat Products from Korea,* 63 FR 13192 (March 18, 1998) (final results) in support of their positions. The respondent requests in its case brief that the Department correct this error by subtracting imputed credit from constructed value.

Department's Position: The Department agrees that imputed credit should be deducted from constructed value and has done this for the final results.

Comment 8: Description of Verification

The respondent argues in its case brief that, in the preliminary results, the Department failed to mention that Saha Thai's cost responses were also verified, despite the fact that the Department's verification report suggests that the Department did in fact verify significant portions of Saha Thai's constructed value and cost of production information. *See Preliminary Results,* 64 FR at 17999 and Verification Report at 16–20, 22–24 and 34–36. The respondent argues that the Department should state in its final results that it verified both sales and cost of production information submitted by Saha Thai in order to ensure the accuracy of the public record and establish a foundation on which to decide the need for verifying cost issues in future reviews.

Department's Position: We agree with the respondent that the Department should have stated in the preliminary results that our verification addressed both sales and cost of production issues. We did not intend to imply that cost of production issues were not addressed at verification.

Final Results of the Review

As a result of this review, we have determined that the following weighted-average dumping margin exists for the period March 1, 1997 through February 28, 1998:

Manufacturer/exporter	Period	Margin
Saha Thai ...	3/1/97–2/28/98	9.65

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of sales examined.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipes and tubes from Thailand, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate stated above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate will continue to be 15.67 percent, the ''All Others'' rate made effective by the LTFV investigation. *See* 51 FR 3384, 3387 (January 27, 1986). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility

under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with sections 351.305 and 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 12, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–27569 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 99–00006.'' A summary of the application follows.

Summary of the Application

Applicant: T.P. International Expo Services Inc. (''TPIES'') 31–10 23rd Avenue, Long Island City, N.Y. 11105.

Contact: Tina Kontou Psomas, President.

Telephone: (718) 728–7275.

Application No.: 99–00006

Date Deemed Submitted: October 13, 1999.

Members (in addition to applicant): None.

T.P. International Expo Services Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products,* All products.

2. *Services,* All services.

3. *Technology Rights,* Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)* Export Trade Facilitation Services, including, but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

The proposed Export Trade Certificate of Review would extend antitrust protection to TPIES to conduct the following export trade activities:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in the Export Market;

3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;

4. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the sale of Products and Services;

5. Enter into exclusive or non-exclusive licensing agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets;

6. Allocate export orders among Suppliers;

7. Allocate the sales, export orders and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale of Products and Services;

8. Allocate the licensing of Technology Rights among Suppliers, Export Intermediaries, or other persons;

9. Establish the price of Products and Services for sale in Export Markets;

10. Establish the fee for licensing of Technology Rights in Export Markets; and

11. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, TPIES will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. TPIES will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

1. ''Export Intermediary'' means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

Dated: October 18, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–27523 Filed 10–20–99; 8:45 am]

BILLING CODE 3510–DR–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Revision of Currently Approved Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), 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 requirement on respondents can be properly assessed. This form is available in alternate formats. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the revision of its AmeriCorps*VISTA Project Application, Part A and Part B. The application is used by the Corporation in selecting AmeriCorps*VISTA sponsors. Copies of this information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by December 20, 1999.

ADDRESSES: Send comments to the Corporation for National and Community Service, Office of AmeriCorps*VISTA, Attn: Rosezina Dunn, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Rosezina Dunn (202) 606–5000, ext. 244.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The AmeriCorps*VISTA Project Application, Part A and Part B is used by the Corporation in the selection of AmeriCorps*VISTA sponsors and in the approval of both new and the renewal of AmeriCorps*VISTA projects.

Current Action

The Corporation seeks public comment on the AmeriCorps*VISTA Project Application, Part A and Part B. This application is being resubmitted for re-approval for a new 3-year period. The project application is submitted in order for projects to receive Federal assistance either in the form of an AmeriCorps*VISTA member, or grant of funds to support a project approved for members. It is used by potential project sponsors, as well as continuing previously approved projects.

Type of Review: Revision of a currently approved collection.

Agency: Corporation for National and Community Service.

Title: The AmeriCorps*VISTA Project Application, Part A and Part B.

OMB Number: 3045–0038.

Agency Number: CNS 1421 and CNS 1421B.

Affected Public: All eligible public and private non-profit organizations.

Total Respondents: 2,200.

Frequency: Part A is completed initially when the project is being developed. Part B is completed for each renewal year.

Average Time Per Response: 15 hours.

Estimated Total Burden Hours: 33,00 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice 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 18, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–27535 Filed 10–20–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On September 30, 1999, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as the ''Members of the Alaska Territorial Guard, who served in Alaska between December 31, 1941, and August 15, 1945, under the authority of Public Law 392, Section 7'' shall not be considered ''active duty'' for purposes of all laws administered by the Department of Veterans Affairs (VA).

For further information contact, Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, MD 20762–7002.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–27549 Filed 10–20–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On September 30, 1999, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as the ''Chamorros, including the 'Chamorro Marine Scouts,' who assisted the U.S. Marines in the offensive operations against the Japanese on the Saipan, Pagan, and Maug Islands, of the Northern Mariana Islands, from June 19, 1944 through September 2, 1945'' shall not be considered ''active duty'' for purposes of all laws administered by the Department of Veterans Affairs (VA).

On the other hand, the service of a group described as ''three scouts/guides, Miguel Tenorio, Penedicto Taisacan, and Cristino Dela Cruz, who assisted the U.S. Marines in the offensive operations against the Japanese on the Northern Mariana Islands from June 19, 1944 through September 2, 1945'' and the service of a group described as ''the approximately 50 Chamorro and Carolinian former, native policemen who received military training in the Donnal area of central Saipan and were placed under the command of Lt. Casino of the 6th Provisional Military Police Battalion to accompany United States Marines on active, combat-patrol activity from August 19, 1945 to September 2, 1945'' shall be considered ''active duty'' under the provisions of Public Law 95–202 for the purposes of all laws administered by the VA.

Application Procedures

The Group of ''Three Scouts/Guides''

To be eligible for VA benefits, an individual who believes he is among the first group, that is among the ''three scouts/guides,'' must establish he is Miguel Tenorio, Penedicto Taisacan, or Cristino Dela Cruz.

Qualifying periods of service for each of the three scouts/guides (Miguel Tenorio, Penedicto Taisacan, and Cristino Dela Cruz) are those days he assisted the U.S. Marines in the offensive operations against the Japanese on the Northern Mariana Islands between June 19, 1944 and September 2, 1945.

Before an individual can receive any VA benefits, the person must first apply for an *Armed Forces Discharge Certificate* (Department of Defense Form 214) by filling out a Department of Defense (DD) Form 2168, *Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty With the Armed Forces of the United States,* and sending it to the Navy Personnel Center at the following address: Navy Personnel Center, (PERS–312), Millington, TN 38054–5045.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Of importance will be any records from the World War II period indicating participation in the scout/guide. Additionally, supporting documents might include affidavits from individuals with firsthand knowledge of the nature and periods of service of the applicant.

Upon confirmation of an applicant's eligibility, the applicant will be considered for the appropriate ribbons the applicant is eligible to receive (campaign ribbons, theater ribbons, victory medal, *etc.*). Specific awards (*i.e.,* Silver Star, Purple Heart, *etc.*) need separate justification detailing the act, achievement, or service believed to warrant the appropriate medal/ribbon.

DD Forms 2168 are available from VA offices or from the U.S. Navy office mentioned in this notice. An electronic version is also available in Adobe Acrobat (the reader is free) on the Internet at ''DefenseLINK, publications.''

For further information contact Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, MD 20762–7002.

Application Procedures

The Group of ''the Approximately 50 Chamorro and Carolinian Former, Native Policemen, Who Received Military Training''

To be eligible for VA benefits, an individual who believes he is among the second recognized group, that is among the ''approximately 50 Chamorro and Carolinian former, native policemen,'' must establish:

a. He was a former, native policeman who received military training in the Donnal area of central Saipan, and

b. He was placed under the command of Lt. Casino of the 6th Provisional Military Police from August 19, 1945 to September 2, 1945.

Qualifying periods of time for those who were under the command of Lt. Casino of the 6th Provisional Military Police are the days they were so assigned.

Before an individual can receive any VA benefits, the person must first apply for an *Armed Forces Discharge Certificate* (Department of Defense Form 214) by filling out a Department of Defense (DD) Form 2168 and sending it to the Navy Personnel Center at the following address: Navy Personnel Center, (PERS–312), Millington, TN 38054–5045.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Of importance will be any records from the World War II period indicating participation in the 6th Provisional Military Police Battalion. Additionally, supporting documents might include affidavits from individuals with firsthand knowledge of the nature and periods of service of the applicant.

Upon confirmation of an applicant's eligibility, the applicant will be considered for the appropriate ribbons the applicant is eligible to receive (campaign ribbons, theater ribbons, victory medal, etc.). Specific awards (*i.e.,* Silver Star, Purple Heart, etc.) need separate justification detailing the act, achievement, or service believed to warrant the appropriate medal/ribbon.

DD Forms 2168 are available from VA offices or from the U.S. Navy office mentioned in this notice. An electronic version is also available in Adobe Acrobat (the reader is free) on the Internet at ''DefenseLINK, publications.''

For further information contact Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), 1535 Command Drive, EE Wing, 3rd Floor, Andrews AFB, MD 20762–7002.

Benefit Information

A determination of ''active duty'' under Public Law 95–202 is ''for the purposes of all laws administered by the Department of Veterans Affairs'' (38 U.S.C. 106). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veterans benefits vary and are governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Affairs Office and your state veterans service office after you have received your Armed Forces discharge documents.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–27548 Filed 10–20–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Draft Programmatic Environmental Impact Statement on Transportable Treatment Systems for Non-Stockpile Chemical Warfare Materiel

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This Draft Programmatic Environmental Impact Statement (DPEIS) has been prepared by the Army in compliance with the National Environmental Policy Act of 1969, regulations of the President's Council on Environmental Quality (40 CFR 1500–1508), and Army Regulation 200–2. The Department of the Army, as Executive Agent for the DoD, is responsible for destroying that portion of the nation's chemical warfare materiel (CWM) referred to as ''non-stockpile'' CWM. This non-stockpile CWM must be destroyed in order to protect human health and safety, comply with an international treaty, and carry out the requirements of the U.S. Congress. Non-stockpile CWM covered under this DPEIS includes: (1) Munitions containing chemical agent or industrial chemicals, (2) chemical agents or industrial chemicals contained in other than munitions configurations, and (3) chemical agent identification set items containing small quantities of pure or diluted agent used for training purposes.

DATES: Comments must be received on or before February 4, 2000.

ADDRESSES: Questions and written comments regarding the DPEIS, or a request for a copy of the document, should be directed to: Program Manager for Chemical Demilitarization, ATTN: SFAE–CD–NP (Mr. John K. Gieseking/PEIS), Aberdeen Proving Ground, MD 21010–4005 or via email at john.gieseking@pmcd.apgea.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Gieseking at (410) 436–3768 or by fax at (410) 436–8737.

SUPPLEMENTARY INFORMATION: The Army's Product Manager for Non-Stockpile Chemical Materiel has analyzed the potential environmental and socioeconomic consequences of two alternative courses of action in the DPEIS with respect to the Army's chemical demilitarization responsibilities:

(1) Using transportable chemical treatment systems, under which the Army would use as many as four different types of transportable systems currently being developed to chemically treat non-stockpile CWM.

(2) The no action alternative, under which the Army would discontinue development of the transportable treatment systems currently being developed and continue storage of non-stockpile CWM until other technologies are developed.

Other alternatives that were considered, but not evaluated in detail, are: (1) Using stockpile CWM disposal facilities; (2) using other treatment systems or technologies, none of which have currently been sufficiently developed as part of an integrated system for the treatment of non-stockpile CWM; and (3) using commercial treatment facilities, which would require changes in federal law and Army policy.

The Army has determined, based on the DPEIS, that the no-action alternative could lead to the United States violating the Chemical Weapons Convention timetable requirements for destroying currently stored non-stockpile CWM or CWM recovered in the near future. The Army further concludes that using stockpile disposal facilities, other treatment systems, or commercial treatment facilities are not feasible alternatives given certain legal requirements, in addition to the time restraints of the Chemical Weapons Convention.

The Army's preferred alternative course of action is to complete the development of transportable chemical treatment systems and make them available for deployment. Subsequent environmental reviews by the appropriate DoD authorities would address the impacts of actual deployment to specific locations.

A series of public meetings will be held at nine U.S. locations during the comment period to afford the public the opportunity to provide oral and written comments on the DPEIS. These meetings will tentatively be held in the vicinity of Aberdeen, MD; Alexandria, LA; Anchorage, AK; Huntsville, AL; Indianapolis, IN; Salt Lake City, UT; San Antonio, TX; Santa Rosa, CA; and Tampa, FL. The specific time, locations, and dates of these meetings will be announced in appropriate news media at least 15 days prior to each meeting. Comments made at the public meetings and written comments received during the comment period will be used in the preparation of the Final PEIS.

Copies of the DPEIS have been forwarded to the EPA; other federal state, and local agencies; Native Americans; public officials; and organizations and individuals who previously provided substantive comments during the PEIS scoping process or have expressed interest in the Non-Stockpile Chemical Materiel Program. Copies of the DPEIS can also be obtained by calling the Public Outreach and Information Office of the Program Manager for Chemical Demilitarization at 1–800–488–0648 or (410) 436–3445; fax (410) 436–8737 or may be accessed at the following web site: http://www-pmcd.apgea.army.mil/nscmp/index.html.

Dated: October 14, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 99–27501 Filed 10–20–99; 8:45 am]

BILLING CODE 3710–08–M

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold an informal conference followed by a public hearing on Wednesday, October 27, 1999. The hearing will be part of the Commission's regular business meeting. Both the conference and business meeting are open to the public and will be held in Courtroom #1 of the Carbon County Courthouse, at 4 Broadway, Jim Thorpe, Pennsylvania.

The conference among the Commissioners and staff will begin at 9:30 a.m. and will include reports on the following subjects: hydrologic conditions in the basin; activities of the Flow Management Technical Advisory Committee; status of the Proposed Determination Regarding the Assimilative Capacity of the Tidal Delaware River for Volatile Organics

and Chronic Toxicity; and status of discussions with the Army Corps of Engineers regarding an agreement for storage of water at Francis E. Walter Reservoir and the matter of federal funding for the Commission. In addition, a presentation will be made on the stream restoration program of the Waterway Corridors Subcommittee of the Commission's Water Quality Advisory Committee.

The 1:30 p.m. business meeting will include a public hearing on the projects summarized below. In addition, the Commission will address the following: minutes of the September 30, 1999 business meeting; announcements; report on hydrologic conditions in the basin; reports of the Executive Director and General Counsel; a Resolution Establishing a Watershed Advisory Council; and public dialogue.

The subjects of the hearing will be as follows:

1. Borough of Brooklawn Water Department D–85–18 CP Renewal 2

An application for the renewal of a ground water withdrawal project to supply up to 15 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 1, 3 and 4. Commission approval on December 8, 1989 was extended to 10 years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 15 mg/30 days. The project is located in Brooklawn Borough, Camden County, New Jersey.

2. Moon Nurseries, Inc. D–88–28 Renewal

An application for the renewal of a ground water withdrawal project to supply up to 8 mg/30 days of water to the applicant's nursery irrigation system from Well No. 1. Commission approval on April 26, 1989 was extended to 10 years. The applicant requests that total withdrawal from the well remain limited to 8 mg/30 days. The project is located in Lower Makefield Township, Bucks County, Pennsylvania.

3. Pennsauken Township D–98–36 CP

A project to withdraw up to 20 mg/30 days of water from the tidal reach of the South Branch Pennsauken Creek, for irrigation of the Pennsauken Country Club golf course. The proposed withdrawal will replace the existing municipal potable water supply system as the source of irrigation water. The project golf course is located just northeast of the intersection of Haddonfield Road and Moorestown Pike in Pennsauken Township, Camden County, New Jersey. The intake will be situated at the eastern side of the golf course on the west bank of South Branch Pennsauken Creek.

4. Citizens Utilities Water Company of Pennsylvania D–98–43 CP

An application for approval of a ground water withdrawal project to supply up to 28 mg/30 days of water to the applicant's Penn Water District distribution system from new Well No. 27, and to retain the existing withdrawal limit of 127 mg/30 days from all wells. The project is located in South Heidelberg Township, Berks County, Pennsylvania.

5. Northeast Schuylkill Joint Municipal Authority D–99–33 CP

An application to construct a new 0.245 million gallons per day (mgd) sewage treatment plant (STP) to serve portions of Rush and Ryan Townships, Schuylkill County, Pennsylvania. The proposed extended aeration/activated sludge STP will be situated just east of Barnesville at the northeast corner of State Route 54 and Holly Road (Township Road 856) in Rush Township, Schuylkill County, Pennsylvania, and will discharge to Pine Creek, a tributary of the Little Schuylkill River.

6. Allen Family Foods, Inc. D–99–49

An application to re-rate the applicant's existing 0.91 mgd wastewater treatment plant to an average monthly flow of 1.25 mgd. The plant will continue to provide secondary treatment only to the applicant's poultry processing facility, which is located on the west side of Route 5 approximately 1,400 feet south of Route 18 in the Village of Harbeson, Sussex County, Delaware. Treated plant effluent will continue to discharge to Beaverdam Creek, a tributary of Broadkill River.

7. Warwick Township Water & Sewer Authority D–99–51 CP

A project to expand the applicant's existing 0.12 mgd Country Crossing STP to provide advanced secondary treatment of 0.32 mgd. The STP is located just north of the intersection of Bristol and Mearns Roads in Warwick Township, Bucks County, Pennsylvania and will continue to serve Warwick Township. Although the applicant will maintain its outfall to an unnamed tributary of Little Neshaminy Creek, the effluent will be conveyed to Heritage Creek Golf Course pond for irrigation purposes, as needed.

8. Toll Brothers, Inc. D–99–52

An application for approval of a surface water withdrawal project to supply up to 19.5 mg/30 days of water from Ponds A and G to irrigate the applicant's Laurel Creek Country Club golf course. The project is located in Moorestown Township, Burlington County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Individuals in need of an accommodation as provided for in the Americans With Disabilities Act who wish to attend the hearing should contact the Secretary, Pamela M. Bush, at (609) 883–9500 ext. 222 or the New Jersey Relay Service at 1–800–852–7899 (TTY) to discuss how the Commission may accommodate your needs.

Dated: October 12, 1999.

Pamela M. Bush,

Secretary.

[FR Doc. 99–27453 Filed 10–20–99; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.265A]

State Vocational Rehabilitation Unit In-Service Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: This program is designed to support projects for training State vocational rehabilitation agency personnel in program areas essential to the effective management of the agency's program of vocational rehabilitation services or in skill areas that will enable personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities.

Eligible Applicants: Only State agencies designated under a State plan for vocational rehabilitation services under section 101(a) of the Rehabilitation Act of 1973, as amended, are eligible to receive an award under this program.

Deadline for Transmittal of Applications: December 17, 1999.

Deadline for Intergovernmental Review: February 15, 2000.

Applications Available: Applications will be mailed to the Directors of the

State agencies of vocational rehabilitation on or about October 25, 1999. Extra copies of applications will be available on or about October 25, 1999.

Available Funds: The Administration has requested $41,629,000 for the Rehabilitation Services Administration training program, of which $6,244,350 would be used for the State Vocational Rehabilitation Unit In-Service Training program in FY 2000. Of the $6,244,350, approximately $4,995,480 would be available for basic awards to State agencies and $1,248,870 would be available for funding projects under the absolute priorities in this notice. The actual level of funding, if any, depends on final congressional action. A listing, by State agency, of basic award funds available is as follows:

State	Basic award funds available
AL	$102,375
AK	20,748
AZ	73,532
AR	95,075
AR (Blind)	20,748
CA	339,351
CO	39,882
CT	26,528
CT (Blind)	20,748
DE	20,748
DE (Blind)	20,748
FL	191,040
FL (Blind)	36,143
GA	175,729
HI	20,748
ID	23,146
ID (Blind)	20,748
IL	150,981
IN	62,315
IA	49,318
IA (Blind)	20,748
KS	46,113
KY	82,612
KY (Blind)	20,748
LA	101,307
ME	21,721
ME (Blind)	20,748
MD	87,953
MA	94,185
MA (Blind)	21,187
MI	95,253
MI (Blind)	20,748
MN	66,054
MN (Blind)	20,748
MS	92,226
MO	62,137
MO (Blind)	20,748
MT	20,748
NE	33,116
NE (Blind)	20,748
NV	20,748
NH	20,748
NJ	58,576
NJ (Blind)	20,748
NM	27,953
NM (Blind)	20,748
NY	149,912
NY (Blind)	32,582
NC	169,141
NC (Blind)	47,716
ND	20,748
OH	36,143
OK	74,956
OR	40,060
OR (Blind)	20,748
PA	171,100
PA (Blind)	20,748
RI	20,748
SC	164,334
SC (Blind)	20,748
SD	20,748
SD (Blind)	20,748
TN	99,704
TX	258,875
TX (Blind)	89,734
UT	39,348
VT	20,748
VT (Blind)	20,748
VA	87,597
VA (Blind)	20,748
WA	58,754
WA (Blind)	20,748
WV	97,390
WI	70,327
WY	20,748
DC	24,392
PR	301,427
AS	20,748
NOM	20,748
GU	20,748
VI	20,748

Estimated Range of Awards: Basic Awards: $20,748–$339,351; Quality Awards: $5,000–$80,000.

Estimated Average Size of Awards: Basic Awards: $63,234; Quality Awards: $30,000.

Estimated Number of Awards: Basic Awards: 79; Quality Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, and 85; and (b) The regulations for this program in 34 CFR parts 385 and 388.

Statutory Requirements: Under section 302(g)(3)(A) of the Rehabilitation Act of 1973, as amended by the Rehabilitation Act Amendments of 1998, only projects that meet the following requirements will be funded: Projects that provide for in-service training of rehabilitation personnel, consistent with the needs identified through the Comprehensive System of Personnel Development required by section 101(a)(7) of the Rehabilitation Act of 1973, including projects designed (i) to address recruitment and retention of qualified rehabilitation professionals; (ii) to provide succession planning; (iii) to provide for leadership development and capacity building; and (iv) for fiscal years 1999 and 2000, to provide training regarding the Workforce Investment Act of 1998 and the amendments to the Rehabilitation Act made by the Rehabilitation Act Amendments of 1998.

Priorities: Under 34 CFR 75.105(c)(3) and 34 CFR 388.22, the Secretary reserves a portion of the funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in 34 CFR 388.20. In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and gives an absolute preference to applications that meet one or more of the following priorities. The Secretary funds under the quality portion of this program only applications that meet one or more of these absolute priorities:

Absolute Priority 1—Development and Dissemination of Model In-Service Training Materials and Practices

The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

Absolute Priority 2—Distance Education

The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

Absolute Priority 3—Enhanced Employment Outcomes for Specific Populations

The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR and from the regulations for this program in 34 CFR 388.20. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Applications will be mailed to the Director of the State agency of vocational rehabilitation. Additional copies of the application may be obtained from the Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (*edpubs@inet.ed.gov*). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.265A.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–9817. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Steburg, U.S. Department of Education, Region IV, 61 Forsyth Street, SW., Suite 18T91, Atlanta, Georgia 30303. Telephone: (404) 562–6336. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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http://ocfo.ed.gov/fedreg.htm

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

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

Program Authority: 29 U.S.C. 772.

Dated: October 15, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–27440 Filed 10–20–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–206–005]

Atlanta Gas Light Company; Notice Granting Late Interventions

October 18, 1999.

Motions to intervene in the above-captioned proceeding were due on July 2, 1999. Motions to intervene out-of-time have been filed with the Commission. No party filed an answer in opposition to the motions.

The petitioners appear to have a legitimate interest under the law that is not adequately represented by other parties. Granting the interventions will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioners to appear in this proceeding. Accordingly, good cause exists for granting the late interventions.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. Sections 717–717(W). Participation of the late intervenors shall be limited to matters set out in their motions to intervene. The admission of the late intervenors shall not be construed as recognition by the Commission that the intervenors might be aggrieved by an order entered in this proceeding.

David P. Boergers,

Secretary.

[FR Doc. 99–27495 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–20–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

October 15, 1999.

Take notice that on October 8, 1999, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to become effective November 1, 1999:

First Revised Sheet No. 5
First Revised Sheet No. 7
First Revised Sheet No. 8

Equitrans states that the purpose of this filing is to remove the stranded production component of the rate for Part 284 transportation and storage period pursuant to Article I, Section 2 of the Stipulation and Agreement (''Settlement'') filed on July 31, 1995 in Docket Nos. RP93–187–011, *et al*, RP93–62–014, *et al* and CP88–546–009, approved by the Commission on September 28, 1995. The stranded production component as included in Equitrans' rates to collect $2.6 million for well plugging and abandonment costs over a four-year period. Pursuant to Article II, Sections 1 and 2 of the Settlement, Equitrans estimates that it will over collect the stranded production component by approximately $100,000. A reconciliation report will be filed within ninety days after the expiration of the four-year surcharge period. Equitrans will refund to the customers who actually paid the surcharge any overcollection within thirty days of filing the reconciliation report.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http:///www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27485 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–227–002]

High Island Offshore System, L.L.C.; Notice of Tariff Sheet Filing

October 15, 1999.

Take notice that on October 5, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective April 1, 1999:

First Revised Sheet No. 23I
First Revised Sheet No. 23J
First Revised Sheet No. 23K
First Revised Sheet No. 23L
First Revised Sheet No. 23N
First Revised Sheet No. 23O
First Revised Sheet No. 23P
Fourth Revised Sheet No. 79
Fifth Revised Sheet No. 111
First Revised Sheet No. 138
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146

HIOS states that such tariff sheets are being submitted to comply with the Commission's September 20, 1999, Order Following Technical Conference.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27482 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meeting

October 15, 1999.

Take notice there will be meetings of the Ecological Resources and Recreation subgroups of the Mokelumne Relicensing Collaborative on Wednesday, October 27 and Thursday, October 28, 1999, from 9:00 a.m. to 4:00 p.m. at the PG&E offices, and 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so they can get through security.

For further information, please contact Diana Shannon at (202) 208–7774.

David P. Boergers,

Secretary.

[FR Doc. 99–27490 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–001]

PG&E Gas Transmission, Northwest Corporation; Notice of Resubmission of Tariff Sheets

October 15, 1999.

Take notice that on October 7, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following sheets, with an effective of October 30, 1999:

Second Revised Sheet No. 54B
First Revised Sheet No. 81.01a

PG&E GT–NW states that these sheets are being refiled to correct errors in the electronically-filed versions of the sheets, as directed by the Commission's October 6, 1999 Letter Order in this docket.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, interested state regulatory agencies, and all parties on the Commission's official service list for this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–27484 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–481–000]

Transwestern Pipeline; Notice of Technical Conference

October 15, 1999.

In the Commission's order issued on September 22, 1999, the Commission directed that a technical conference be held to address various issues related to Transwestern Pipeline Company's proposed enhanced firm backhaul service.

Take notice that the technical conference will be held on Wednesday, November 3, 1999, at 10:00 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 99–27483 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–96–000, et al.]

Commonwealth Edison Company, et al., Electric Rate and Corporate Regulation Filings

October 13, 1999.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company; Unicom Investment Inc. and Edison Mission Energy

[Docket No. EC99–96–000]

Take notice that on October 7, 1999, Commonwealth Edison Company (ComEd) and Unicom Investment Inc.(UII) supplemented the Application that they filed jointly with Edison Mission Energy (Mission) on July 22, 1999, under Section 203 of the Federal Power Act for authorization for the sale by ComEd of its fossil generating facilities to a special purpose subsidiary of Mission. The supplement describes a possible alternative transaction structure, which would involve a bank or other financial institution that would act as a ''Qualified Intermediary'' for federal tax purposes, to facilitate a ''like kind exchange'' that would enable ComEd to defer recognition of gain from the sale to Mission.

The supplement requests the Commission to approve the alternative structure, as well as the structure described in the Application as initially filed, to allow a closing of the transaction with Mission on or about November 4, 1999.

Comment date: October 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Rocky Road Power, LLC and NRG Rocky Road LLC

[Docket Nos. EC00–4–000 and ER00–55–000]

Take notice that on October 7, 1999, Rocky Road Power, LLC (Rocky Road) and NRG Rocky Road LLC (NRG Rocky Road) tendered for filing a joint application pursuant to Section 203 of the Federal Power Act requesting that the Commission approve the transfer of an undivided portion of the ownership interest in Rocky Road to NRG Rocky Road.

In addition, Rocky Road tendered for filing, pursuant to Section 205 of the Federal Power Act, an amendment to its market-based rate schedule to include a Code of Conduct.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. El Paso Energy Corporation, et al.

[Docket No. EC00–5–000]

Take notice that on October 7, 1999, pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b (1998) and Part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 33 *et seq.*, El Paso Energy Corporation, El Paso Power Holding Company, El Paso Chaparral Holding Company, El Paso Chaparral Investor, L.L.C., Limestone Investors, L.L.C., Chaparral Investors, L.L.C., and Mesquite Investors, L.L.C. (collectively, Applicants) filed an Application for Commission approval for the transfer of certain upstream interests in the following indirect subsidiaries of El Paso Energy Corporation in connection with a refinancing transaction: BIV Generation Company, L.L.C., Brush Generation Company, L.L.C., Morgan Generation Company, L.L.C., and Colorado Power Partners. Applicants have also requested that the Commission find that no passive investor involved in the proposed transfers of interests will be deemed a ''public utility'' as such term is defined under Section 201 of the FPA by virtue of its participation therein.

Applicants have requested a shortened notice period and expedited consideration of the Application.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. El Paso Energy Corporation, et al.

[Docket No. EC00–6–000]

Take notice that on October 7, 1999, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b (1998) and Part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 33 *et seq.*, El Paso Energy Corporation, El Paso Power Services Company, El Paso Power Holding Company, El Paso Chaparral Holding Company, El Paso Chaparral Investor, L.L.C., Chaparral Investors, L.L.C., Mesquite Investors, L.L.C. and Limestone Investors, L.L.C., (collectively, Applicants) filed an Application for Commission approval for the transfer of certain upstream interests in the following indirect subsidiaries of El Paso Energy Corporation in connection with a refinancing transaction: El Paso Berkshire Power I Company and El Paso Berkshire Power II Company. Applicants have requested that the Commission find that no passive investor involved in the proposed transfers of interests will be deemed a ''public utility'' as such term is defined under Section 201 of the FPA by virtue of its participation therein.

Applicants have also requested a shortened notice period and expedited consideration of the Application.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. El Paso Energy Corporation, et al.

[Docket No. EC00–7–000]

Take notice that on October 7, 1999, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b (1998) and Part 33 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 33 *et seq.*, El Paso Energy Corporation, El Paso Power Services Company, El Paso Power Holding Company, El Paso Chaparral Holding Company, El Paso Chaparral Investor, L.L.C., Chaparral Investors, L.L.C., Mesquite Investors, L.L.C. and Limestone Investors, L.L.C., (collectively, Applicants) filed an Application for Commission approval for the transfer of certain upstream interests in the following indirect subsidiaries of El Paso Energy Corporation in connection with a refinancing transaction El Paso Milford Power I Company and El Paso Milford Power II Company. Applicants have requested that the Commission find that no passive investor involved in the proposed transfers of interests will be deemed a ''public utility'' as such term is defined under Section 201 of the FPA by virtue of its participation therein. Applicants have also requested a shortened notice period and expedited consideration of the Application.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. South Glens Falls Energy, LLC

[Docket No. EC00–8–000]

Take notice that on October 7, 1999, South Glens Falls Energy, LLC filed an application for an order authorizing the transfer of a 15% interest in South Glens Falls Energy, LLC to General Electric Capital Corporation.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. FPL Energy Wisconsin Wind, LLC

[Docket No. EG00–4–000]

Take notice that on October 7, 1999, FPL Energy Wisconsin Wind, LLC (''FPL Wind'') filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations.

FPL Wind is developing a wind-powered eligible facility with a capacity of approximately 29.7 megawatts, powered by approximately thirty-three (33) wind turbine generators, which will be located near Allenton, Wisconsin.

Comment date: November 3, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. CoGen Lyondell, Inc.

[Docket No. QF83–355–002]

Take notice that on October 5, 1999, CoGen Lyondell, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) (1998) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on October 7, 1983, in Docket No. QF83–355–000. The Facility was self-recertified in Docket No. QF83–355–001. Recertification is sought to reflect the divestiture of half of the ownership interest in the facility held by an upstream owner and a change in status of such owner.

Comment date: November 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Badger Creek Limited

[Docket No. QF87–120–003]

Take notice that on October 6, 1999, Badger Creek Limited, 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) (1998) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on March 23, 1987 in Docket No. QF87–120–000. By letter dated November 20, 1990, in Docket No. QF87–120–001, Badger Creek notified the FERC of a change in ownership, a name change for the steam host, and revised performance data. The Facility was self-recertified in Docket No. QF87–120–002. Recertification is sought to reflect the divestiture of certain ownership interests in the facility held by an upstream owner and a change in status of such owner.

Comment date: November 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Chalk Cliff Limited

[Docket No. QF87–132–005]

Take notice that on October 7, 1999, Chalk Cliff Limited, 1000 Louisiana, Suite 5800, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to Sections 292.207(b) and (d)(2) (1998) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The Commission previously certified the facility as a qualifying cogeneration facility on March 23, 1987 in Docket No. QF87–132–000. The Commission granted recertification of the facility on February 2, 1989 in Docket No. QF87–132–001. The Facility was self-recertified in Docket Nos. QF87–132–002, QF87–132–003, and QF87–132–004. Recertification is sought to reflect the divestiture of certain upstream ownership interests in the facility and a change in status of such owners.

Comment date: November 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Illinois Municipal Electric Agency v. Illinois Power Company

[Docket No. EL00–4–000]

Take notice that on October 8, 1999, the Illinois Municipal Electric Agency tendered for filing a complaint against Illinois Power Company in order to seek the establishment by the Commission of an effective refund date in connection with rate reductions expected as a result of Illinois Power's transmission rate filing in Docket No. ER99–4415.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company; California Independent System; Operator Corp.; El Segundo Power, LLC; Pacific Gas and Electric Company; Duke Energy Moss Landing LLC; Duke Energy Oakland LLC; San Diego Gas and Electric Company; Southern California Edison Company; Pacific Gas and Electric Company; San Diego Gas & Electric Company; Duke Energy Moss Landing LLC; Duke Energy Oakland LLC; Duke Energy Moss Landing LLC; Duke Energy Oakland LLC

[Docket Nos. ER98–441–011 ER98–2550–000 ER98–495–000 ER98–1614–000 ER98–2145–000 ER98–2668–000 ER98–2669–000 ER98–4296–000 ER98–4300–000 ER98–496–000 ER98–2160–000 ER98–441–001 ER98–495–001 ER98–496–001 ER98–4300–001 ER98–2668–001 ER98–2669–001 ER98–4296–001 ER98–2668–000 ER98–2669–000 ER99–1127–000 ER99–1128–000 ER98–4296–000 and ER98–4300–000]

Take notice that on October 5, 1999, Williams Energy Marketing & Trading Company (Williams), tendered for filing a refund report as required by the Stipulation and Agreement filed in the above-captioned proceedings on April 2, 1999 and approved by the Commission in an Order issued May 28, 1999.

Comment date: October 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. MidAmerican Energy Company

[Docket No. ER00–47–000]

Take notice that on October 6, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Firm Transmission Service Agreement with Basin Electric Power Cooperative (Basin), dated September 14, 1999, and a Non-Firm Transmission Service Agreement with Basin, dated September 14, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of September 14, 1999, for the Agreements with Basin, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Basin, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: October 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Nevada Power Company

[Docket No. ER00–48–000]

Take notice that on October 6, 1999, Nevada Power Company (NPC), tended for filing Service Agreement to provide Non-Firm Point-to-Point Transmission Service under NPC's (Transmission Provider) Open Access Transmission Tariff with MIECO, Inc. (Transmission Customer).

A copy of this filing has been served on MIECO, Inc, (Transmission Customer) and the Nevada Public Service Commission.

Comment date: October 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Nevada Power Company

[Docket No. ER00–49–000]

Take notice that on October 6, 1999, Nevada Power Company (Nevada Power), tended for filing Service Agreement with El Dorado Energy, L.L.C., pursuant to Nevada Power's Coordination Sales Tariff.

Nevada Power requests an effective date of November 1, 1999.

A copy of this filing has been served on El Dorado Energy, L.L.C., the Nevada Public Service Commission and the Bureau of Consumer Protection.

Comment date: October 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Nevada Power Company

[Docket No. ER00–50–000]

Take notice that on October 6, 1999, Nevada Power Company (NPC), tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service under NPC's (Transmission Provider) Open Access Transmission Tariff with the Public Service Company of Colorado (Transmission Customer).

A copy of this filing has been served on the Public Service Company of Colorado (Transmission Customer) and the Nevada Public Service Commission.

Comment date: October 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER00–52–000]

Take notice that on October 6, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Short-Term Firm Point-to-Point Transmission Service Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Western Resources, Inc.

Comment date: October 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER00–53–000]

Take notice that on October 6, 1999, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing a proposed amendment to its FERC Electric Tariff, Volume No. 1, Service Agreement Nos. 1 through 6. The proposed changes would provide a rate rebate to each of Deseret's six Member Cooperatives.

Deseret requests an effective date of December 6, 1999.

Copies of this filing were served upon Deseret's six Member Cooperatives.

Comment date: October 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Tampa Electric Company

[Docket No. ER00–54–000]

Take notice that on October 6, 1999, Tampa Electric Company (Tampa Electric), tendered for filing a service agreement with Florida Power Corporation (FPC) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on October 6, 1999.

Copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment date: October 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. FPL Energy Wisconsin Wind, LLC

[Docket No. ER00–56–000]

Take notice that on October 7, 1999, FPL Energy Wisconsin Wind, LLC (FPL Wind), petitioned the Commission for acceptance of the power purchase agreement between FPL Wind and Alliant Energy—Wisconsin Power and Light Company, Inc., and the power purchase agreement between FPL Wind and Wisconsin Electric Power Company, and to accept the rates under these respective agreements as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a); for the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and for the waiver of certain Commission regulations. FPL Wind is a limited liability company that proposes to engage in the wholesale sale of electric power in the state of Wisconsin and is headquartered in Florida.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER00–57–000]

Take notice that on October 6, 1999, Cinergy Services, Inc. (Services), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (collectively Cinergy Operating Companies) Notices of Cancellation, dated September 1, 1999, for the Original Service Agreement, dated March 17, 1997, between Edgar Electric Cooperative Association (Edgar) and the Cinergy Operating Companies under the COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 6—CB and COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7—MB.

The Notices of Cancellation to the Original Service Agreement, dated March 17, 1997, are necessary to eliminate duplicate contractual arrangements between Edgar and the Cinergy Operating Companies under the above referenced Power Sales Tariffs. Transactions will continue to be arranged under the Revised Service Agreement, dated March 17, 1997, as supplemented.

Copies of the filing were served on Edgar and the State Regulatory Commissions of Illinois, Ohio, Kentucky and Indiana.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Pool

[Docket No. ER00–58–000]

Take notice that on October 7, 1999, the New England Power Pool Participants Committee filed notification that the effective date of membership in the New England Power Pool (NEPOOL) of Entergy Nuclear Generation Company (Entergy) was July 13, 1999.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Southern California Edison Company

[Docket No. ER00–60–000]

Take notice that on October 6, 1999, Southern California Edison Company (SCE), tendered for filing the amendments to the existing firm transmission service agreements between SCE and the City of Riverside, California.

The Amendments serve to implement Riverside's election to convert transmission loss provisions in the existing agreements to the California Independent System Operator's Tariff loss provisions, pursuant to Section 6.4.3 of the Edison-Riverside Restructuring Agreement.

SCE requests an effective date of October 3, 1999, and seeks waiver of the Commission's notice requirements to permit the requested effective date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Illinois Power Company

[Docket No. ER00–61–000]

Take notice that on October 1, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Illinova Power Marketing, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 1, 1999.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. PECO Energy Company

[Docket No. ER00–62–000]

Take notice that on October 7, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with WISVEST-CONNECTICUT, LLC. (WVCT) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds WVCT as a Wisvest-Connecticut, LLC under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to WVCT and to the Pennsylvania Public Utility Commission.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER00–63–000]

Take notice that on October 7, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated September 23, 1999 with MICHIGAN PUBLIC POWER AGENCY. (MPPA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds MPPA as a Michigan Public Power Agency under the Tariff.

PECO requests an effective date of September 23, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to MPPA and to the Pennsylvania Public Utility Commission.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power & Light Company

[Docket No. ER00–64–000]

Take notice that on October 7, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Carolina Power & Light Company for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements are permitted to become effective on October 1, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Public Service Company of Colorado

[Docket No. ER00–65–000]

Take notice that on October 7, 1999, Public Service Company of Colorado tendered for filing an agreement adding a new delivery point with Yampa Valley Electric Association, Inc.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Commonwealth Edison Company

[Docket No. ER00–66–000]

Take notice that on October 7, 1999, Commonwealth Edison Company (ComEd), tendered for filing Firm Service Agreements with Wisconsin Electric Power Company (WEPCO) and with Commonwealth Edison Company, in the wholesale merchant function (CEWMD) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of October 1, 1999, for the Service Agreements with WEPCO and January 1, 2000 for the Service Agreements with CEWMD, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. New York Independent System Operator, Inc.; Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; Long Island Lighting Company; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation; Orange & Rockland Utilities, Inc.; Rochester Gas & Electric Corp.; Power Authority of the State of New York; and New York Power Pool

[Docket No. ER00–67–000]

Take notice that on October 7, 1999, the Member Systems of the New York Power Pool (Member Systems) and the New York Independent System Operator, Inc. (NYISO), tendered for filing revised sheets for the ISO Open Access Transmission Tariff and the New York Independent System Operator Market Administration and Control Area Service Tariff.

The Member Systems and the NYISO request an effective date as the date on which the NYISO commences operations and request waiver of the Commission's notice requirements.

A copy of this filing was served upon all persons on the Commission's official service list in Docket No. ER97–1523–000 and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Alliant Services, Inc.

[Docket No. ER00–68–000]

Take notice that on October 7, 1999, Alliant Services, Inc., on its own behalf and on behalf of Wisconsin Power & Light Company, tendered for filing a DLM Service Agreement with Wisconsin Public Power Inc., two W–4 Service Agreements, as amended, with Sheboygan Falls Utilities, and one W–4 Service Agreement, as amended, with Adams-Columbia Electric Cooperative.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. New England Power Pool and ISO New England Inc.

[Docket No. ER00–69–000]

Take notice that on October 7, 1999, the New England Power Pool Participants Committee (NEPOOL) and ISO New England Inc. (the ISO) jointly tendered for filing changes to Market Rule and Procedure Appendix 6–A (Appendix 6–A) in the above-captioned dockets.

Additionally, NEPOOL and the ISO have requested a waiver of the Commission's notice requirements to permit the revisions to Appendix 6–A to become effective as of June 1, 1999.

NEPOOL and the ISO state that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Illinois Municipal Electric Agency v. **Commonwealth Edison Company Commonwealth Edison Company of Indiana**

[Docket No. EL00–3–000]

Take notice that on October 8, 1999, the Illinois Municipal Electric Agency tendered for filing a complaint against Commonwealth Edison Company in order to seek the establishment by the Commission of an effective refund date in connection with rate reductions expected as a result of Commonwealth Edison's transmission rate filing in Docket No. ER99–4470.

Comment date: October 28, 1999, in accordance with Standard Paragraph E at the end of this notice. Answers to the compliant are also due on or before October 28, 1999.

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. 99–27448 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2927–004 and 2928–004]

Aquamac Corporation Merrimac Paper Company, Inc.; Notice of Availability of Draft Environmental Assessment

October 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for new licenses for the Aquamac and Merrimac Hydroelectric Projects, located on the Merrimack River in the city of Lawrence, Essex County, Massachusetts, and has prepared a Multiple Project Draft Environmental Assessment (MPDEA) for the projects.

Copies of the MPDEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, DC 20426 and may also be viewed on the Web at www.Ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Please affix ''Merrimac Hydroelectric Project No. 2928'' or ''Aquamac Hydroelectric Project No. 2927'' to the top page of all comments. For any questions concerning preparation of the MPDEA for this proposed action, please contact Lee Emery, E-mail address, lee.emery@ferc.fed.us, or telephone (202) 219–2779, Federal Energy Regulatory Commission, Office of Hydropower Licensing.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Room 1–A, Washington, DC 20426. For further information contact Lee Emery, Fishery Biologist at (202) 219–2779 or lee.emery@FERC.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 99–27487 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6759–016]

Aquenergy Systems, Inc.; Notice of Availability of Draft Environmental Assessment

October 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to surrender the license for the existing Apalache Hydroelectric Project, located on Trinity Alps Creek in Trinity County, California, and has prepared a Draft Environmental Assessment (Draft EA) for the proposed action.

In the Draft EA, Commission staff concludes that approval of the subject surrender of license would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the Draft EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The Draft EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments on the Draft EA should be filed within 30 days from the date of this notice and should be addressed to Dave Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix ''Apalache Project Surrender of License, No. 6759–016'' to all comments. For further information, please contact Jim Haimes at (202) 219–2780.

David P. Boergers,

Secretary.

[FR Doc. 99–27488 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Terminating ''TM'' Docket Prefix

October 15, 1999.

On November 10, 1987, the Commission issued a final rule (Order No. 483) that amended its Regulations governing the procedures by which a natural gas pipeline company may recover the cost of purchased gas from their customers. The Commission established several docket prefixes for the various rate adjustments permitted pursuant to the Purchased Gas Adjustment Provisions of the FERC Gas Pipeline Tariffs. In particular, a ''TM'' prefix was created as a ''Miscellaneous tracking adjustments (*i.e.*, GRI's ACA's, transportation and storage trackers, etc. when not accompanied by the quarterly or annual PGA filings.''

In the interest of administrative efficiency and the Commission's recent migration to a new computer tracking system, FERC Automated Management Information System (FAMIS), the TM prefix is discontinued and terminated effective immediately. In the future, any filing that would have received a TM prefix will receive the currently used prefix of RP.

David P. Boergers,

Secretary.

[FR Doc. 99–27481 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Competing Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

October 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection. This application competes with an application for a subsequent license filed by the City of Hamilton, Ohio (Project No. 2724–023):

a. *Type of Application:* New Major License

b. *Project No.:* 11826–000

c. *Date filed:* September 29, 1999

d. *Applicant:* Northbrook Energy, LLC

e. *Name of Project:* Hamilton Hydroelectric Project

f. *Location:* Ford Canal and Great Miami River, Butler County, Ohio. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Northbrook Energy, LLC, 225 W. Wacker Drive, Suite 2330, Chicago, IL 60606, or telephone (312) 553–2131.

i. *FERC Contact:* Any questions on this notice should be addressed to Nick Jayjack, E-mail address *nicholas.jayjack@ferc.fed.us.* or telephone (202) 219–2825.

j. *Deadline for filing additional study request:* November 29, 1999

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NW, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of: (1) an 8-foot-high (average), 1,660-foot-long concrete overflow diversion dam; (2) an 8-foot-high (average), 196-foot long concrete overflow diversion dam; (3) a 3-mile-long power canal; (4) a concrete headgate structure at the canal entrance; (5) a 93-foot-wide by 63-foot-long by 50-foot-high powerhouse with an installed capacity of 1,500 kilowatts (kW) to be upgraded to 2,250 kW (the turbine-generator units are currently capable of producing, 1,940 kW; however, system governors limit output to 1,500 kW); (6) a 21-foot-long spillway adjacent to the powerhouse; (7) a 50-foot-wide, 1,600-foot-long concrete and earthen tailrace; (8) a 0.25-mile-long, 13.2 kilovolt transmission line; (9) generator leads; and (10) appurtenant facilities.

m. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 99–27480 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Establishing a Deadline for Final Amendment, and Soliciting Additional Study Requests

October 15, 1999.

Take notice that the following hydroelectric application has been filed with the commission and is available for public inspection:

a. *Type of application:* New Major License

b. *Project No.:* 2416–009

c. *Date filed:* October 5, 1999

d. *Applicant:* Aquenergy Systems Inc.

e. *Name of project:* Ware Shoals Project.

f. *Location:* On Saluda River in the Town of Ware Shoals, within the counties of Laurens, Greenwood and Abbeville, South Carolina. No Federal Lands used in this project.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Beth Harris, P.E., CHI Energy, Inc., P.O. 5897, Greenville, SC 29604, (864) 281–9630 Ext. 105.

i. *FERC contact:* Any questions on this notice should be addressed to Timothy Looney, E-mail address, timothy.looney@ferc.fed.us, or telephone 202–219–2852.

j. *Deadline for filing final amendments:* February 5, 2000.

k. *Deadline for filing additional study requests:* December 6, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the commission to deserve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

m. The existing project consists of a dam and reservoir, a power canal and two turbine generating units with a total nameplate rating of 6,200-kilowatts, and appurtenant facilities. The project would have an annual generation of 23,500,000 kilowatt hours. The applicant does not propose any modifications to the project features or operation.

n. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web to 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.

o. With this notice we are initiating consultation with the South Carolina State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 99–27486 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

October 15, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No.:* DI99–11–000.

c. *Date Filed:* September 7, 1999.

d. *Applicant:* Michael R. Hamlin and Rita Jean.

e. *Name of Project:* Great Falls Electric Company Project.

f. *Location:* On Androscoggin River, Lewiston, Androscoggin County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Ms. Rita Jean, 4 Bailey Court, Lewiston, ME 04240 (207) 783–9728.

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 219–2679, or e-mail address: *etta.foster@ferc.fed.us.*

j. *Deadline for filing comments, protests and motions:* November 17, 1999.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the docket number (DI99–11–000) on any comments, protests or motions filed.

k. *Description of Project:* The proposed run-of-river project will consist of an existing 20-foot-long penstock; an intake rack; a powerhouse containing a proposed single vertical generator with a generating capacity of 600 kW; and appurtenant facilities. Proposed power generation will be used by applicant and the surplus sold wholesale.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy public lands or reservations of the United States; (3) would utilize surplus water or waterpower from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

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, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us./online/rims.htm* (call (202) 208–2222 for assistance.) A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing 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. 99–27489 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

October 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2724–023.

c. *Date filed:* September 30, 1999.

d. *Applicant:* City of Hamilton, Ohio.

e. *Name of Project:* City of Hamilton Hydroelectric Project.

f. *Location:* Ford Canal and Great Miami River, Butler County, Ohio. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* City Manager, City of Hamilton, Ohio, 20 High Street, Hamilton, OH 45011, or telephone (513) 868–5891.

i. *FERC Contact:* Any questions on this notice should be addressed to Nick Jayjack, E-mail address *nicholas.jayjack@ferc.fed.us* or telephone (202) 219–2825.

j. *Deadline for filing additional study requests:* November 29, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis.* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of: (1) an 8-foot-high (average), 1,660-foot-long concrete overflow diversion dam; (2) an 8-foot-high (average), 196-foot-long concrete overflow diversion dam; (3) a 3-mile-long power canal; (4) a concrete headgate structure at the canal entrance; (5) a 93-foot-wide by 63-foot-long by 50-foot-high powerhouse with an installed capacity of 1,500 kilowatts (kW) to be upgraded to 1,940 kW (the turbine-generator units are currently capable of producing 1,940 kW; however, system governors limit output to 1,500 kW); (6) a 21-foot-long spillway adjacent to the powerhouse; (7) a 50-foot-wide, 1,600-foot-long concrete and earthen tailrace; (8) a 0.25-mile-long, 13.2-kilovolt transmission line; (9) generator leads; and (10) appurtenant facilities.

m. *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 avaialble for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic preservation, 36 CFR 800.4.

David P. Boergers,

Secretary.

[FR Doc. 99–27491 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Applicaton Type:* Transfer of License.

b. *Project No.:* 4334.

c. *Date Filed:* October 1, 1999.

d. *Applicants:* Philadelphia Corporation, Harza Hydropower, Inc., and FortisUS Energy Corporation.

e. *Name and Location of Project:* The Philadelphia Hydroelectric Project is on the Indian River in Jefferson County, New York. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Ms. Amy S. Koch, Cameron McKenna LLP, 1275 K Street, NW, 5th Floor, Washington, DC 20037, (202) 466–0060, Mr. Frank M. Dickerson, 150 South Wacker Drive, Chicago, IL 60606, (312) 831–3000, and Mr. Earle H. O'Donnell, Dewey Ballantine, LLP, 1775 Pennsylvania Avenue, NW, Washington, DC 20006, (202) 429–2327.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and or motions:* November 8, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–4334) on any comments or motions filed.

j. *Description of Proposal:* Applicants propose a transfer of the license for Project No. 4334 from Philadelphia Corporation and Harza Hydropower, Inc. to FortisUS Energy Corporation. Transfer is being sought in connection with FortisUS Energy Corporation's intended purchase of the project.

One of the current licensees, Prudential Interfunding Corporation (Prudential), is no longer involved, having transferred its ownership interest in the project to Harza Hydropower, Inc. in February 1992. The applicants request after-the-fact Commission approval of the transfer of the project license from Prudential to Harza Hydropower, Inc., as well as the prospective transfer to FortisUS Energy Corporation.

k. *Location of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

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, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If 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. 99–27492 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 4349.

c. *Date Filed:* October 1, 1999.

d. *Applicants:* Moose River Corporation, Moose River Acquisition Corporation, and FortisUS Energy Corporation.

e. *Name and Location of Project:* The Moose River Hydroelectric Project is on the Moose River in Lewis County, New York. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Ms. Amy S. Koch, Cameron McKenna LLP, 1275 K Street, NW, 5th Floor, Washington, DC 20037, (202) 466–0060, Mr. Frank M. Dickerson, 150 South Wacker Drive, Chicago, IL 60606, (312) 831–3000, and Mr. Earle H. O'Donnell, Dewey Ballantine, LLP, 1775 Pennsylvania Avenue, NW, Washington, DC 20006, (202) 429–2327.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and or motions:* November 8, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–4349) on any comments or motions filed.

j. *Description of Proposal:* Applciants propose a transfer of the license for Project No. 4349 from moose River Corporation and Moose River Acquisition Corporation (transferors) to FortisUS Energy Corporation. Transfer is being sought in connection with FortisUS Energy Corporation's intended purchase of the project.

Note: The transferors have not yet met the conditions of the Commission's September 24, 1999, transfer order, but are expected to do so shortly.

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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 or Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If 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. 99–27493 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

October 15, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time to Commence and Complete Project Construction.

b. *Project No.:* 10228–012.

c. *Date Filed:* August 13, 1999.

d. *Applicant:* Cannelton Hydroelectric Project, L.P.

e. *Location:* On the Ohio River in Hancock County, Kentucky.

f. *Pursuant to:* Public Law 104–249, 110 Stat. 3150 (1996).

g. *Applicant Contact:* Donald H. Clarke, Counsel for Licensee, Wilkinson, Barker and Knauer, 2300 N Street, N.W., Suite 700, Washington, D.C. 20037, (202) 783–4141.

h. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us

i. *Deadline for filing comments and or motions:* November 17, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (10228–012) on any comments or motions filed.

j. *Description of the Request:* The licensee has requested that the deadline for commencement of construction of the Cannelton Hydroelectric Project be extended for two additional years. The deadline to commence project construction for FERC Project No. 10228 would be extended to June 20, 2001. The deadline for completion of construction for FERC Project No. 10228 would be extended to June 20, 2003.

k. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .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. 99–27494 Filed 10–20–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6461–4]

Notice of Fifth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; announcement of meeting.

SUMMARY: Fifth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force, consisting of Federal, State, and Tribal members, is to understand and address nutrient management and hypoxia related issues in the Mississippi River and Gulf of Mexico watersheds. The matters to be discussed at the meeting include the Integrated Assessment of the causes and consequences of hypoxia in the Gulf of Mexico, and the Action Plan issues, approach, and schedule, including sharing ideas for consultation with States, Tribes, and stakeholders within the Mississippi River Basin (see agenda on EPA website at <http://www.epa.gov/msbasin/>). The Integrated Assessment and the Action Plan were requested by the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) as required by section 604(a) and 604(b) of Public Law 105–383 Coast Guard Authorization Act of 1998. The meeting of the Task Force will be open to the public, and the public will be afforded an opportunity to provide input during open discussion periods.

DATES: 9:00 a.m.–3:30 p.m., November 18, 1999.

ADDRESSES: Holiday Inn O'Hare International, 5440 North River Road, Rosemont, IL; (847) 671–6350. The meeting is open to the public and is limited only by the space available. The room accommodates approximately 125 people.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, SW (4503F), Washington, DC 20460, telephone (202) 260–7061; Internet: belefski.mary@epa.gov. For additional information on hotel accommodations contact Marquietta Davis, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, VA 22030, telephone: (703) 385–6000; Email:davisma@tetratech-ffx.com.

Dated: October 15, 1999.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 99–27544 Filed 10–20–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6461–3]

Notice of Availability of an Integrated Assessment of the Causes and Consequences of Hypoxia in the Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA), in coordination with the National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, invites public comments on an integrated assessment of the causes and consequences of hypoxia in the Gulf of Mexico as required by section 604(a) of Public Law 105–383. The Integrated Assessment was prepared by the Gulf of Mexico Hypoxia Working Group under the auspices of the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) and will be delivered to the President, Congress and the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

DATES: Comments must be received by December 20, 1999. Any comments received after the formal comment period will be reviewed by the Gulf of Mexico Hypoxia Working Group and delivered to the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force for their consideration along with the final Integrated Assessment.

ADDRESSES: Comments should be submitted to: Gulf of Mexico Hypoxia Working Group, National Oceanic and Atmospheric Administration (NOAA), National Centers for Coastal Ocean Science, Room 9127, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Pryor, National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, National Centers for Coastal Ocean Science, Room 9127, 1305 East-West Highway, Silver Spring, MD 20910, telephone 301–713–3000x127, Internet: don.pryor@noaa.gov; or Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, SW (4503F), Washington, DC 20460, telephone (202) 260–7061; Internet: belefski.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

Purpose

The Environmental Protection Agency leads the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force consisting of Federal, State, and Tribal members. The Task Force has accepted the responsibility to develop an Action Plan, based on the Integrated Assessment and other information, for reducing, mitigating, and controlling hypoxia in the northern Gulf of Mexico. The Action Plan is required by section 604(b) of Public Law 105–383.

Status

The Integrated Assessment, as required in section 604(a) of Public Law 105–383, examines the distribution, dynamics, and causes of hypoxia; ecological and economic consequences; sources and loads of nutrients transported by the Mississippi River to the Gulf of Mexico; effects of reducing nutrient loads; methods for reducing nutrient loads; and the social and economic costs and benefits of such methods.

Six topical reports, each covering one of the aspects listed above, were prepared by teams of scientists. Each of the reports underwent extensive peer review by independent scientific experts. These reports, along with the public comment on them, were considered in developing the Integrated Assessment. (See 64 FR 23834–23835 dated May 4, 1999.)

The Integrated Assessment, as well as the six topical reports and the public comments, may be reached via either the EPA or NOAA/NOS websites: at <http://www.epa.gov/msbasin/> or <http://www.nos.noaa.gov/Products/pubs_hypox.html>; or contact those listed above for information on how to obtain the reports.

Dated: October 15, 1999.

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 99–27543 Filed 10–20–99; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

October 14, 1999.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0854.

Expiration Date: 09/30/2002.

Title: Truth-In-Billing Format—CC Docket No. 98–170 (Final Rule).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 3099 respondents; 62.72 hours per response (avg.); 194,388 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $1,800,000–$9,000,000.

Frequency of Response: On occasion; Third party disclosures.

Description: Under Section 201(b) of the Communications Act, the charges, practices, and classifications of common carriers must be just and reasonable. The Commission believes that the telephone bill is an integral part of the relationship between a carrier and its customer. The manner in which charges are identified and articulated on the bills is essential to the consumer's understanding of the services that have been rendered, such that a carrier's provision of misleading or deceptive billing information may be an unjust and unreasonable practice in violation of Section 201(b). In the First Report and Order issued in CC Docket No. 98–170, released May 11, 1999, the Commission imposes the following collections of information to ensure that telephone bills contain the information necessary for consumers to determine the validity of charges assessed on the bills and to combat telecommunications fraud. a. *Clear identification of service providers.* Section 64.2001 requires that all telephone bills clearly identify the name of the service provider associated with each charge. (No. of respondents: 3099; hours per response: 1 hour; total annual burden: 3099).

b. *Separation of charges by service provider and highlighting new service provider information.* Section 64.2001 requires that all telephone bills containing charges for wireline common carrier service (1) separate charges by service provider and (2) clearly and conspicuously show any change in service providers by identifying all service providers that did not bill for services on the previous billing statement and, where applicable, describing any new presubscribed or continuing relationship with the customer. (No. of respondents: 2295; hours per response: 80 hours; total annual burden: 183,600 hours).

c. *Full and non-misleading billed charges.* Section 64.2001 requires that (1) all telephone bills for wireline service, include for each charge a brief, clear, plain-language description of the services rendered; and (2) all telephone bills that contain additional carrier charges along with charges for local wireline service must differentiate between charges for which non-payment could result in termination of local telephone service and those charges for which non-payment would not result in termination of such basic service. (No. of respondents: 2295; hours per response: 2 hours; total annual burden: 4590 hours).

d. *Clear and Conspicuous Disclosure of Inquiry Contacts.* Section 64.2001 requires that all telephone bills display a toll-free number or numbers by which consumers may inquire about or dispute any charge on the bill. The number(s) must be displayed in a manner that permits a customer to identify easily the appropriate number to use to inquire about a particular charge. (No. of respondents: 3099; hours per response: 1 hour; total annual burden: 3099 hours). The information will be used by consumers to help them understand their telephone bills. Consumers need this information to protect themselves against fraud and to resolve billing disputes on their own. Obligation to comply: Required to obtain or retain benefits.

Note: The Commission issued a Public Notice announcing the effective date of the requirements. See DA 99–2030, released 9/30/99.

OMB Control No.: 3060–0515.

Expiration Date: 10/31/2002.

Title: Miscellaneous Common Carrier Annual Letter Filing Requirement—47 CFR Section 43.21(c).

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 32 respondents; 1 hour per response (avg.); 32 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: Pursuant to Section 43.21(c), each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in 47 CFR Section 32.9000 must file a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letter must contain information pertaining to the carrier's revenues, expenses, net income, assets, liabilities and owners' equity. These letters must be filed by no later than April 1 of the following year. Those miscellaneous common carriers with annual operating revenues that equal or surpass the indexed revenue threshold for the first time may file the letter up to one month after publication of the adjusted revenue threshold in the **Federal Register**, but in no event shall such carriers be required to file the letter prior to April 1. The information is used by staff members to regulate and monitor the telephone industry and by the public to analyze the industry. The information on revenue and total plant is compiled and published in the Commission's annual common carrier statistical publication and long distance market share report. Obligation to comply: Mandatory.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–27529 Filed 10–20–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following

agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 201088.
Title: Jacksonville—Birdsall Marine Terminal Agreement.
Parties:
Jacksonville Port Authority, Birdsall, Inc.
Synopsis: The proposed agreement permits Birdsall, Inc., to operate and use certain facilities at the Talleyrand Docks. The Agreement runs through September 30, 2000.

Agreement No.: 201089.
Title: Broward-Worldwide-Carnival Passenger Cruise Marine Terminal Agreement.
Parties:
Broward County, Worldwide Shore Services, Inc., Carnival Corporation
Synopsis: The proposed agreement provides for the use of certain facilities at Port Everglades. The agreement runs through September 30, 2009.

Dated: October 15, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–27435 Filed 10–20–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Delpa International Corp., 7084 NW 50th Street, Miami, FL 33166, Officers: Xonia Torres, Secretary, (Qualifying Individual), Daniel A. Urra, President.

Polonoz Parcel Service, Inc., 143 Doty Circle, West Springfield, MA 01089, Officers: Joanna Chrzan, Vice President, (Qualifying Individual), Jan Chrzan, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

H.L.M. Cargo Corp., 5567 NW 72nd Avenue, Miami, FL 33166, Officers: Nilo E. Villena, Jr., President, (Qualifying Individual), Nilo E. Villena, Sr., Vice President.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

J-Lec Corp., 5405 NW 102nd Avenue, Suite 223, Sunrise, FL 33351, Officers: Luis E. Rodriguez, Vice President, Eduardo G. Sardinha, President.

Dated: October 15, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–27436 Filed 10–20–99; 8:45 am]

BILLING CODE 6730–01–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 November 4, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Piton, L.P. and Ram's Horn, L.P., Tulsa, Oklahoma; to acquire voting shares of Sooner Southwest Bankshares, Inc., Tulsa, Oklahoma; and thereby indirectly acquire voting shares of Security First National Bank of Hugo, Hugo, Oklahoma, and Community Bank, Bristow, Oklahoma.

Board of Governors of the Federal Reserve System, October 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27465 Filed 10–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 15, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Advantage Bankshares, Inc., Village of North Palm Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Advantage Bank, Village of North Palm Beach, Florida (in organization).

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Community Bancshares of Chanute, Inc., Chanute, Kansas; to merge with Edna Bancshares, Inc., Edna, Kansas,

and thereby indirectly acquire First State Bank, Edna, Kansas.

2. MBT Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of Whiting Bancshares, Inc., Whiting, Kansas, and thereby indirectly acquire First State Bank of Whiting, Whiting, Kansas, and First State Bank of Lancaster, Lancaster, Kansas.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Capitol Bancorp, Lansing, Michigan; Sun Community Bancorp, Tucson, Arizona; and Sunrise Capital Corporation, Phoenix, Arizona; to acquire 51 percent of the voting shares of Sunrise Bank of Albuquerque, Albuquerque, New Mexico (in organization). Sunrise Capital Corp., also has applied to become a bank holding company.

2. Capitol Bancorp, Lansing, Michigan; Sun Community Bancorp, Tucson, Arizona; and Nevada Community Bancorp, Las Vegas, Nevada; to acquire 51 percent of the voting shares of Black Mountain Community Bank, Las Vegas, Nevada (in organization).

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. North American Bancshares, Inc., Sherman, Texas; to acquire 98.76 percent of the voting shares of Marble Falls National Bancshares, Inc., Marble Falls, Texas, and thereby indirectly acquire Marble Falls National Bank, Marble Falls, Texas.

2. Texas Independent Bancshares, Inc., Texas City, Texas; to acquire 100 percent of the voting shares of American Independent Bancshares, Inc., Santa Fe, Texas, and thereby indirectly acquire Texas First Bank, Santa Fe, Texas.

Board of Governors of the Federal Reserve System, October 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27464 Filed 10–20–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Nonbanking Activities or to Acquire Companies that are Engaged in Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 4, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. The Chase Manhattan Corporation, New York, New York; to acquire all of the shares of Hambrecht & Quist Group, Inc. (''Group''), San Francisco, California, and thereby engage worldwide in: extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; leasing personal or real property, pursuant to § 225.28(b)(3) of Regulation Y; financial or investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage, riskless principal, private placement and other agency transactional services, pursuant to §§ 225.28(b)(7)(i)(ii)(iii) & (v) of Regulation Y; underwriting and dealing in obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. sections 24 and 335 (''bank-eligible securities''), and engaging in investing and trading activities, pursuant to §§ 225.28(b)(8)(i) & (ii) of Regulation Y; management consulting, pursuant to § 225.28(b)(9)(i) of Regulation Y; underwriting and dealing in, to a limited extent, all types of debt and equity securities other than interests in open-end investment companies, *see J.P. Morgan & Co.,* 75 Fed. Res. Bull. 192 (1989); and acting as the general partner of private investment limited partnerships that invest in assets in which a bank holding company is permitted to invest, *see Dresdner Bank AG,* 84 Fed. Res. Bull. 361 (1998). Notificant would engage in these activities in accordance with the limitations and conditions previously established by the Board by regulation or order, with an exception relating to the proposed dealing in bank-ineligible securities that is discussed in the notice. Specifically, Notificant proposes, through its activities as a dealer in bank-ineligible securities, to acquire, at times, between 5 percent and 25 percent of the voting shares of various companies. Notificant also intends to acquire certain offshore affiliates, companies engaged in providing services to Hambrecht & Quist Group, and proprietary investments of the Group.

2. North Fork Bancorporation, Inc., Melville, New York; to acquire JSB Financial, Inc., and thereby indirectly acquire Jamaica Savings Bank FSB, both of Lynbrook, New York, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than November 15, 1999.

3. North Fork Bancorporation, Inc., Melville, New York; to acquire Reliance Bancorp, Inc., and thereby indirectly acquire Reliance Federal Savings Bank, both of Garden City, New York, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received not later than November 15, 1999.

Board of Governors of the Federal Reserve System, October 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–27463 Filed 10–20–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meetings.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9:00 a.m.–5:p.m., November 3, 1999.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC

Status: Open

Purpose: A one day meeting of the National Committee on Vital and Health Statistics is planned for November 3, 1999. The meeting will focus on a variety of health data policy issues. Department officials will update the Committee on recent activities of the HHS Data Council and the status of HHS activities in implementing the administrative simplication provisions of Public Law 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will discuss its draft report on Medicaid managed care data issues, as well as possible NCVHS comments on forthcoming HIPAA Notices of Proposed Rulemaking relating to standards for claims attachments, health information privacy, and other proposed rules.

All topics are tentative and subject to change. Prior to the meeting, please check the NCVHS web site, where a detailed agenda will be posted when available.

Contact Person for More Information: Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director Office of the Assistance Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–4253.

Notes: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: October 14, 1999.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 99–27438 Filed 10–20–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations—Working Group on Quality.

Time and Date: 5:30 p.m.—8:00 p.m., November 3, 1999.

Place: Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW, Washington, DC 20037.

Status: Open.

Purpose: The purpose of the meeting is to identify the most significant data gaps in the existing National Health Information Infrastructure that inhibit the development and/or production of clinical quality measures for all segments of the population. A panel of speakers will consist of individuals who have been involved in the design, testing and production of operational clinical quality measures. Other similar panels, including one with researchers who have developed measures to support outcomes research, will be planned in connection with future NCVHS meetings.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Stan Edinger, Lead Staff Person for the NCVHS Subcommittee on Special Populations, Working Group on Quality, Agency for Health Care Policy and Research, 2101 East Jefferson Street, #600, Rockville, MD 20852 telephone (301) 594–1483; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe/os.dhhs.gov/ncvhs,* where an agenda for the meeting will be posted when available.

Dated: October 14, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–27439 Filed 10–20–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–155]

Notice of the Revised Priority List of Hazardous Substances That Will Be the Subject of Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires that ATSDR and the Environmental Protection Agency (EPA) revise the Priority List of Hazardous Substances. This list includes substances most commonly found at facilities on the CERCLA National Priorities List (NPL) which have been determined to be of greatest concern to public health at or around these NPL hazardous waste sites. This announcement provides notice that the agencies have developed and are making available a revised CERCLA Priority List of 275 Hazardous Substances, based on the most recent information available to ATSDR and EPA. Each substance on the priority list is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

In addition to the Priority List of Hazardous Substances, ATSDR has developed a Completed Exposure Pathway Site Count Report. This report lists the number of sites or events with ATSDR activities where a substance has been found in a completed exposure pathway (CEP). This report is included in the Support Document of the Priority List.

ADDRESSES: Requests for a copy of the report, the 1999 CERCLA Priority List of Hazardous Substances That Will Be The Subject of Toxicological Profiles and Support Document, including the CEP report, should bear the docket control number ATSDR–155, and should be submitted to: ATSDR Information Center, Division of Toxicology, Mail Stop E–29, 1600 Clifton Rd., NE, Atlanta, GA 30333. Requests must be in writing.

Electronic Availability: The 1999 Priority List of Hazardous Substances will be posted on ATSDR's World-Wide Web server on the Internet located at http://www.atsdr.cdc.gov/99list.html. The priority list will also be posted on the Federal Bulletin Board on or near the day of publication of this notice in the **Federal Register**. The Federal Bulletin Board can be accessed via the Internet at http://fedbbs.access.gpo.gov/libs/tsd__frc.htm. This file is available in WordPerfect, Dbase, and ASCII formats.

This is an informational notice only, and comments are not being solicited at this time. However, any comments received will be considered for inclusion in the next revision of the list and placed in a publicly accessible docket; therefore, please do not submit confidential business or other confidential information.

FOR FURTHER INFORMATION CONTACT: ATSDR, Division of Toxicology, Emergency Response and Scientific Assessment Branch, 1600 Clifton Road NE, Mail Stop E–29, Atlanta, GA 30333, telephone 888–442–8737.

SUPPLEMENTARY INFORMATION: CERCLA establishes certain requirements for ATSDR and EPA with regard to hazardous substances that are most commonly found at facilities on the CERCLA NPL. Section 104(i)(2) of CERCLA, as amended (42 U.S.C. 9604(i)(2)), required that the two agencies prepare a list, in order of priority, of at least 100 hazardous substances that are most commonly found at facilities on the NPL and which, in their sole discretion, have been determined to pose the most significant potential threat to human health (see 52 FR 12866, April 17, 1987). CERCLA also required the

agencies to revise the priority list to include 100 or more additional hazardous substances (see 53 FR 41280, October 20, 1988), and to include at least 25 additional hazardous substances in each of the three successive years following the 1988 revision (see 54 FR 43619, October 26, 1989; 55 FR 42067, October 17, 1990; 56 FR 52166, October 17, 1991). CERCLA also requires that ATSDR and EPA shall, at least annually thereafter, revise the list to include additional hazardous substances that have been determined to pose the most significant potential threat to human health. In 1995, the agencies altered the publication schedule of the priority list by moving to a 2-year publication schedule, reflecting the stability of this listing activity (60 FR 16478, March 30, 1995). As a result, the priority list is now on a 2-year publication schedule with a yearly informal review and revision. Each substance on the CERCLA Priority List of Hazardous Substances is a candidate to become the subject of a toxicological profile prepared by ATSDR and subsequently a candidate for the identification of priority data needs.

The initial priority lists of hazardous substances (1987–1990) were based on the most comprehensive and relevant information available when the lists were developed. More comprehensive sources of information on the frequency of occurrence and the potential for human exposure to substances at NPL sites became available for use in the 1991 priority list with the development of ATSDR's HazDat database. Utilizing this database, a revised approach and algorithm for ranking substances was developed in 1991, and a notice announcing the intention of ATSDR and EPA to revise and rerank the Priority List of Hazardous Substances was published on June 27, 1991 (56 FR 29485). The subsequent 1991 Priority List and revised approach used for its compilation was summarized in the ''Revised Priority List of Hazardous Substances'' **Federal Register** notice published October 17, 1991 (56 FR 52166). The same approach and the same basic algorithm have been used in all subsequent activities, including the 1999 listing activity. The algorithm used in ranking hazardous substances on the priority list consists of three criteria, which are combined to result in the total score. The three criteria are: frequency of occurrence at NPL sites; toxicity; and potential for human exposure.

Since HazDat is a dynamic database with ongoing data collection, additional information from the HazDat database became available for the 1999 listing activity. This additional information has been entered into HazDat since the development of the 1997 Priority List of Hazardous Substances. The site-specific information from HazDat that is used in the listing activity has been collected from ATSDR public health assessments, health consultations, and from site file data packages that are used to develop these public health assessments. The new information may include more recent NPL frequency of occurrence data, additional concentration data, and more information on exposure to substances at NPL sites. With these additional data, 17 substances have been replaced on the list of 275 substances. Of the 17 replacement substances, 12 are new candidate substances, and 5 are substances that were previously under consideration. These replacement substances and changes in the order of substances appearing on the CERCLA Priority List of Hazardous Substances will be reflected in the program activities that rely on the list for future direction. These changes reflect the dynamic nature of scientific data on substances present at NPL hazardous waste sites.

The 1999 Priority List of Hazardous Substances includes 275 substances that have been determined to be of greatest concern to public health based on the criteria of CERCLA Section 104(i)(2) (42 U.S.C. 9604(i)(2)). A total of 815 candidate substances have been analyzed and ranked with the current algorithm. Of these candidates, the 275 substances on the priority list may become the subject of toxicological profiles in the future. The top 25 substances on the 1999 Priority List of Hazardous Substances are listed below.

Rank	Substance name
1	ARSENIC.
2	LEAD.
3	MERCURY.
4	VINYL CHLORIDE.
5	BENZENE.
6	POLYCHLORINATED BIPHENYLS.
7	CADMIUM.
8	BENZO(A)PYRENE.
9	POLYCYCLIC AROMATIC HYDROCARBONS.
10	BENZO(B)FLUORANTHENE.
11	CHLOROFORM.
12	DDT, P,P′-.
13	AROCLOR 1260.
14	AROCLOR 1254.
15	TRICHLOROETHYLENE.
16	CHROMIUM, HEXAVALENT.
17	DIBENZO(A,H)ANTHRACENE.
18	DIELDRIN.
19	HEXACHLOROBUTADIENE.
20	DDE, P,P′-.
21	CREOSOTE.
22	CHLORDANE.
23	BENZIDINE.
24	ALDRIN.
25	AROCLOR 1248.

ATSDR and EPA intend to publish the next revised list of hazardous substances in two years, with an informal review and revision performed in one year. These revisions will reflect changes and improvements in data collection and availability. Additional information on the existing methodology used in the development of the CERCLA Priority List of Hazardous Substances can be found in the Support Document to the List and in the **Federal Register** notices mentioned previously.

In addition to the revised priority list, ATSDR is also releasing a Completed Exposure Pathway Site Count Report. A completed exposure pathway (CEP) is an exposure pathway that links a contaminant source to a receptor population. The CEP ranking is very similar to a sub-component of the potential-for-human-exposure component of the listing algorithm. The CEP ranking is based on a site frequency count, and thus lists the number of sites at which a substance has been found in a CEP. ATSDR's HazDat database contains this information which is derived from ATSDR public health assessments and health consultations. Because exposure to hazardous substances is of significant concern, ATSDR has been tabulating the substances to which people have been exposed at hazardous waste sites. Recently much interest has been focused on this tabulation. Therefore, ATSDR is publishing this CEP report along with the CERCLA Priority List of Hazardous Substances. Since this CEP report focuses on documented exposure, it provides an important prioritization based on substances to which people are exposed.

The substances on the CEP report are similar to the substances on the CERCLA Priority List of Hazardous Substances. However, there are some substances that are on the CEP report, because they are frequently found in completed exposure pathways, but are not on the CERCLA Priority List because they have a very low toxicity (*e.g.*, sodium). Since the CERCLA Priority List incorporates three different components (toxicity, frequency of occurrence, and potential for human exposure) to determine its priority substances, substances with very low toxicity are not on the CERCLA Priority List and consequently are not the subject of toxicological profiles. Of the 100

substances on the CEP report, the 25 substances found at the most number of sites in a CEP are presented below.

Substance name	Number of sites with substance in a CEP	
	All sites	NPL sites
LEAD	298	206
TRICHLOROETHYLENE	277	239
ARSENIC	215	147
TETRACHLOROETHYLENE	206	167
BENZENE	149	116
CADMIUM	148	105
CHROMIUM	146	102
POLYCHLORINATED BIPHENYLS	130	96
1,1,1-TRICHLOROETHANE	116	97
ZINC	116	75
MANGANESE	116	73
MERCURY	115	74
COPPER	101	61
VOLATILE ORGANIC COMPOUNDS, UNSPECIFIED	99	73
CHLOROFORM	98	81
1,1-DICHLOROETHENE	94	87
METHYLENE CHLORIDE	93	69
TOLUENE	86	60
NICKEL	84	59
BARIUM	82	52
VINYL CHLORIDE	81	75
1,1-DICHLOROETHANE	80	72
1,2-DICHLOROETHANE	77	66
BENZO(A)PYRENE	77	46
ANTIMONY	74	50

Note: Sorted by the All Sites column.
ALL Sites = all sites with ATSDR activities; NPL Sites = current and former sites on the National Priorities List, as mandated.

Dated: October 15, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–27466 Filed 10–20–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Surveillance and Evaluation of Plasma Donors for the Human Immunodeficiency Virus (HIV) and Hepatitis C Virus (HCV)—New—National Center for HIV, STD, and TB Prevention (NCHSTP). In 1987, the President directed the Department of Health and Human Services (DHHS) to determine the nationwide incidence of, to predict the future of, and to determine the extent to which human immunodeficiency virus (HIV) was present in various segments of the population. In response, the CDC formed an epidemiologic team to summarize existing information. An extensive review of published and unpublished data led to the conclusion that even though there was information suggesting a very large number of Americans were infected, there was no substitute for carefully and scientifically obtained incidence and prevalence data. The need to monitor HIV seroprevalence existed on the national and at the state and local levels for public health management: Targeting and evaluating prevention programs, planning future health care needs and determining health policy. Research has also indicated that similar studies are needed to determine the incidence and prevalence of hepatitis C (HCV) infection.

A complementary family of surveys and studies, organized by the CDC, provides empirical estimates of the extent of the epidemic of the human immunodeficiency virus (HIV) in the United States. The national surveillance system of HIV infection in the United States includes monitoring incidence and prevalence rates of HIV-infection among first time and repeat whole blood donors. Although this surveillance system has been in place for several years to monitor HIV trends in the United States blood supply, such a system does not exist for the source

plasma industry for either HIV or hepatitis C (HCV).

The source plasma industry collects approximately 14 million of plasma each year. The majority of source plasma is used to produce immune globulins, albumin and other blood products utilized in the United States and in other countries. Donors may donate up to two times per week and are remunerated for each donation. Although the source collection industry plays an important role in the production of blood products, little information regarding HIV or HCV rates within the industry has been published to date.

The objectives of this study of HIV and HCV in plasma donors are to:

1. Analyze the risk behavior characteristics of infected donors to assess distribution and trends of HIV and HCV;

2. Study the motivations and risk factors of HIV and HCV infected deferred donors in order to improve the donor screening and deferral processes;

3. Monitor additional human immunodeficiency and hepatitis viruses, HIV and HCV genetic variation, and other infections relevant to the epidemiology of HIV and HCV among U.S. plasma donors;

4. Evaluate the laboratory characteristics of plasma from infected donors to determine the effectiveness of current and anticipated test modalities; and

5. Evaluate risk factors for transmission of HCV among recently infected individuals.

The above objectives will be attained though a questionnaire designed to evaluate demographic information, knowledge of HIV and HCV, risks for HIV and HCV and motivations for donating plasma. In order to elucidate risks for transmission among this population, a group of HIV and HCV negative persons will also be given the questionnaire. Respondents will be interviewed with the aid of a computer assisted telephone interview (CATI) and respondents will receive a stipend for their time and travel expenses. Participation is voluntary, and all information will be gathered only after written informed consent has been obtained.

The CDC anticipates 430 individuals will be enrolled annually in this study (based upon combined estimates obtained from the plasma companies regarding the number of HIV and HCV positive donors identified per year, plus the number of HIV and HCV negative individuals enrolled as comparisons). It has been estimated that the interview will take approximately 20 minutes to complete; therefore, the response burden will be 143 hours. The approximate hourly wage earned per respondent is $10.00/hour. The total cost to the respondents would be $1430.00.

Form name	Number of respondents	Number of responses/ respondent	Avg. burden per response (in hrs.)	Total Burden (in hrs.)
Questionnaire	430	1	20/60	143

Date: October 14, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–27467 Filed 10–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–02]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. Surveillance and Evaluation of Blood Donors Positive for Human Immunodeficiency Virus (HIV) Antibody or HIV Antigen Surveillance and Evaluation of Blood Donors Positive for Human Immunodeficiency Virus (HIV) Antibody or HIV Antigen (0920–0329)—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP). In 1987, the President directed the Department of Health and Human Services (DHHS) to determine the nationwide incidence of, to predict the future of, and to determine the extent to which human immunodeficiency virus (HIV) is present in various segments of our population. In response, CDC formed an epidemiological team to summarize existing information. An extensive review of published and unpublished data led to the conclusion that even though there is information suggesting a very large number of Americans were infected, there was no substitute for carefully and scientifically obtained incidence and prevalence data. The need to monitor HIV seroprevalence existed on the national and at the state and local levels for public health management: Targeting and evaluating prevention programs, planning future health care needs and determining health policy.

On a national basis, HIV seroprevalence projects in 1987 consisted of monitoring the HIV status of: Civilian applicants for military service; blood donors, including follow-up risk factor evaluation in seropositives; and Job Corps entrants. HIV prevalence was studied in settings of special public health interest including selected colleges and prisons, among health care workers in hospital emergency rooms and among Native Americans and homeless persons. Other national data sources were examined, such as cohort studies of groups at risk, including homosexual and bisexual men and IV drug users, providing information on knowledge of AIDS and

risk behaviors, changes in behavior, and incidence of HIV infection.

In 1987, OMB approved the ''Family of HIV Seroprevalence Surveys'' (0920–0232). These surveys included seven seroprevalence surveys that involved interaction with individuals (non-blinded surveys). One of these surveys was the surveillance and evaluation of blood donors.

The objectives of this study are to: (1) Estimate the prevalence and incidence of HIV infection among blood donors at participating blood centers; (2) evaluate the characteristics of infected donors to strengthen the effectiveness of the donor screening and deferral processes; (3) analyze the risk behavior characteristics of infected donors to assess distribution and trends of HIV; (4) monitor additional human immunodeficiency viruses, HIV genetic variation, and other infections relevant to the epidemiology of HIV among U.S. blood donors and seroconverted recipients; (5) estimate the risk of HIV transmission from screened blood; (6) and evaluate new tests to decrease transmission by window period donors.

In 1993 and 1996, OMB again approved for 3 years each, the surveillance and evaluation of blood donors who test positive for Human Immunodeficiency Virus (HIV) Antibody and their needle-sharing and sexual partners (0920–0329). This request is for an additional 3-year approval. The CDC anticipates 125 positive donors will enroll annually in this study (based upon previous 3 year enrollment rates and epidemiological progress of the disease). The interview takes approximately 1 hour to complete for those who agree to the interview and 10 minutes to complete for those who refuse to enroll. The total cost to the respondent is $8,206.19 over the 3-year period.

Respondents	Number of respondents	Number of responses/Respondent	Avg. burden response (in hours)	Total burden (in hours)
Blood donors (interviewed)	375	1	1.0	375
Blood donors (refuse interview)	275	1	0.16	44
Total				419.00

Dated: October 14, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–27468 Filed 10–20–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–00–04]

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

Gene-Environment Interactions in Beryllium Sensitization and Disease Among Current and Former Beryllium Industry Workers—NEW—National Institute for Occupational Safety and Health (NIOSH). Beryllium is a light weight metal with wide application in modern technology. The size of the U.S.A. Workforce at risk of beryllium exposure is estimated at approximately 30,000, with exposed workers in primary production, nuclear power and weapons, aerospace, scrap metal reclaiming, specialty ceramics, and electronics industries. Demand for beryllium is growing worldwide, which means that increasing numbers of workers are likely to be exposed. An acute pneumonitis due to occupational exposure to beryllium was common in the 1940s and 1950s, but has virtually disappeared with improvements in work-site control measures. Even with the improved controls, as many as 5% of currently-exposed workers will develop chronic beryllium disease (CBD).

CBD is a chronic granulomatous lung disease mediated through a poorly understood immunologic mechanism in workers who become sensitized. Sensitization can be detected using a blood test, that is used by the industry as a screening tool. The screening test for sensitization was first reported in 1989, but many questions remain about the natural history of sensitization and disease, as well as exposure risk factors. Sensitized workers, identified through workplace screening programs, undergo clinical diagnostic tests to determine whether they have CBD. The proportion of sensitized workers who have beryllium disease at initial clinical evaluation has varied form 41–100% in different workplaces. Sensitized workers often develop CBD with follow-up, but whether all sensitized workers will eventually develop beryllium disease is unknown. Early diagnosis at the subclinical stage and careful follow-up seems prudent in that CBD usually responds to corticosteroid treatment. However, the efficacy of screening in preventing adverse outcomes of the disease has not yet been evaluated. While recent research has suggested that a genetic determinant of the immune response could be a susceptibility factor, this has not been well characterized.

The National Institute of Occupational Safety and Health (NIOSH) wants to determine how beryllium workers and former workers develop beryllium disease and how to prevent it. Through the proposed study, NIOSH has the opportunity to contribute to the scientific understanding of this disease in the context of environmental and genetic etiologic factors. The goals of this investigation are to: (1) determine the incidence of beryllium sensitization or disease over a 6-year period; (2) seek an association with exposure measurements; (3) identify a genetic determinant of susceptibility to CBD; and (4) characterize that genetic determinant to ascertain if it is associated with clinical impairment or progression of disease. Through a greater understanding of the environmental and genetic risk factors associated with the onset and progression of CBD, NIOSH will be able to develop strategies for both primary and secondary prevention applicable to beryllium-exposed workers. The total annual burden hours are 250.

Respondents	Number of respondents	Responses per respondent	Hours per response (in hrs.)
Former Workers	s60,175	1	0.5

Dated: October 13, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC)

[FR Doc. 99–27193 Filed 10–20–99; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Project.

Title: Federal Parent Locator Service.

OMB No.: 0970–0142.

Description: The Federal Parent Locator Service is a computerized national location network which provides address and social security number information to State and local child support enforcement agencies upon request for purposes of locating parents to establish parentage or establish or enforcement a child support order and to assist authorized persons in resolving parental kidnapping and child custody and visitation issues. As such, the FPLS services as a conduct between child support enforcement offices and Federal and State agencies by conducting weekly, biweekly, or monthly matches of the collected information with various agencies and distributing the information back to the requesting State or local child support office.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
FPLS	200	24	1	4,800

Estimated Total Annual Burden Hours: 4,800.

In Compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447.

Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 15, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–27437 Filed 10–20–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4202]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use—Form FDA 356h

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the application form, Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use, Form FDA 356h, and a related regulation. This form applies to a wide range of products for human use that are regulated by both the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) including drugs and biologics.

DATES: Submit written comments on the collection of information by December 20, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use; Form FDA 356h (OMB Control Number 0910–0338)—Extension

FDA is the Federal agency charged with responsibility for determining that drugs, including antibiotic drugs, and biologics are safe and effective. Manufacturers of a drug, or biologic for human use must file applications for FDA approval of the product prior to introducing it into interstate commerce. Statutory authority for the collection of this information is provided by section 505(a), (b), and (j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(a), (b), and (j)) and section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262). Manufacturers of new drugs for human use regulated under the act must submit a new drug application (NDA) for review and approval to CBER or CDER prior to marketing a drug in interstate commerce (§ 314.50 (21 CFR 314.50)). Manufacturers of generic drugs regulated under the act must submit a abbreviated new drug application (ANDA) for review and approval to CDER prior to marketing a generic drug in interstate commerce (§ 314.94 (21 CFR 314.94)).

Manufacturers of biological products regulated under the PHS Act must submit an establishment license application (ELA) and a product license application (PLA) or biologics license application (BLA) for review and approval to CBER prior to marketing a biological product in interstate commerce (§ 601.2 (21 CFR 601.2)). Blood and blood components fall within the category of biological products. All establishments collecting and/or preparing blood and blood components for sale or distribution in interstate commerce are subject to the licensing application provisions of section 351 of the PHS Act. Applicants are required to report to FDA any transfer of ownership of an NDA (21 CFR 314.72). Applicants are required to report a change in ownership of an ANDA (21 CFR 314.99(a)). Manufacturers of a drug or biologic for human use are required to file supplemental applications for certain changes to applications previously approved (21 CFR 314.70, 314.71, 314.97, and 601.12). The form is also submitted with an amendment to an unapproved original application or supplemental application, and a presubmission or resubmission of information pertaining to an application.

The information provided by manufacturers with the application form is necessary for FDA to carry out its mission of protecting the public health and helping to ensure that drugs and biologics for human use have been shown to be safe and effective. Form FDA 356h was developed initially as a checklist to assist manufacturers in filling a drug application and has been previously used only by manufacturers of products regulated under the act. In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of the revised Form FDA 356h. The form was revised as a ''Reinventing Government'' initiative to harmonize application procedures between CBER and CDER. The application form serves primarily as a checklist for firms to gather and submit to the agency studies and data that have been completed. The checklist helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. The form provides key information to the agency for efficient handling and distribution to the appropriate staff for review. For biologics manufacturers, the form will replace a number of different ELA and PLA forms that were formerly used for these products. The information collection burden for various ELA and PLA forms is covered under OMB Control No. 0910–0124.

There are an estimated 343 licensed biologics manufacturers. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The annual responses are based on submissions received by FDA in 1998. The time estimated to prepare an ELA/PLA or BLA under § 601.2 for CBER approval to market a new product is based on information provided by industry. The time required for preparing an ELA/PLA or BLA includes the estimate for filling out the form. The estimated average burden hours for the other submissions using Form 356h to CBER is based on past FDA experience and includes the time to fill out the form and collate the documentation. The average burden hours also include the time to prepare an amendment submitted to CBER. The estimated burden hours to prepare a supplement to CBER (§ 601.12) are reported under OMB Control No. 0910–0315.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

21 CFR/FDA Form	No. of respondents	Total annual responses	Hours per response	Total hours
601.2	343	84	1,600	134,400
Form 356h	343	4,947	16	79,152
Total				213,552

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

There are 483 drug applicants that submitted the form. The annual responses are based on submissions received by FDA in 1997 and 1998. The estimated average burden hours for the submissions using Form 356h to CDER is based on past FDA experience and includes the time to fill out the form and collate the documentation. The estimated burden hours to prepare an NDA (§ 314.50); an ANDA (§ 314.94); supplements (21 CFR 314.70, 314.71, and 314.97); and amendments (21 CFR 314.60 and 314.96) are approved under OMB Control No. 0910–0001.

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]

21 CFR Part/FDA Form	No. of respondents	Total annual responses	Hours per response	Total hours
Form 356h	483	16,221	24	389,304
Total				389,304

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 13, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–27499 Filed 10–20–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4328]

Draft Guidance for Industry on Developing Antimicrobial Drugs to Treat Catheter-Related Bloodstream Infections; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Catheter-Related Bloodstream Infections—Developing Antimicrobial Drugs for Treatment.'' This draft guidance is one in a series of guidances being developed to assist pharmaceutical manufacturers in developing antimicrobial drug products.

DATES: Written comments on the draft guidance may be submitted by December 20, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance entitled ''Catheter-Related Bloodstream Infections—Developing Antimicrobial Drugs for Treatment'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. 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: Renata Albrecht, Center for Drug Evaluation and Research (HFD–590), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2336.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''Catheter-Related Bloodstream Infections—Developing Antimicrobial Drugs for Treatment.'' This is one of a series of guidances under development to assist manufacturers in planning the necessary clinical studies and designing and implementing the clinical protocols for drug products to treat infections. This draft guidance discusses catheter-related bloodstream infections, i.e., bloodstream infections resulting from an infected vascular access device or contaminated infusate. The issues raised in this draft guidance will be discussed at a meeting of the Anti-Infective Drugs Advisory Committee, scheduled for October 20, 1999 (64 FR 54335, October 6, 1999).

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on catheter-related bloodstream infections. 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 submit written comments on the draft 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 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: October 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–27580 Filed 10–19–99; 11:59 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Health Care Financing Administration (HCFA).

ACTION: Notice to delete systems of records.

SUMMARY: The Health Care Financing Administration is deleting twenty (20) systems of records from its inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: The deletions will be effective on October 21, 1999.

ADDRESSES: The public should address comments to: Director, Division of Data Liaison and Distribution, HCFA, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–3573. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

SUPPLEMENTARY INFORMATION: We have conducted a review of each Privacy Act systems of records under our control. As a result of this review, notice is hereby given that HCFA is deleting twenty (20)

systems of records. The systems of records are being deleted because they are either obsolete and no longer in use, or the systems have been phased out following the reorganization and replaced with existing or newly designed systems. All records were disposed in compliance with the ''Retention and Disposal'' section of each notice.

Deletions

No. 09–70–0019
System Name: ''Actuarial Sample Hospital Stay Record Study (ASHSS) System,'' HHS/HCFA/BDMS; (Published **Federal Register** on Wednesday, October 13, 1982, Vol. 47, No. 198, pages 45703–45705)

No. 09–70–0020
System Name: ''Actuarial Sample of Supplementary Medical Insurance (SMI) Payments,'' HHS/HCFA/BDMS; (Published **Federal Register** on Wednesday, October 13, 1982, Vol. 47, No. 198, page 45705)

No. 09–70–0029
System Name: ''Evaluation of Medicare Competition Demonstration (EMCD),'' HHS/HCFA/ORD; (Published **Federal Register** on Thursday, December 22, 1983, Vol. 48, No. 247, pages 56645–56647)

No. 09–70–0034
System Name: ''Evaluation of Social/Health Maintenance Organizations (SHMO) Demonstrations,'' HHS/HCFA/ORD; (Published **Federal Register** on Monday, July 22, 1985, Vol. 50, No. 240, pages 29766–29767)

No. 09–70–0035
System Name: ''Aftercare Evaluation System (AES),'' HHS/HCFA/ORD; (Published **Federal Register** on Wednesday, September 2, 1987, Vol. 52, No. 170, pages 33290–33292)

No. 09–70–0038
System Name: ''Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plans (CMP) Program,'' HHS/HCFA/ORD; (Published **Federal Register** on Tuesday, January 5, 1983, Vol. 53, No. 2, pages 182–184)

No. 09–70–0041
System Name: ''Evaluation of the ORBRA 87 Medicare Payment of Influenza Vaccination (MPIV) Demonstration;'' HHS/HCFA/ORD; (Published **Federal Register** on Thursday, January 5, 1989, Vol. 54, No. 3, pages 329–331)

No. 09–70–0044
System Name: ''Demonstration and Evaluation of the Medicare Insured Group (MIG) Model;'' HHS/HCFA/ORD; (Published **Federal Register** on Wednesday, November 30, 1998, Vol. 53, No. 230, pages 48314–48315)

No. 09–70–0047
System Name: ''HCFA Medicare Mortality Predictor Data (MMPD) File;'' HHS/HCFA/ORD; (Published **Federal Register** on Tuesday, May 29, 1990, Vol. 55, No. 103, pages 21792–21794)

No. 09–70–0054
System Name: ''Evaluation of the United Mine Workers of America Health and Retirement Funds Medicare Part B Capitation (UMWC) Demonstration,'' HHS/HCFA/ORD; (Published **Federal Register** on Wednesday, March 4, 1992, Vol. 57, No. 43, pages 7765–7767)

No. 09–70–0055
System Name: ''Implementation and Evaluation of the Staff-Assisted Home Dialysis (SAHD) Demonstration,'' HHS/HCFA/ORD; (Published **Federal Register** on Monday, May 18, 1992, Vol. 57, No. 96, pages 21120–21123)

No. 09–70–0056
System Name: ''Evaluation of the Medicaid Expansion Demonstrations (EMED),'' HHS/HCFA/ORD; (Published **Federal Register** on Thursday, April 23, 1992, Vol. 57, No. 79, pages 14839–14841)

No. 09–70–0061
System Name: ''Evaluation of the Medicare Case Management Demonstration (EMCM),'' HHS/HCFA/ORD; (Published **Federal Register** on Tuesday, June 8, 1993, Vol. 58, No. 108, pages 32145–32146)

No. 09–70–0062
System Name: ''Medicare Cataract Surgery Alternate Payment Demonstration Data Base (MCSAP),'' HHS/HCFA/ORD; (Published **Federal Register** on Monday, June 21, 1993, Vol. 58, No. 117, pages 33826–33828)

No. 09–70–0507
System Name: ''Health Insurance Microfilm (HIUM),'' HHS/HCFA/BDMS; (Published **Federal Register** on Tuesday, October 27, 1981, Vol. 46, No. 207, pages 52703–52705)

No. 09–70–0529
System Name: ''Pennsylvania Medicare/Medicaid Duplicate Paid Claims,'' HHS/HCFA/RO III; (Published **Federal Register** on Friday, January 5, 1990, Vol. 55, No. 4, pages 487–489)

No. 09–70–1514
System Name: ''Medicare Severity of Illness Data (MSID) File,'' HHS/HCFA/HSQB; (Published **Federal Register** on Friday, March 17, 1989, Vol. 54, No. 51, pages 11292–11293)

No. 09–70–1515
System Name: ''Resident Assessment System and Data Base for Nursing (RASD),'' HHS/HCFA/HSQB; (Published **Federal Register** on Wednesday, January 2, 1991, Vol. 56, No. 1, pages 81–83)

No. 09–70–3003
System Name: ''Correspondence Handling and Processing System (CHAPS),'' HHS/HCFA/BDMS; (Published **Federal Register** on Wednesday, February 18, 1987, Vol. 52, No. 32, pages 4971–4972)

No. 09–70–4002
System Name: ''Beneficiary Inquiry Tracking System (BITS),'' HHS/HCFA/OPHC; (Published **Federal Register** on Friday, August 14, 1987, Vol. 52, No. 157, pages 30435–30438)

Dated: October 18, 1999.

Michael Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–27574 Filed 10–20–99; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and an Environmental Impact Statement for Texas Chenier Plain National Wildlife Refuge Complex, Chambers, Galveston and Jefferson Counties, Texas. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations for the following purposes: (1) To advise other agencies and the public of our intentions; (2) to obtain suggestions and information to be included in the EIS; and (3) to announce public open house meetings.

DATES: Submit comments on or before December 31, 1999. See Supplementary

Information for meeting dates and locations.

ADDRESSES: Address comments and requests for more information to: Louis J. Bridges, Project Manager, Research Management Consultants, Inc., P.O. Box 71, (412 Nevava Street), Hot Sulfur Springs, Colorado 80451.

FOR FURTHER INFORMATION CONTACT: Andy Loranger, Refuge Complex Manager (409) 267–3337; John Slown, U.S. Fish and Wildlife Service Biologist/Planner (505) 248–7458.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service started the process of developing a Habitat Stewardship Program for the Texas Chenier Plain ecosystem in southeast Texas in 1994. This Program included potential expansion through land acquisition of the Texas Chenier Plain NWR Complex. This Refuge Complex encompasses the Anahuac, McFaddin, Moody and Texas Point National Wildlife Refuges. Open houses and public meetings were held in 1994 and 1996.

Persons and organizations involved in the scoping process for the Habitat Stewardship Program included: the U.S. Department of Agriculture, Natural Resource Conservation Service; U.S. Department of the Interior, National Marine Fisheries Service, Texas Parks and Wildlife Department; Texas General Land Office; U.S. Army, Corps of Engineers; members of national, state and local conservation organizations; grazing permittees; inholders and neighboring landowners; and other interested citizens. Comments and concerns received have been used to identify issues for the upcoming Comprehensive Conservation Plan and EIS.

Major issues to be addressed in the Comprehensive Conservation Plan and associated EIS include management of the Refuge Complex and potential expansion of the Complex' refuges through land acquisition. Specific refuge management issues include management of public recreational uses such as hunting, fishing and wildlife observation, and habitat management strategies (grazing, cooperative rice farming, prescribed burning, water management) for wetland, grassland and woodland habitats. The plan will include the following topics: (a) An assessment of existing biological, physical, and cultural resources, and their condition; (b) identification of the long term goals and objectives of the refuge, consistent with the National Wildlife Refuge System mission; (c) strategies for habitat management, including actions for wetlands, grasslands and woodlands; (d) strategies for management of public access and uses, including hunting, fishing, wildlife observation and photography, environmental education and interpretation; (e) strategies for land acquisition or cooperative agreements with adjacent land owners to further the conservation goals of the plan.

Public open houses to allow opportunities for direct public input on the scope of the document will be held at a time and place to be determined. For information concerning these open houses, please contact Louis J. Bridges, at the address provided above.

All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)], and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

We estimate that the draft CCP/Environmental Impact Statement will be available in November, 2001.

Dated: October 7, 1999.

Stephen W. Perry,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–27550 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–014420

Applicant: Thomas Leuteritz, George Mason University, Fairfax, VA

The applicant requests a permit to import blood samples from Radiated tortoises (**Geochelone radiata**) collected in the wild in Madagascar, for scientific research.

PRT–016034

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in interstate commerce three male and four female captive-born tigers (*Panthera tigris*) from the Bridgeport Nature Center, Inc., Bridgeport, Texas, for export to Safari Park Qin Huang Dao, Qinhuangdao, China for the purpose of public display and conservation education.

PRT–016035

Applicant: International Animal Exchange, Ferndale, MI

The applicant requests a permit to purchase in interstate commerce four male and three female captive-born tigers (*Panthera tigris*) from the Bridgeport Nature Center, Inc., Bridgeport, Texas, for export to Beijing Badaling Wild Animal World, Beijing, China for the purpose of public display and conservation education.

PRT–015401

Applicant: Cincinnati Zoo & Botanical Gardens, Cincinnati, OH

The applicant requests a permit to export one male captive-born Komodo Island monitor (*Varanus komodoensis*) to the North of England Zoological Society, Chester, United Kingdom, for the purpose of enhancement of the species through propagation.

PRT–018063

Applicant: Randy Miller, Big Bear City, CA

The applicant requests a permit to export and re-import tigers (*Panthera tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities

conducted by the applicant over a three year period.

PRT–017745

Applicant: Jeffrey R. Powell, Yale University, New Haven, CT

The applicant requests a permit to re-export up to 5000 blood samples collected from wild Galapagos tortoises (*Geochelone nigra*) to Michel C. Milinkovitch, Free University of Brussels (ULB), Gosselies, Belgium, for the purpose of enhancement of the species through scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

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, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 18, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–27502 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1320–00; NMNM 99144]

Request for Public Comment on Fair Market Value and Maximum Economic Recovery; Lease by Application NMNM 99144

October 8, 1999.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The lands included in Coal Lease Application NMNM 99144 are located in San Juan County, New Mexico and are described as follows:

T. 30 N., R. 14 W., NMPM

Sec. 17, All;
Sec. 18, All;
Sec. 19, All;
Sec. 20, All;
Sec. 29, All;
Sec. 30, All;
Sec. 31, Lot 1–4, N½N½S½;

Containing 4,483.88 acres, more or less.

The average thickness of the coal under consideration is about 12 feet with an in-place of approximately 90 million tons.

The public is invited to submit written comments on the fair market value and the maximum economic recover of the tract.

In addition, notice is also given that a public hearing will be held on November 15, 1999, on the fair market value and maximum economic recovery of the proposed lease tract.

DATES: Comments must be received on or before November 22, 1999.

ADDRESSES: For more complete data on this tract, please contact Powell King or Ida T. Viarreal, Bureau of Land Management, New Mexico State Office, 1474 Rodeo Rd., Santa Fe, NM 87504.

The public hearing will be held at 7:00 p.m. at the Farmington Field Office, 1235 La Plata Highway, Farmington, New Mexico.

FOR FURTHER INFORMATION CONTACT: Charlie F. Beecham, Team Lead Solid Minerals, (505) 599–6372.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management regulations 43 CFR 3422 and 3425, not less than 30 days prior to the publication of the sale notice of sale, the Secretary shall solicit public comments on the fair market value appraisal, and maximum economic recovery and on factors that may effect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the above address during regular business hours (9:00 a.m. to 4:00 p.m.) Monday through Friday.

Comments should be sent to Bureau of Land Management Farmington Field Office, 1235 La Plata Highway, Farmington, NM 87401 and should address, but not necessarily be limited to, the following Information:

1. The quality and quantity of the coal resource;

2. The mining method or methods, which would achieve maximum economic recovery of the coal, including specification of seams to be mined and the most desirable timing and rate of production.

3. The quantity of coal;

4. If this tract is likely to be mined as part of an existing mine and therefore be evaluated, on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;

5. If this tract should be evaluated as part of a potential larger mining unit and evaluated as a portion of a new potential mine (*i.e.*, a tract which does not in itself form a logical mining unit);

6. The configuration to the mining, which may affect coal recovery;

7. Restrictions to the mining, which may affect coal recovery;

8. The price that the mined coal could bring when sold;

9. Costs, including mining and reclamation, of producing the coal and the time of production.

10. The percentage rate at which anticipated income streams should be discounted, either in the absence of inflation or with inflation, in which case the anticipated rate of inflation should be given;

11. Depreciation and other tax accounting factors:

12. The value of any surface estate where held privately;

13. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale acres; and

14. Any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Carsten F. Goff,

Acting State Director.

[FR Doc. 99–27178 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–00–1420–BJ]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New

Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on November 12, 1999.

New Mexico Principal Meridian, New Mexico

Taos Pueblo, Tract E, approved September 24, 1999.

T. 29 N., R. 13 W., and T. 29 N., R. 14 W., approved September 29, 1999.
T. 30 N., R. 13 W., and T. 31 N., R. 13 W., approved September 24, 1999.
T. 31 N., R. 11 W., approved September 29, 1999.

Indian Meridian, Oklahoma

T. 11 N., R. 8 W., approved September 29, 1999.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) day after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Sante Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: October 12, 1999.

Robert Bewley,

Acting Chief Cadastral Surveyor For New Mexico.

[FR Doc. 99–27551 Filed 10–20–99; 8:45 am]

BILLING CODE 4301–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Going-to-the-Sun Road Advisory Committee

AGENCY: National Park Service.

ACTION: Establishment.

SUMMARY: The Secretary of the Interior is establishing the Going-to-the-Sun Road Advisory Committee to make recommendations to the National Park Service concerning alternatives for the reconstruction of the Going-to-the-Sun Road, Glacier National Park.

FOR FURTHER INFORMATION CONTACT: John K. Kilpatrick, Chief of Facility Management, Glacier National Park, P.O. Box 128, West Glacier, Montana 59936–0128; telephone 406–888–7977; fax—406–888–7808.

SUPPLEMENTARY INFORMATION: In accordance with the intent of Congress as expressed in Public Law 105–277 (The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999), October 21, 1998, and in House Report 105–825, the Secretary of the Interior is administratively establishing the Going-to-the-Sun Road Advisory Committee to advise the National Park Service in the development of alternatives for reconstruction of the Going-to-the-Sun Road in Glacier National Park, focusing on road condition, reconstruction strategies, including scheduling, cost and measures to mitigate impacts on visitors, resources, and local economies. These alternatives will then be analyzed in an environmental document that will provide the basis for the agency decision.

Composition: The Committee will be comprised of 17 members appointed by the Secretary of the Interior as follows:

(a) One member representing the interests of the Blackfeet Tribe, as recommended by the Blackfeet Tribal Council;

(b) One member representing the interests of the Confederated Salish-Kootenai Tribes, as recommended by the Confederated Salish-Kootenai Tribal Government;

(c) One representative of local government within the area immediately east of Glacier National Park;

(d) One representative of local government within the area immediately west of Glacier National Park;

(e) One representative from recommendations of the Governor of Montana;

(f) Two representatives of local business within the multiple county area immediately east of Glacier National;

(g) Two representatives of local business within the multiple county area immediately west of Glacier National Park;

(h) One representative from recommendations of a State and/or national tourism (marketing) organization;

(i) One representative from recommendations of a national environmental organization;

(j) One representative from recommendations of a national historic preservation organization;

(k) One representative having engineering expertise of a national reputation;

(l) One representative having economic expertise of a national reputation;

(m) One representative, at large; and,

(n) Two representatives from Canada, from recommendations of the tourism and business communities of Southern Alberta.

Copies of the Committee's charter will be filed with the appropriate committees of the Congress and with the Library of Congress in accordance with section 9(c) of the Federal Advisory Committee Act (FACA), 5 U.S.C. appx.

Records of Meetings: In accordance with requirements of the Federal Advisory Committee Act, 5 U.S.C. Appx. 1994, the NPS will keep a record of all Committee meetings.

Administrative Support: To the extent authorized by law, the NPS will fund the costs of the Committee and provide administrative support and technical assistance for the activities of the Committee.

Certification

I hereby certify that the administrative establishment of the Going-to-the-Sun Road Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of October 2, 1968, as amended, 16 U.S.C. 1241 *et seq.*

Dated: September 28, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–27556 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision on the Final General Management Plan/ Environmental Impact Statement, Glacier National Park, Montana

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of record of decision on the final general management plan and environmental impact statement, Glacier National Park, Montana.

SUMMARY: Pursuant to section 102(2)© of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the

Record of Decision for the Final General Management Plan/Environmental Impact Statement for Glacier National Park, Montana.

DATE: The Record of Decision was signed on September 2, 1999.

ADDRESSES: Copies of the Record of Decision can be found at www.nps.gov/glac or by writing to: GMP/EIS Project, Glacier National Park, West Glacier, Montana 59936.

Or by calling (406) 888–7898 and leaving your name and address. Public reading copies of the Record of Decision will be available at the following locations: Office of the Superintendent, Glacier National Park, West Glacier, Montana, (406) 888–7901.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 West Alameda Parkway, Lakewood, Colorado 80228, Telephone: (303) 969–2851, or (303) 969–2832.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington DC 20240, Telephone: (202) 208–6843.

The Record of Decision is also available at the following libraries: Browning Public Library, Browning MT, Great Falls Public Library, Great Falls, MT, Lewis and Clark Library, Helena, MT, Bigfork Library, Bigfork, MT, Lincoln County Public Library, Libby, MT, Fernie Public Library, Fernie, British Columbia Canada, Columbia Falls Public Library, Columbia Falls, MT, Whitefish Library Whitefish, MT, Toole County Library, Shelby MT, Marion Library, Marion MT, Lincoln County Public Library, Eureka MT, Flathead County Library, Kalispell, MT, Missoula City Library, Missoula, MT, Cut Bank Public Library, Cut Bank, MT, Polson City Library, Polson, MT, and Lethbridge Public Library, Lethbridge, Alberta Canada.

FOR FURTHER INFORMATION: Contact Superintendent, Glacier National Park at the above address and telephone number.

R. Everhart,

Acting Regional Director, Intermountain Region, National Park Service

[FR Doc. 99–27560 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of availability of the final wild and scenic river study and legislative environmental impact statement for the Lower Sheenjek River in Alaska

AGENCIES: National Park Service, Interior.

ACTION: Notice of availability of the final Wild and Scenic River Study and Legislative Environmental Impact Statement for the Lower Sheenjek River in Alaska.

SUMMARY: The National Park Service announces the availability of the final Wild and Scenic River Study and Legislative Environmental Impact Statement for the Lower Sheenjek River in Alaska. The document describes and analyzes the environmental impacts of a proposed action and a no-action alternative. The proposed action recommends congressional designation of the 99-mile segment of the Lower Sheenjek River within Yukon Flats National Wildlife Refuge as a National Wild River. Designation would ensure long-term protection of the river's outstanding values through a cooperative river management plan for the lower river. Under the no-action alternative, the lower Sheenjek River would not be recommended for designation. The no-action alternative would continue existing management conditions on the river.

DATES: A Record of Decision will be made no sooner than 30 days after the date of this notice.

ADDRESSES: Copies of the study/LEIS are available on request from Sheenjek River Study, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892; by FAX at (907) 257–2499; or by electronic mail to: Sheenjek@nps.gov. Copies of the final Study/FEIS are also available for public inspection at the following locations:

- Yukon Flats Refuge office in Fairbanks, AK (101 12th Ave., Room 264),
- Noel Wien Public Library in Fairbanks, AK (1215 Cowles Street),
- Fort Yukon Village Office and Public Library, Fort Yukon, AK,
- National Park Service, Alaska Regional Office (Anchorage, AK, 2525 Gambell Street, Room 405),
- U.S. Fish and Wildlife, Alaska Regional Office (Anchorage, AK, 1011 East Tudor Road, External Affairs Office, 1st Floor),
- Alaska Resources Library and Information Services (3150 C Street, Suite 100), and
- Anchorage Loussac Public Library (3600 Denali Street).

FOR FURTHER INFORMATION CONTACT: Jack Mosby, Program Manager—Rivers, Trails, and Conservation Assistance, National Park Service, 2525 Gambell Street, Anchorage, AK 99503–2892. Telephone (907) 257–2650 or email: jack__mosby@nps.gov

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91–190, as amended), the National Park Service, in cooperation with the U.S. Fish and Wildlife Service, has prepared a final Wild and Scenic River Study and Legislative Environmental Impact Statement for the Lower Sheenjek River in Alaska.

The Lower Sheenjek River study corridor (two miles on either side of the river) was evaluated and found to meet the eligibility criteria as it is ''free flowing'' and contains one or more ''outstandingly remarkable values'' (cultural (subsistence), wildlife, scenic, and recreation). It was recommended as a ''wild river'' due to the lack of development along the river corridor. Alternatives presented in the FEIS explore the impacts of the designation versus non-designation. Alternative A (the proposed action) recommends the Lower Sheenjek River within the Yukon Flats National Wildlife Refuge be recommended for Congressional action for addition to the National Wild and Scenic Rivers System for its outstandingly remarkable cultural (subsistence), wildlife, scenic, and recreational values. The segment would be classified as wild, and management of the federal lands would remain with the U.S. Fish and Wildlife Service. Management objectives would focus on keeping the river free of water resource development, major extractive resource development, monitoring the impact of human use on the rivers' outstandingly remarkable values, and generally maintaining the undeveloped character of the river corridor. No expenditures for administrative or public use facilities would be required under this alternative, although some funds would be spent on corridor administration (estimated at less than $5,000 per year and a onetime allocation of $40,000 to develop a cooperative river management plan). No land acquisition is needed. Alternative B (no action) would continue existing conditions on the refuge. The river's resource values would not receive any additional statutory protection or management attention relative to other rivers or resources in the Yukon Flats National Wildlife Refuge.

The majority of comments provided during the review of the 1998 Draft Study/Legislative Environmental Impact Statement supported designation of the Lower Sheenjek River (50 of 51 individuals, and 10 of 15 organizations with two organizations only providing comments without any recommendation).

The responsible officials for a Record of Decision on the proposed action are the National Park Service and Fish and Wildlife Service regional directors in Alaska.

Dated: October 8, 1999.

Robert D. Barbee,

Regional Director, Alaska Region.

[FR Doc. 99–27555 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concessions Management Advisory Board; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), notice is hereby given that a meeting of the Concessions Management Advisory Board will be held on Monday, November 8, 1999 through Tuesday, November 9, 1999, in the Secretary's Conference Room, 1849 C Street, NW, Rm. 5160, Washington, DC 20240. On Tuesday, November 9, the Board will meet in Room 3121, 1849 C Street, NW. The Board will convene at 10:00 a.m. on Monday, November 8 and will adjourn at approximately 4:00 p.m. on Tuesday, November 9.

SUPPLEMENTARY INFORMATION: The Advisory Board was established by Title IV, Section 409 of the National Park Omnibus management Act of 1998, November 13, 1998 (Public Law 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

Topics for discussion during this meeting include:

- Welcome and introductions
- Presentations on specific aspects of advisory board duties and responsibilities as mandated by legislation with a focus on:

(1) NPS concessions history (key events and relationship to Concessions Program development);

(2) Contract and franchise fee determination process over past decade;

(3) Rate Approval Program; and

(4) Handcraft exemption program.

The board will also discuss its organizational and administrative needs.

The meeting 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. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, attention: Manager, Concessions Program at least seven days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program Division, 1849 C St., NW, Rm. 7313, Washington, DC 20240, Telephone 202/565–1210.

Draft minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in room 7313, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: October 15, 1999.

Robert Stanton,

Director, National Park Service.

[FR Doc. 99–27559 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 9, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by November 5, 1999.

Paul Lusignan,

Acting Keeper of the National Register.

ALABAMA

Chambers County

Langdale Historic District (Valley, Alabama, and the West Point Manufacturing Company MPS) Roughly bounded by 65th St., 20th Ave., 61st, 58th, and 55th Sts., 16th Ave., and Chattahoochie R., Valley, 99001299

Riverview Historic District (Valley, Alabama, and the West Point Manufacturing Company MPS) Roughly bounded by School and G.I. Sts., Chattahoochee R. and along California St., Valley, 99001300

ARKANSAS

Chicot County

Saunders—Cook House, 4236 US 82 East, Lake Village vicinity, 99001296

Pulaski County South Scott Street Historic District, Roughly bounded by E. 24th, S. Scott, E. 25th, and South Main Sts., Little Rock, 99001297

FLORIDA

Lake County

Campbell House, 3147 Co. Rd. 470, Okahumpka, 99001298

GUAM

Guam County

Umatac Outdoor Library, GU 4, Umatac, 99001301

LOUISIANA

Ouachita Parish

Grayson House, 2300 DiSiard St., Monroe, 99001303

MASSACHUSETTS

Bristol County

High, Church and Gould Streets Historic District, 56–60—122 High St., 29–117 Church St., and 9—17 Gould St., North Attleborough, 99001305

Middlesex County Cutter, Gershom, House (Arlington MRA) 1146 Massachusetts Ave., Arlington, 99001306

Washington Square Historic District (Boundary Increase), 140—160 Andover St., Lowell, 99001307

Suffolk County Congregation Adath Jeshurun, 397 Blue Hill Ave., Boston, 99001304

First Congregational Church of Hyde Park, 6 Webster St., Boston, 99001308

Mariner's House, 11 North Square, Boston, 99001302

MINNESOTA

Olmsted County

Viola Cooperative Creamery, 10500 Viola Rd. NE, Viola vicinity, 99001310

MISSOURI

Cole County

Lansdown—Higgins, House, 5240 Tanner Bridge Rd., Jefferson City vicinity, 99001311

NEW JERSEY

Cape May County

Gandy, John Wesley, House, 26 Tyler Rd. (Upper Township), Greenfield vicinity, 99001309
Cumberland County Bethel African Methodist Episcopal Church, Sheppards Mill Rd. (Greenwich Township), Springtown vicinity, 99001312
Hudson County Jersey City YMCA, 654 Bergan Ave., Jersey City, 99001314

Hunterdon County

Peck's Ferry Bridge, Locktown—Flemington Rd. (Delaware Township), Locktown vicinity, 99001313

Mercer County

University Cottage Club, 51 Prospect Ave., Princeton Borough, 99001315

Monmouth County

Clarksburg School, 524 Stagecoach Rd. (Millstone Township), Clarksburg vicinity, 99001316

NEW YORK

Clinton County

AuSable Chasm Bridge (AuSable River Valley Bridges MPS) NY 9 over AuSable R., AuSable, 99001320
Carpenter's Flats Bridge (AuSable River Valley Bridges MPS) NY 9 over AuSable R., AuSable, 99001321
Delaware and Hudson Railroad Bridge (AuSable River Valley Bridges MPS) Over AuSable River northeast of Lakeside Rd., AuSable, 99001317
Old State Road Bridge (AuSable River Valley Bridges MPS) Co. Rt. 17B over AuSable R., AuSable Chasm, 99001319
Palmer Brook Bridge (AuSable River Valley Bridges MPS) Golf Course Rd. over Palmer Brook, AuSable Forks, 99001318
Stone Arch Bridge (AuSable River Valley Bridges MPS) Main St. over AuSable R., Keeseville, 99001323
Swing Bridge (AuSable River Valley Bridges MPS) Over AuSable R. between Clinton and S. AuSable Sts., Keeseville, 99001322

Essex County

Beer's Bridge (AuSable River Valley Bridges MPS) Private Rd. off NY 73 over AuSable R., Keene Valley, 99001327
Notman Bridge (AuSable River Valley Bridges MPS) Country Club Rd. over AuSable R., Keene Valley, 99001328
Ranney Bridge (AuSable River Valley Bridges MPS) Private Rd. off NY 73 over East Branch of AuSable R., Keene Valley, 99001329
Slater Bridge (AuSable River Valley Bridges MPS) East Branch of AuSable R. off St. Hubert's Rd., Keene Valley, 99001325
Walton Bridge (AuSable River Valley Bridges MPS) Dr. Ray Rd. access over AuSable R., Keene, 99001326
Wilmington Bridge (AuSable River Valley Bridges MPS) NY 86 over AuSable R., Wilmington, 99001324

New York County

Stone Street Historic District, Stone, Pearl and S. William Sts. and Mill Ln., New York, 99001330

Queens County

St. James Church, 86–02 Broadway, Elmhurst, 99001331

NORTH CAROLINA

Chatham County

High Point Bending and Chair Company, Former, 108 W. 3rd St., Siler City, 99001332

Gates County

Freeman, Joseph, Farm, NW side of SR 1213, .7 mi. NE of Jct. SR 1212, Gates vicinity, 99001333

OHIO

Summit County
Oakwood Cemetery Chapel, 2420 Oakwood Dr., Cuyahoga Falls, 99001334

PENNSYLVANIA

Venango County
Oil City North Side Historic District (Oil Industry Resources in Western Pennsylvania MPS) Roughly bounded by Conrail RR, Manning St., Park Rd., Deer St., and Linden, Hasson, Bishop, Carroll and E. Bissell Ave., Oil City, 99001335

Wayne County

Equinunk Historic District (Upper Delaware Valley, New York and Pennsylvania, MPS) Generally following SR191, Pine Mill, Lordville, and Grocery Hill Rds. (Buckingham and Manchester Townships), Equinunk, 99001336

PUERTO RICO

Guanica Municipality Guanica Landing Site and Battlefield Historic District, Roughly along PR 332 and PR 116, Guanica vicinity, 99001337

RHODE ISLAND

Providence County

Knight, Jonathan, House, 151 Laten Knight Rd., Cranston, 99001347

SOUTH DAKOTA

Aurora County

South Dakota Department of Transportation Bridge No. 02–007–220 (Historic Bridges in South Dakota MPS) Local Rd. over Platte Cr., White Lake vicinity, 99001338
South Dakota Department of Transportation Bridge No. 02–012–240 (Historic Bridges in South Dakota MPS) Local Rd. over Platte Cr., White Lake vicinity, 99001339

Minnehaha County

South Dakota Department of Transportation Bridge No. 50–196–104 (Historic Bridges in South Dakota MPS) Local Rd. over Big Sioux R. (Sverdrup Township), Midway vicinity, 99001340

Perkins County

South Dakota Department of Transportation Bridge No. 53–101–196 (Historic Bridges in South Dakota MPS) Local Rd. over South Fork Grand R., Bison vicinity, 99001341

Turner County

South Dakota Department of Transportation Bridge No. 63–016–150 (Historic Bridges in South Dakota MPS) Local Rd. over unnamed creek, Marion vicinity, 99001342
South Dakota Department of Transportation Bridge No. 63–160–056 (Historic Bridges in South Dakota MPS) Local Rd. over East Fork of Vermillion R., Parker vicinity, 99001343

TENNESSEE

Campbell County

Jellico Commercial Historic District, Roughly along North and South Main Sts., Jellico, 99001344

Cumberland County

Camp Nakanawa Wigwam, Camp Nakanawa Wigwam Rd., Mayland vicinity, 99001345

VERMONT

Rutland County

Brandon State School, US 7, Brandon, 99001346

[FR Doc. 99–27558 Filed 10–20–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order #35: Sale or Lease of Services, Resources, or Water Available within an Area of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is updating its system of internal directives. Within this system, NPS Management Policies set the broad framework, provide direction, and prescribe the parameters for making management decisions. Director's Orders provide specific instruction and outline requirements or standards applicable to NPS functions, programs and activities. *Special Directive 78–2: Sale or Lease of Services, Resources, or Water Available within an Area of the National Park System* was issued as an NPS directive on March 30, 1978. The NPS is updating and clarifying *Special Directive 78–2* and converting it to Director's Order #35: Sale or Lease of Services, Resources, or Water Available within an Area of the National Park System. The draft Director's Order #35 is available for public review and interested parties are invited to provide comments.

DATES: Written comments will be accepted on or before November 22, 1999.

ADDRESSES: Draft Director's Order #35: Sale or Lease of Services, Resources, or Water Available within an Area of the National Park System is available on the Internet at http//www.nps.gov/refdesk/Dorders/index.htm

Requests for copies and written comments should be sent to Chuck Pettee, National Park Service, Water Resources Division, 1201 Oakridge Drive, Suite 250, Fort Collins, CO 80525.

FOR FURTHER INFORMATION CONTACT: Chuck Pettee at (970) 225–3505.

SUPPLEMENTARY INFORMATION: Special Directive 78–2: Sale or Lease of Services, Resources, or Water Available within an Area of the National Park System was issued on March 30, 1978, to establish standards for applying the authority in section 3(e) of Public Law 91–383 (84 Stat. 827). The NPS is revising *Special Directive 78–2* to fit the new NPS Directive System format and to incorporate new policy and procedure decisions made during the intervening time period. Upon final approval of Director's Order #35: Sale or Lease of Services, Resources, or Water Available within an Area of the National Park System, Special Directive 78–2: Sale or Lease of Services, Resources, or Water Available within an Area of the National Park System will be rescinded.

Dated: October 15, 1999.

Abigail Miller,

Acting Associate Director, Natural Resource Stewardship and Science.

[FR Doc. 99–27557 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions that are new, modified, discontinued, or completed since the last publication of this notice on July 21, 1999. The January 22, 1999, notice should be used as a reference point to identify changes. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Sandra Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007, telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1999. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BON) Basis of Negotiation
(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction
(FR) Federal Register
(IDD) Irrigation and Drainage District

(ID) Irrigation District
(M&I) Municipal and Industrial
(NEPA) National Environmental Policy Act
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(R&B) Rehabilitation and Betterment
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5346.

Completed contract actions:

17. Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wasco Dam. This contract was executed in August 1999.

Mid–Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

41. Resource Renewal Institute, CVP, California: Proposed water purchase agreement with Resource Renewal Institute for the permanent purchase of water rights on Butte Creek for instream flow purposes.

42. Sacramento Area Flood Control Agency, CVP, California: Execution of a long-term Operations Agreement for flood control operations of Folsom Dam and Reservoir to allow for recovery of costs associated with operating a variable flood control pool of 400,000 to 670,000 acre-feet of water during the flood control season. This agreement is to conform to Federal law.

Modified contract actions:

2. Contractors from the American River Division, Buchanan Unit, Cross Valley Canal, Delta Division, Friant Division, Hidden Unit, Sacramento River Division, San Felipe Division, Shasta Division, Trinity River Division, and West San Joaquin Division, CVP, California: Early renewal of existing long-term and interim renewal water service contracts with contractors having contracts which expire between 2000 and 2001; water quantities for these contracts total in excess of 5.6M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Pub. L. 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts.

14. Mercy Springs WD, CVP, California: Partial assignment of about 7,000 acre-feet of Mercy Springs WD's water service contract to Westlands WD for agricultural use.

29. Widren WD, CVP, California: Assignment of 2,940 acre-feet of The District's water service contract to the City of Tracy. The assignment will require approval of conversion of the District's CVP irrigation water to M&I water.

33. Sierra Pacific Power Company, Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native-American Tribal interest, who may have negotiated rights under Pub. L. 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the proposed Truckee River Operating Agreement.

Discontinued contract actions:

22. Reno, Sparks, and Washoe County; Washoe and Truckee Storage Projects; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and consistent with the terms and conditions of the Truckee River Water Quality Settlement Agreement.

23. Sierra Pacific Power Company and Washoe County Water Conservation District; Washoe and Truckee Storage Projects; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Pub. L. 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

Completed contract action:

4. Sacramento River settlement contractors, CVP, California: Administrative policy for voluntary contract assignments which provides for repayment of O&M deficit(s), and payment by assignee of the CVP cost-of-service rate as determined in accordance with the current CVP ratesetting policy. Administrative policy letter dated October 15, 1998, and in process of mailing fact sheet/policy to interested parties.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

64. Litchfield Park Service Company, CAP, Arizona: Assignment of 1,200 acre-feet of CAP M&I water to the City of Scottsdale.

65. Brooke Water, L.L.C., CAP, Arizona: Assignment of 3,932 acre-feet of CAP M&I water to Circle City Water Company.

66. California WDs, BCP, California: Incorporate into the water delivery contracts with several water districts (Coachella Valley WD, Imperial ID, Palo Verde ID, and The Metropolitan WD of Southern California), through new contracts, contract amendments, contract approvals, or other appropriate means, the agreement to be reached among those water districts to (i) quantity the Colorado River water entitlements for Coachella Valley WD and Imperial ID and (ii) provide a basis for water transfers among California water districts.

67. Coachella Valley WD, BCP, California: Amend contract designated symbol 14–20–650, contract No. 631, which authorizes the United States to construct irrigation and drainage works for certain Indian lands within the District, to provide for construction of necessary facilities to allow water deliveries for irrigation of up to 322 acres of lands on the Torres-Martinez Indian Reservation located within the District's improvement district No. 1.

Modified contract action:

55. E&R Water Company, CAP, Arizona: Assignment of rights, title, and interest in CAP water delivery subcontract for 161 acre-feet of M&I water to Pine Water Company.

Completed contract action:

25. United States Navy, BCP, Niland, California: Contract for 23 acre-feet of surplus Colorado River water for domestic use delivered through the Coachella Canal.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3691.

New contract actions:

(h) R&D Investment, LTD., Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support augmentation plan. R&D Investment has filed an application with the Division 4 Water Court of the State of Colorado seeking decrees for up to seven domestic wells to serve R&D Investment with domestic, single-family, residential use; lawn and garden irrigation; and fire protection.

20. Mancos Water Conservancy District, Mancos Project, Colorado: Amendment to repayment contract with the District to increase the farm unit size (for acreage limitation purposes) from

160 to 750 acres, pursuant to the Water Conservation and Utilization Act of 1939.

Modified contract action:

16. Dolores Water Conservancy District, Dolores Project, Colorado: Carriage contract with the District to carry up to 6,000 acre-feet of non-project water in project facilities under the authority of the Warren Act of 1911.

Completed contract action:

(g) Whetstone Vista L.L.C., Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support augmentation plans, Water Division Court No. 4, State of Colorado (Case No. 96CW298), to provide for single-family residential use, irrigation, and livestock watering.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

New contract actions:

43. Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Acting by and through the Pleasant Valley Pipeline Project Water Activity Enterprise, beginning discussions and draft BON for a long-term contract for conveyance of nonproject water through Colorado-Big Thompson Project facilities.

44. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: The District is requesting a deferment of its 2000 construction payment. In the process of developing a BON.

Modified contract actions:

15. Fort Shaw ID, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam.

20. Fort Clark ID, P–SMBP, North Dakota: Negotiation of water service contract to continue delivery of project water to the District.

37. Greenfields ID, Sun River Project, Montana: Contract for additional SOD costs for repairs to Willow Creek Dam.

Completed contract actions:

35. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: In compliance with the October 1996 Stipulation and Agreement, Orchard Mesa Check Case No. 91CW247, Colorado Water Division No. 5, Reclamation is currently negotiating a long-term Operating Agreement among Colorado Public Service Company of Colorado, Orchard Mesa ID, and Grand Valley Water Users Association, for delivery of surplus Green Mountain Reservoir water to the Federal Grand Valley Power Plant.

37. Greenfields ID, Sun River Project, Montana: Contract for additional SOD costs for repairs to Willow Creek Dam. Contract has been executed.

Dated: October 14, 1999.

A. Jack Garner,

Acting Deputy Director, Office of Policy.

[FR Doc. 99–27471 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA 186P]

Controlled Substances: Proposed Aggregate Production Quotas for 2000

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed year 2000 aggregate production quotas.

SUMMARY: This notice proposes initial year 2000 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act (CSA).

DATES: Comments or objections should be received on or before November 22, 1999.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

The proposed year 2000 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2000 to provide adequate supplies of each substance for: the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. These quotas do not include imports of controlled substances for use in industrial processes.

In determining the proposed year 2000 aggregate production quotas, the Deputy Administrator considered the following factors: total actual 1998 and estimated 1999 and 2000 net disposals of each substance by all manufacturers; estimates of 1999 year-end inventories of each substance and of any substance manufactured from it and trends in accumulation of such inventories; product development requirements of both bulk and finished dosage from manufacturers; projected demand as indicated by procurement quota applications filed pursuant to Section 1303.12 of Title 21 of the Code of Federal Regulations; and other pertinent information.

In the past, the basic class methamphetamine has been listed as desoxyephedrine for aggregate production quota purposes. For clarification, the desoxyephedrine aggregate production quota was divided into a methamphetamine for sale quota and a levo-desoxyephedrine quote. The aggregate production quota for methamphetamine for conversion was listed separately. In order to more accurately reflect the nomenclature used in Section 1308.12(d) of Title 21 of the Code of Federal Regulations, levo-desoxyephedrine, methamphetamine (for sale) and methamphetamine (for conversion) are now listed under the basic class of methamphetamine.

Pursuant to Section 1303 of Title 21 of the Code of Federal Regulations, the Deputy Administrator of the DEA will, in early 2000, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 1999 year-end inventory and actual 1999 disposition data supplied by quota recipients for each basic class of Schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA of 1970 (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby proposes that the year 2000 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, by established as follows:

Basic class	Proposed year 2000 quotas
Schedule I	
2,5-Dimethoxyamphetamine	10,001,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2
3-Methylfentanyl	14
3-Methylthiofentanyl	2
3,4-Methylenedioxyamphetamine (MDA)	20
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	30
3,4-Methylenedioxymethamphetamine (MDMA)	20
3,4,5-Trimethoxyamphetamine	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2
4-Methoxyamphetamine	201,000
4-Methylaminorex	3
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2
Acetyl-alpha-methylfentanyl	2
Acetyldihydrocodeine	2
Acetylmethadol	7
Allylprodine	2
Alphacetylmethadol	7
Alpha-ethyltryptamine	2
Alphameprodine	2
Alphamethadol	2
Alpha-methylfentanyl	2
Alpha-methylthiofentanyl	2
Aminorex	7
Benzylmorphine	2
Betacetylmethadol	2
Beta-hydroxy-3-methylfentanyl	2
Beta-hydroxyfentanyl	2
Betameprodine	2
Betamethadol	2
Betaprodine	2
Bufotenine	2
Cathinone	9
Codeine-N-oxide	2
Diethyltryptamine	2
Difenoxin	10,000
Dihydromorphine	8
Dimethyltryptamine	3
Heroin	2
Hydroxypethidine	2
Lysergic acid diethylamine (LSD)	38
Mescaline	7
Methaqualone	17
Methcathinone	9
Morphine-N-oxide	2
N,N-Dimethylamphetamine	7
N-Ethyl-1-Phenylcyclohexylamine (PCE)	5
N-Ethylamphetamine	7
N-Hydroxy-3,4-Methylenedioxyamphetamine	2
Noracymethadol	2
Norlevorphanol	2
Normethadone	7
Normorphine	7
Para-fluorofentanyl	2
Pholcodine	2
Propiram	415,000
Psilocybin	2
Psilocyn	2
Tetrahydrocannabinols	101,000
Thiofentanyl	2
Trimeperidine	2
Schedule II	
1-Phenylcyclohexylamine	12
1-Piperidinocyclohexanecarbonitrile (PCC)	10
Alfentanil	3,800
Alphaprodine	2
Amobarbital	12
Amphetamine	9,007,000

Basic class	Proposed year 2000 quotas
Cocaine	251,000
Codeine (for sale)	54,504,000
Codeine (for conversion)	52,384,000
Dextropropoxyphene	114,078,000
Dihydrocodeine	268,000
Diphenoxylate	615,000
Ecgonine	36,000
Ethylmorphine	12
Fentanyl	269,000
Glutethimide	2
Hydrocodone (for sale)	20,208,000
Hydrocodone (for conversion)	20,700,000
Hydromorphone	856,000
Isomethadone	12
Levo-alphacetylmethadol (LAAM)	201,000
Levomethorphan	2
Levorphanol	16,000
Meperidine	10,731,000
Metazocine	1
Methadone (for sale)	8,347,000
Methadone (for conversion)	600,000
Methadone Intermediate	9,503,000
Methamphetamine	1,419,000
595,000 grams of devo-desxyephedine for use in a non-controlled, non-prescription product; 750,000 grams for methamphetamine for conversion to a Schedule III product; and 74,000 grams for methamphetamine (for sale)	
Methylphenidate	14,957,000
Morphine (for sale)	14,706,000
Morphine (for conversion)	97,160,000
Nabilone	2
Noroxymorphone (for sale)	25,000
Noroxymorphone (for conversion)	2,067,000
Opium	720,000
Oxycodone (for sale)	22,020,000
Oxycodone (for conversion)	271,000
Oxymorphone	166,000
Pentobarbital	22,037,000
Phencyclidine	41
Phenmetrazine	2
Phenylacetone	10
Secobarbital	22
Sufentanil	852
Thebaine	35,102,000

The Deputy Administrator further proposes that aggregate production quotas for all other Schedules I and II controlled substances included in Sections 1308.11 and 1308.12 of Title 21 of the Code of Federal Regulations be established at zero.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more of these issues warrant a hearing, the individual should so state and summarize the reasons for this belief.

In the event that comments or objections to this proposal raise one or more issues which the Deputy Administrator finds warrant a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 6501 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas re necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: October 12, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–27428 Filed 10–20–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0215(2000)]

Personal Protective Equipment for Shipyard Employment; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Request

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed extension by OMB of the information collection requirements contained in the standard on Personal Protective Equipment for Shipyard Employment (PPE), 29 CFR 1915.152(b)(4) and (e)(4).

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before December 20, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0215(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements contained in the standard on Personal Protective Equipment for Shipyard Employment (29 CFR 1915.152) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

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 continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657.) The PPE for Shipyard Employment standard requires that all affected employers conduct a hazard assessment and make a determination regarding their need for PPE. This is a one-time obligation unless conditions in the workplace change in such a way that new or different hazards arise, thereby necessitating an updated or revised hazard assessment. The employer must verify performance of the required occupational hazard assessment through a document that contains the following information: Occupation, the date(s) of the hazard assessment, and the name of the person performing the hazard assessment. The employer must also verify that each affected employee received the required training through a document that contains the following information: Name of each employee trained, the date(s) of training, and type of training the employee received.

The information collection requirements (documentations) verify that employers are in compliance with the standard. OSHA compliance officers will require employers to disclose the required documentation at the time of an inspection.

II. Proposed Actions

OSHA estimates that employers will expand 707 burden hours to comply with the information collection requirements in 29 CFR 1915.152(b)(4) and (e)(4). This is a decrease of OSHA's earlier estimate of 1,540 burden hours to comply with the information collection requirements in the above provisions.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Personal Protective Equipment for Shipyard Employment (29 CFR 1915.152).

OMB Number: 1218–0215.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 8,000.

Frequency: Varies (on occasion, annually).

Average Time per Response: Varies from five minutes (0.08 hour) to 3 hours.

Estimated Total Burden Hours: 707.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC, this 14th day of October 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–27522 Filed 10–20–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–42; Exemption Application No. D–10671, et al.]

Grant of Individual Exemptions; Pacific Coast Roofers Pension Plan (the Plan), et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Pacific Coast Roofers Pension Plan (the Plan), Located in San Jose, California, [Prohibited Transaction Exemption 99–42; Exemption Application No. D–10671]

Exemption

The restrictions of section 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) of the Code, shall not apply to the making of loans by certain banks (the Banks), under a loan program (the Program) providing for loans to Bank customers for residential and commercial re-roofing jobs that are performed by contributing employers to the Plan, pursuant to an arrangement in which the Plan will purchase certificates of deposit (the CDs) issued by the Banks, provided the following conditions are met:

(a) Alan D. Biller and Associates, Inc., an independent investment manager with respect to the Plan's equities and fixed-income investments, determines on an on-going basis the appropriateness of the Plan's investment of up to 5% of the Plan's total assets in CDs, including CDs issued under the Program, with respect to the Plan's overall investment objectives and policy guidelines;

(b) Turner Dale Associates, Inc. (TDA), an independent investment manager with respect to the Plan's assets involved in the Program, which is also independent of the Banks, acts on the Plan's behalf pursuant to a written Investment Management Agreement to determine on an on-going basis whether the Plan should make each particular investment in the CDs under the Program, and should continue or terminate participation in the Program;

(c) TDA determines at least annually that the Banks participating in the Program are solvent institutions, based on analysis of all relevant information involving the Banks' financial status;

(d) The requirements of section 408(b)(4) of the Act are satisfied if any Bank participating in the Program is a fiduciary or other party in interest with respect to the Plan (see 29 CFR 2550.408b–4);

(e) The Plan's CDs will have a maturity date of at least one year from the date of issuance and will pay the maximum rates of interest provided by the Banks for CDs of the same size and maturity being purchased at the time of the transaction by customers of the Bank not participating in the Program;

(f) The Banks offer CDs provided under the Program to other, unrelated customers in the ordinary course of business;

(g) Interest rates on CDs under the Program, and the total net rates of return to the Plan, taking into consideration all expenses associated with the transaction, are at least comparable to or better than those rates which the Plan could obtain on similar fixed-income investments of similar risk and term at the time of each CD purchase;

(h) No person who is a party in interest with respect to the Plan, including contributing employers, trustees and other plan fiduciaries, receives a loan under the Program;

(i) The total outstanding amount of CDs purchased by the Plan from the Banks will not exceed 5% of the Plan's total assets at the time of any transaction;

(j) No Plan trustee currently engages in any personal or business transactions with a Bank which will be involved in the Program, and if a trustee engages in such transactions in the future, the trustee shall recuse himself or herself with respect to any decision regarding the Program on behalf of the Plan;

(k) The Plan's investment in CDs is not part of an agreement, arrangement or understanding designed to benefit any investment manager, other Plan fiduciary, or contributing employer, other than to the extent that residential or commercial re-roofing jobs will be performed by contributing employers to the Plan; and

(l) If a customer defaults on a loan, the Bank has no claim against, or recourse to, the CDs or other assets of the Plan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on August 26, 1999 at 64 FR 46725.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Jonas Builders, Inc. Restated Profit Sharing Plan (the Plan), Located in Milwaukee, Wisconsin, [Prohibited Transaction Exemption 99–43; Exemption Application No. D–10764]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of a certain building, which contains a warehouse and a single-family residence (collectively; the Building), by the Plan to Mr. Gerald Jonas, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) All terms and conditions of the sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market value of the Building has been determined by an independent qualified appraiser;

(c) The sale of the Building is a one-time transaction for cash;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the sale of the Building; and

(e) The Plan receives an amount equal to the greater of either: (i) The original acquisition cost of the Building plus any improvement costs and real estate taxes that were incurred by the Plan from the date the Building was acquired by the Plan until the date of the sale (i.e., the total cost of $1,929,422.73, as of December 31, 1998); or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 26, 1999 at 64 FR 46730.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 19th day of October, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 99–27521 Filed 10–20–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–137)]

NASA Advisory Council (NAC), Technology Subcommittee of the Earth Systems Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology Subcommittee of the Earth Systems Science and Applications Advisory Committee.

DATES: November 17, 1999, 9:00 a.m. to 5:30 p.m.

ADDRESSES: NASA Headquarters, Room MIC3, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Granville Paules, Code YF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0706.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Introductions, Comments, Adoption of the Agenda
—Review of the ESE Technology Development/Investment Plan for FY2000
—Discussion of external partnering opportunities (continued from earlier meetings)
—Review and discussion of overall Technology Program performance metrics

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: October 18, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–27500 Filed 10–20–99; 8:45 am]

BILLING CODE 4310–55–P

NATIONAL FOUNDATION OF 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 (Public Law 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, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 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: November 1, 1999
   TIME: 8:30 a.m. to 5:00 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: November 2, 1999
   TIME: 8:30 a.m. to 5:00 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
3. DATE: November 2, 1999
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications for Library and Archival Preservation and Access/ Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1999 deadline
4. DATE: November 4, 1999
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications for Library and Archival Preservation and Access/ Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1999 deadline
5. DATE: November 9, 1999
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications for Library and Archival Preservation and Access/ Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1999 deadline
6. DATE: November 16, 1999
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications for Library and Archival Preservation and Access/ Reference Materials, submitted to the Division of Preservation and Access at the July 1, 1999 deadline
7. DATE: November 30, 1999
   TIME: 9:00 a.m. to 5:00 p.m.
   ROOM: 415
   PROGRAM: This meeting will review applications for National Heritage Preservation Program, submitted to the Division of Preservation and Access at the July 1, 1999 deadline

Laura S. Nelson,

Advisory Committee Management Officer.

[FR Doc. 99–27573 Filed 10–20–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 17, 1999, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on October 8, 1999 to the following applicants:

Donald B. Siniff—Permit No. 2000–003
Michael A. Casstellini—Permit No. 2000–005
Brent S. Stewart—Permit No. 2000–011
Norbert Wu—Permit No. 2000–013

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 99–27536 Filed 10–20–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on Jet Impingement Effects and Leak Rates From Steam Generator Tubes During Severe Accidents

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: A meeting with a group of experts will be held at Argonne National Laboratory (ANL) to discuss information, data, and experimentation related to jet impingement effects and leak rates from degraded steam generator tubes under severe-accident conditions. Input from this meeting will be used to plan experimental and analytical work to be carried out under the Steam Generator Tube Integrity Research Program being conducted at ANL for the Nuclear Regulatory Commission (NRC). In the recent past, and expected to continue into the future, NRC has conducted and/or evaluated a number of risk analyses in conjunction with various actions related to steam generator tube integrity. Because risk from severe accidents can comprise a significant portion of the overall plant risk, the risk analyses have addressed the contribution from severe accidents. In conducting these analyses, the NRC staff has identified some areas that could benefit from additional data, modeling, and experimentation. In particular, we are interested in evaluating the possibility that the jet of superheated steam, hydrogen and entrained particles emanating from a cracked tube may penetrate the neighboring tube during severe-accident transients. In addition, we need to calculate the leak rate from tubes with throughwall cracks of various lengths under severe-accident conditions. In the absence of data on leak rates under the conditions of interest, one would need to calculate the crack opening areas under these conditions to estimate the leak rates. Besides information on the mechanical properties of Inconel tubes at the temperatures of interest, we need to know if (and how) creep and creep crack growth play a role in the crack opening areas developed under the time/temperature/pressure exposures during severe accidents. Also, information is needed on whether the fluid escaping the crack will cause erosion of the crack walls, thereby increasing the crack opening areas. We have assembled a group of experts in the fields of high-temperature metallurgy, fracture mechanics, thermal hydraulics, severe-accident propagation, and erosion/corrosion to address these questions/issues during the meeting.

If you are an expert in one or more of the above fields, and wish to participate and contribute to the meeting, you are asked to contact Dr. Dwight Diercks at ANL by no later than Thursday, November 11, 1999 to provide him information for you to obtain access to the ANL site. Sufficient time is not available for citizens of sensitive countries, as listed in the DOE web site *HTTP://WWW.DOE.GOV*, to obtain clearance, and they will not be able to participate in this meeting.

DATES: November 19, 1999, from 8:30 a.m. to 5 p.m.

ADDRESSES: Argonne National Laboratory, Building 212, Room B201, 9700 South Cass Avenue, Argonne, Illinois 60439.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Muscara, Mail Stop T10–E10, U.S. Nuclear Regulator Commission, Washington, DC 20555–0001. Telephone: (301) 415–5844; FAX: (301) 415–5074; Internet: *JXM8@NRC.GOV*.

Or: Dr. Dwight Diercks, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Illinois 60439.

Telephone: (630) 252–5032; FAX: (630) 252–4798; Internet: *DIERCKS@ANL.GOV*.

Dated at Rockville, Maryland, this 15th day of October, 1999.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Chief, Materials Engineering Branch, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 99–27496 Filed 10–20–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Director, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on July 14, 1999 (64 FR 38044). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1, 1999, and August 31, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established during June 1999.

The following Schedule A authorities were revoked during June 1999:

Department of Commerce

One position above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Department of Defense

Two positions above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Federal Emergency Management Agency

One position above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Department of Justice

Two positions above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Department of Transportation

Two positions above GS–15 in support of the President's Commission on Critical Infrastructure Protection. Effective June 16, 1999.

Thrift Depositor Protection Oversight Board

All positions. Effective June 21, 1999.

No Schedule A authorities were established or revoked during July 1999.

No Schedule A authorities were established or revoked during August 1999.

Schedule B

No Schedule B authorities were established or revoked during June 1999.

No Schedule B authorities were established or revoked during July 1999.

No Schedule B authorities were established or revoked during August 1999.

Schedule C

The following Schedule C authorities were established during June, July and August 1999:

Council on Environmental Quality

Policy Analyst to the Chair, Council on Economic Quality. Effective July 7, 1999.

Special Assistant to the Chair. Effective August 12, 1999.

Public Affairs Specialist/Deputy Director for Communications to the Director for Communications. Effective August 23, 1999.

Commission on Civil Rights

Special Assistant to the Commissioner. Effective June 11, 1999.

Department of Agriculture

Confidential Assistant to the Administrator, Rural Utilities Service. Effective June 2, 1999.

Confidential Assistant to the Administrator, Farm Services Agency. Effective June 17, 1999.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective June 23, 1999.

Confidential Assistant to the Administrator, Farm Service Agency. Effective June 23, 1999.

Confidential Assistant to the Deputy Administrator, Community Development. Effective July 2, 1999.

Confidential Assistant to the Administrator, Foreign Agriculture Service. Effective July 2, 1999.

Special Assistant to the Assistant Secretary for Congressional Relations. Effective July 2, 1999.

Confidential Assistant to the Director, Office of Communications. Effective July 12, 1999.

Confidential Assistant to the Deputy Administrator, Office of Community Development. Effective July 14, 1999.

Special Assistant to the Deputy Administrator, Community Development. Effective July 14, 1999.

Confidential Assistant to the Administrator, Rural Housing Service. Effective August 12, 1999.

Special Assistant to the Confidential Assistant to the Director. Effective August 17, 1999.

Special Assistant to the Associate Chief, Chief Operation Officer. Effective August 24, 1999.

Department of the Air Force (DOD)

Staff Assistant to the Assistant to the Vice President for National Security Affairs. Effective July 9, 1999.

Department of Commerce

Confidential Assistant to the Deputy Assistant Secretary. Effective June 8, 1999.

Senior Advisor to the Under Secretary for Technology, Technology Administration. Effective June 11, 1999.

Confidential Assistant to the Deputy Chief of Staff for External Affairs. Effective June 15, 1999.

Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Strategic Planning. Effective July 14, 1999.

Public Affairs Specialist to the Director, Office of Public Affairs and Press Secretary. Effective July 19, 1999.

Deputy Director of External Affairs and Director of Scheduling to the Director, Office of External Affairs. Effective August 4, 1999.

Confidential Assistant to the Director, Office of External Affairs. Effective August 9, 1999.

Confidential Assistant to the Director, Office of Policy and Planning. Effective August 10, 1999.

Deputy Director to the Director, Office of External Affairs. Effective August 12, 1999.

Deputy Director, to the Director, Office of Business Liaison. Effective August 16, 1999.

Confidential Assistant to the Chief of Staff. Effective August 26, 1999.

Congressional Affairs Officer to the Associate Director for Communications. Effective August 26, 1999.

Department of Defense

International Counterdrug Specialist to the Deputy Assistant Secretary, Drug Enforcement, Policy and Support. Effective June 4, 1999.

Public Affairs Specialist to the Deputy Assistant Secretary for Communications. Effective June 8, 1999.

Special Assistant to the Under Secretary of Defense for Policy. Effective July 28, 1999.

Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense for Policy. Effective August 26, 1999.

Department of Education

Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective June 1, 1999.

Deputy Director to the Director, Office of Bilingual Education and Minority Language Affairs. Effective June 8, 1999.

Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs. Effective June 11, 1999.

Confidential Assistant to the Director, Office of Public Affairs. Effective June 17, 1999.

Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services. Effective June 17, 1999.

Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services. Effective June 17, 1999.

Confidential Assistant to the Special Advisor to the Secretary. Effective June 30, 1999.

Special Assistant to the Deputy Assistant Secretary for Office of Intergovernmental and Interagency Affairs. Effective June 30, 1999.

Special Assistant to the Assistant Secretary, Office of Legislative and Congressional Affairs. Effective July 9, 1999.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective July 15, 1999.

Special Assistant to the Deputy Secretary. Effective August 4, 1999.

Special Assistant to the Senior Advisor to the Secretary (Director, America Reads Challenge). Effective August 6, 1999.

Special Assistant to the Deputy Assistant Secretary, Intergovernmental, Constituent Relations, and Corporate Liaison OIIA. Effective August 10, 1999.

Confidential Assistant to the Assistant Secretary of Intergovernmental and Interagency Affairs. Effective August 18, 1999.

Special Assistant to the Director, Scheduling and Briefing Staff. Effective August 19, 1999.

Confidential Assistant to the Deputy Assistant Secretary. Effective August 19, 1999.

Department of Energy

Special Assistant to the Director, Office of Arms Control and Nonproliferation. Effective July 14, 1999.

Special Assistant to the Chief Financial Officer. Effective July 22, 1999.

Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for House Liaison. Effective July 22, 1999.

Congressional Liaison Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective August 9, 1999.

Staff Assistant to the Assistant Secretary for Policy. Effective August 23, 1999.

Director for Indian Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective August 26, 1999.

Special Assistant to the Assistant Secretary for Environmental Management. Effective August 26, 1999.

Department of Health and Human Services

Confidential Assistant to the Strategic Planning and Policy Coordinator. Effective June 23, 1999.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective June 30, 1999.

Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison). Effective June 30, 1999.

Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services). Effective July 2, 1999.

Senior Advisor to the Director, Indian Health Service. Effective July 28, 1999.

Special Assistant to the Commissioner, Administration for Children Youth and Families. Effective July 30, 1999.

Special Assistant to the Deputy Assistant Secretary for Public Affairs (Media). Effective August 16, 1999.

Department of Housing and Urban Development

Intergovernmental Relations Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective July 6, 1999.

Special Counsel to the General Counsel. Effective August 31, 1999.

Department of the Interior

Special Assistant to the Chief of Staff. Effective June 11, 1999.

Special Assistant to the White House Liaison. Effective June 30, 1999.

Special Assistant to the Director, Fish and Wildlife Service. Effective July 2, 1999.

Special Assistant to the Director, Minerals Management Service. Effective August 4, 1999.

Department of Justice

Public Affairs Specialist to the Director, Office of Public Affairs. Effective July 2, 1999.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective July 9, 1999.

Secretary (OA) to the U.S. Attorney, District of Maryland. Effective July 30, 1999.

Secretary (OA) to the U.S. Attorney. Effective July 30, 1999.

Secretary (OA) to the U.S. Attorney. Effective August 9, 1999.

Special Assistant to the Solicitor General. Effective August 26, 1999.

Department of Labor

Special Assistant to the Executive Secretary. Effective June 25, 1999.

Intergovernmental Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective July 2, 1999.

Staff Assistant to the Director of Scheduling and Advance. Effective July 9, 1999.

Special Assistant for Public Affairs to the Assistant Secretary Employment Standards Administration. Effective July 30, 1999.

Special Assistant to the Deputy Assistant Secretary for Federal Contract Compliance Programs. Effective August 9, 1999.

Senior Advisor to the Secretary of Labor. Effective August 26, 1999.

Department of the Navy (DOD)

Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs). Effective August 13, 1999.

Staff Assistant to the Under Secretary of the Navy. Effective August 26, 1999.

Department of State

Senior Policy Advisor to the Assistant Secretary, Bureau of Legislative Affairs. Effective June 2, 1999.

Special Assistant to the Assistant Secretary, Bureau of European Affairs. Effective July 2, 1999.

Resources, Plans and Policy Advisor to the Director, Office of the Secretary, Resources, Plans and Policy. Effective July 28, 1999.

Resources, Plans and Policy Advisor to the Director, Office of Resources, Plans and Policy. Effective July 28, 1999.

Senior Advisor to the Assistant Secretary, Bureau of South Asian Affairs. Effective July 30, 1999.

Staff Assistant to the Under Secretary of State. Effective August 30, 1999.

Department of Transportation

Intergovernmental Liaison Officer to the Director, Office of Intergovernmental Affairs. Effective August 19, 1999.

Department of the Treasury

Deputy to the Assistant to the Assistant Secretary for Legislative Affairs and Public Liaison. Effective June 17, 1999.

Special Assistant to the Director, Strategic Planning Scheduling and Advance. Effective August 9, 1999.

White House Liaison to the Chief of Staff. Effective August 12, 1999.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective August 13, 1999.

Special Assistant to the Assistant Secretary for Public Affairs. Effective August 13, 1999.

Executive Assistant to the Deputy Secretary. Effective August 16, 1999.

Senior Advisor to the Deputy Secretary of the Treasury. Effective August 16, 1999.

Department of Veterans Affairs

Special Assistant to the Deputy Assistant Secretary for International Affairs. Effective July 22, 1999.

Special Assistant White House Liaison/Special Projects Staff to the Assistant Secretary for Human Resources and Administration. Effective July 30, 1999.

Environmental Protection Agency

Congressional Liaison Specialist to the Associate Administrator, Office of Congressional and Intergovernmental Affairs. Effective June 11, 1999.

Senior Advisor to the Assistant Administrator, Office of Resources and Management. Effective June 15, 1999.

Special Assistant to the Deputy Administrator. Effective June 15, 1999.

Deputy Director, Office of Communications and Governmental Relations to the Deputy Regional Administrator, Region Nine. Effective June 17, 1999.

Special Counsel to the Regional Administrator. Effective July 9, 1999.

Federal Emergency Management Agency

Advisor for Intergovernmental Affairs to the Director, Office of Intergovernmental Affairs. Effective June 11, 1999.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Member. Effective August 26, 1999.

Export-Import Bank of the United States

Personal and Confidential Assistant to the First Vice President and Vice Chairman. Effective July 8, 1999.

Farm Credit Administration

Executive Assistant to the Board Member. Effective July 26, 1999.

National Aeronautics and Space Administration

Program Support Specialist to the Associate Administrator, Outreach Division, Office of Legislative Affairs. Effective August 9, 1999.

National Credit Union Administration

Communications and Administrative Specialist to the Board Member. Effective June 30, 1999.

National Transportation Safety Board

Family and Government Affairs Specialist to the Director, Office of Government, Public and Family Matters. Effective August 23, 1999.

Special Assistant to the Member. Effective August 26, 1999.

Special Assistant to the Member. Effective August 26, 1999.

Office of Management and Budget

Confidential Assistant to the Associate Director, Education, Income Maintenance, and Labor. Effective June 23, 1999.

Occupational Safety and Health Review Commission

Confidential Assistant to the (Chairman). Effective August 12, 1999.

Counsel to a Commissioner to the Member (Commissioner). Effective August 12, 1999.

Office of National Drug Control Policy

Staff Assistant to the Chief of Staff. Effective August 16, 1999.

Staff Assistant to the Deputy Director Supply Reduction. Effective August 16, 1999.

Office of Science and Technology Policy

Confidential Assistant to the Associate Director Technology Division. Effective June 17, 1999.

Public Affairs Specialist to the Chief of Staff. Effective July 22, 1999.

Securities and Exchange Commission

Confidential Assistant to the Director of Public Affairs. Effective June 11, 1999.

Special Advisor to the Chairman. Effective June 23, 1999.

Confidential Assistant to the Commissioner. Effective August 24, 1999.

Small Business Administration

Deputy Assistant Administrator for Congressional and Legislative Affairs to the Assistant Administrator for Congressional and Legislative Affairs. Effective June 2, 1999.

Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison. Effective June 8, 1999.

Assistant Administrator for International Trade to the Associate Deputy Administrator for Capital Access. Effective June 8, 1999.

Deputy Chief of Staff to the Chief of Staff. Effective June 11, 1999.

Social Security Administration

Public Affairs Specialist (Speechwriter) to the Deputy Commissioner for Communications. Effective June 11, 1999.

United States Trade and Development Agency

Special Assistant for Public Affairs and Marketing to the Director of the U.S. Trade and Development Agency. Effective June 11, 1999.

Office of the United States Trade Representative

Director of Scheduling to the Chief of Staff. Effective July 2, 1999.

President's Commission on White House Fellowships

Special Assistant to the Director, Presidential Commission on White House Fellowships. Effective July 9, 1999.

Small Business Administration

Assistant Administrator for Public Communications to the Associate Administrator for Communications and Public Liaison. Effective July 1, 1999.

Deputy Scheduler to the Chief of Staff. Effective July 26, 1999.

Deputy Director of Scheduling to the Chief of Staff. Effective July 27, 1999.

Associate Director for Field Operations to the Associate Administrator for Field Operations. Effective July 28, 1999.

Special Assistant to the Chief of Staff/ White House Liaison. Effective July 28, 1999.

United States Information Agency

Special Projects Officer to the Director, Office of Citizen Exchanges. Effective August 26, 1999.

United States Tax Court

Trial Clerk to the Judge. Effective July 30, 1999.

Trial Clerk to the Judge. Effective July 30, 1999.

Trial Clerk to the Judge. Effective July 30, 1999.

Trial Clerk to the Judge. Effective August 12, 1999.

Trial Clerk to the Judge. Effective August 12, 1999.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–27235 Filed 10–20–99; 8:45 am]

BILLING CODE 6325–01–P

POSTAL RATE COMMISSION

[Docket No. MC2000–1]

Technical and Settlement Conference; Meeting

AGENCY: Postal Rate Commission.

ACTION: Notice of technical and settlement conference.

SUMMARY: An initial technical and settlement conference has been scheduled in docket no. MC2000–1. The conference will discuss potential settlement. It also will address diversion of mail, the accuracy of estimated net revenue effects, and the possibility, frequency, and level of detail of data collection during the experiment.

DATES: The technical and settlement conference has been scheduled for October 27, 1999. For time and other dates, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The conference will be held in the Commission's hearing room at 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Ted P. Gerarden, director of the Commission's Office of the Consumer Advocate (OCA), at 202–789–6838.

SUPPLEMENTARY INFORMATION: The OCA hereby gives notice of a technical and settlement conference to discuss the request [for an experimental mail classification] filed on September 27, 1999, by the United States Postal Service (Postal Service). On September 30, 1999, the Commission issued a notice of the request and provided until October 25, 1999, for parties to file notices of intervention. The Commission also encouraged participants to explore settlement ''at the earliest opportunity following the deadline for intervention and, preferably, prior to the prehearing conference,'' which is scheduled for October 28 at 11 a.m.[1] Accordingly, OCA is scheduling a technical and settlement conference for October 27, 1999, at 2 p.m.

The Postal Service has expressed a desire for expedition.[2] In that spirit, OCA has held informal discussions with the Postal Service better to understand the Service's proposal and to indicate questions of interest to OCA. It is desirable that other parties also utilize informal inquiry methods to define the issues, further the exchange of information and explanations between the Postal Service and the participants, and facilitate settlement.[3] The Postal Service and other interested parties are requested to have individuals present at the conference who are familiar with the following issues: [4]

1. The extent of potential diversion of mail volume from Standard Mail (A) to the proposed ''ride-along'' classification.

2. The accuracy of estimated net revenue effects of the proposed ''Ride-Along'' classification.

3. The possibility, frequency, and level of detail of reporting data during the course of the experiment.

The informal technical and settlement conference will be held October 27, 1999, beginning at 2 p.m. in the Commission's hearing room at 1333 H St., NW., Washington, DC. All interested persons are welcome to attend the conference, but all such persons are placed on notice that attendance at the conference will not confer party status. Any interested person must file pursuant to Rule 20 or 20a of the Commission's rules in order to intervene or to obtain limited participation status in the proceeding.

The Secretary of the Commission is requested to arrange for publication of this notice in the **Federal Register**.

Authority: 39 U.S.C. 3623.

[1] Order No. 1264, Notice and Order on Filing of Request for Establishment of Experimental ''Ride-Along'' Classification (and Flat Rate) for Periodicals. Ordering paragraphs 6 and 9 designated OCA to represent the interests of the general public and to act as settlement coordinator in this proceeding. 64 FR 54693–54695.

[2] Motion of the United States Postal Service for Expedition and for Waiver of Certain Provisions of Rule 64(h), September 27, 1999, at 2–4.

[3] In addition to informal methods, the Commission has authorized parties to conduct formal discovery upon intervention in the proceedings. Order No. 1264 at 11.

[4] Pending the outcome of settlement negotiations, OCA requests that the Commission treat this list of issues as fulfilling the requirements of paragraph 4 of Order No. 1264.

Dated: October 15, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–27433 Filed 10–20–99; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL RATE COMMISSION

Notice of Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of visit.

SUMMARY: Pitney Bowes employees will visit the Commission to present a briefing at 10:00 a.m. on Pitney Bowes' ''fast forward'' system and joint Pitney Bowes/Postal Service activities. This visit has been scheduled as a follow-up to address questions raised by an earlier Commission visit to Pitney Bowes facilities.

DATES: The visit is scheduled for Monday, October 25, 1999.

ADDRESSES: Postal Rate Commission (Conference Room), 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Margaret P. Crenshaw, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001 (202) 789–6840.

Dated: October 15, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–27434 Filed 10–20–99; 8:45 am]

BILLING CODE 7710–FW–M

POSTAL RATE COMMISSION

[Docket No. RM99–4; Order No. 1268]

Privacy Act of 1974; System of Records

AGENCY: Postal Rate Commission.

ACTION: Notice of alterations to Privacy Act system of records.

SUMMARY: The Commission is amending its system of records. The amendments update the longstanding system and establish a second system. These changes will ensure consistency with the Privacy Act of 1974, as amended.

DATES: The amendments take effect November 22, 1999.

ADDRESSES: Send communications regarding this notice to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, at 202–789–6820.

SUPPLEMENTARY INFORMATION: On October 8, 1999, the Postal Rate Commission issued an order adopting, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), two notices regarding its systems of records and their routine uses. The notices were initially proposed in Order No. 1256. They were published at 64 FR 48875. The Commission invited comments, but no comments were received.

Introduction

In a notice published at 64 FR 48875, the Commission set out revisions to its current notice regarding its system of records and their routine uses. The notice was issued in accordance with the Privacy Act of 1974, 5 USC 552a(e)(4). The Commission adopts the referenced notice as final. Part I describes the changes. Part II presents the complete text. As notices of this type generally are not published in the Code of Federal Regulations, there are no corresponding amendments to 39 CFR.

Part I—Background

PRC–1. To date, the Commission's sole system of records for Privacy Act purposes has been PRC–1, named *Official Personnel Files.* This system consists of information pertaining to Commission personnel generally. However, it does not explicitly include all related records maintained by the Commission, such as information regarding travel by Commission personnel on official business. In order to indicate clearly that all such information is included in the system, the Commission is replacing the previously-described PRC–1 with a more comprehensive system extending to all personnel, pay, leave and travel records. This new system, named *Personnel, Pay, Leave, and Travel,* will continue to be designated PRC–1.

The statement of the routine uses of records contained in PRC–1 is also revised, relative to the existing statement. Two previously-published routine uses are abolished because they have not occurred in actual practice, and thus are apparently unnecessary. Other routine uses are reworded, either to accommodate expansions in the use of records made by the Commission or the Postal Service, or to conform with language recommended by the Office of Management and Budget (OMB). The two pre-existing routine uses that encompass litigation-related disclosures have been combined into a single category.

The system notice also contains new routine uses either required by law or which the Commission anticipates may be necessary in the performance of agency business. These include disclosure of information to the National Archives and Records Administration, to agency contractors, and to the OMB for potential private relief legislation. One of these new routine uses reflects the requirement that federal agencies report wage information quarterly to the Parent Locator Service, as prescribed by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act.

The system notice does not contain a routine use for any computer matching activities that might be performed on records contained in PRC–1, as the Commission has not performed such matching activities in the past, and does not intend to do so in the future. However, the Commission provides payroll records to the Postal Service for routine processing, and it is possible that the Postal Service might use information about Commission personnel in a computer matching activity.

To fulfill its statutory obligations regarding potential matching activities, particularly under the Computer Matching and Privacy Protection Amendments of 1998 (Pub. L. 100–508), the Commission has notified the Postal Service of its policy that use of employee records for computer matching may be conducted only with express Commission approval, and has requested that the Postal Service exclude Commission employees from any matching activities it otherwise conducts.

PRC–2. As noted above, revised PRC–1 incorporates all Commission records pertaining to its employees. Virtually all other information in the Commission's possession concerning individuals occurs in the pleadings and other filings submitted by participants in the Commission's postal rate, mail classification, and other official public proceedings.[1]

To provide public notice of the existence of information about individuals in this principal substantive record-keeping system, the Commission has established another system of records, and designated it as PRC–2. This system contains names, addresses, and contact information for anyone who intervenes in a Commission proceeding, together with all filings, answers, exhibits and other submissions provided to the Commission. Because all these materials are public records under the terms of 39 CFR 3001.42(b), the system notice states under the ''Routine Uses'' heading that all records in this system are public and will be disclosed to any person upon request.

The Commission adopts the notices regarding its systems of records and their routine uses set out in the attachment to this order, effective 30 days following publication in the **Federal Register**. In accordance with the Commission's order, the secretary shall cause this order to be published in the **Federal Register** in accordance with applicable regulations.

Dated: October 15, 1999.

Margaret P. Crenshaw,

Secretary.

PRC–1

SYSTEM NAME:

Personnel, Pay, Leave, and Travel (PRC–1).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1333 H Street NW., Suite 300, Washington, DC 20268–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to personnel, pay, leave, and travel. This includes: Name; date of birth; social security number; home address; grade; salary; time and attendance; alternate work schedules; biographical information; leave accrual rate, usage, and balances; training; Civil Service Retirement and Federal Employees' Retirement System contributions; FICA withholdings; Federal, State, and local tax withholdings; Federal Employees' Group Life Insurance withholdings; Federal Employees' Health Benefits withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bonds allotments; travel expenses; parking permits; carpools; building security records; employee locator; and information on the fare subsidy program.

[1] The Commission maintains a short press list containing the names, affiliations, addresses, and telephone numbers of reporters in their professional capacity. In the Commission's view, this list does not qualify as a system of records for Privacy Act purposes. Various Commission offices also maintain correspondence files that may contain some information about individuals in some instances. However, correspondence in these files is not routinely filed or retrieved by personal identifier, and consequently none of them constitutes a system of records in the Commission's view.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Includes 39 U.S.C. 3603, 44 U.S.C. 3101, 5 U.S.C. ch. 57 (relating to travel, transportation, and subsistence), together with any amendments.

PURPOSE(S):

These records are used to administer pay, leave, travel, parking, fare subsidies, and other administrative functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

A. Disclosure to the U.S. Postal Service

The U.S. Postal Service handles payroll and other disbursements on behalf of the Postal Rate Commission. As a result, records related to payroll functions, travel, and other disbursements are disclosed as a routine use to the U.S. Postal Service. The records from the Commission are incorporated into Privacy Act systems of records maintained by the U.S. Postal Service and are routinely disclosed for purposes defined in those systems of records. The main systems of records at the U.S. Postal Service are Finance Records—Payroll System. (USPS 050.020), and Finance Records—Employee Travel Records (USPS 050.010).

B. Disclosure for Law Enforcement Purposes

Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

C. Disclosure Incident to Requesting Information

Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

D. Disclosure to Requesting Agency

Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other authority may then make a request supported by the written consent of the individual for the record if it chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to the authority or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

E. Disclosure to Office of Management and Budget

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

F. Disclosure to Congressional Offices

Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

G. Disclosure During Litigation

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Postal Rate Commission is authorized to appear, when:

1. The Commission, or any component thereof; or

2. Any employee of the Commission in his or her official capacity; or

3. Any employee of the Commission in his or her individual capacity where the Department of Justice or the Commission has agreed to represent the employee; or

4. The United States, when the Commission determines that litigation is likely to affect the Commission or any of its components is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Commission is deemed by the Commission to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

H. Disclosure to the National Archives

Information may be disclosed to the National Archives and Records Administration in records management inspections.

I. Disclosure to Contractors, Grantees, and Others

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Postal Rate Commission and who need the information in the performance of their duties or activities for the Commission. If appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

J. Disclosures for Administrative Claims, Complaints, and Appeals

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

K. Disclosure to the Office of Personnel Management

Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

L. Disclosure in Connection with Litigation

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Postal Rate Commission, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

M. Disclosure for Child Support Enforcement

The name, social security number, home address, date of birth, date of hire, quarterly earnings, employer identifying information, and State of hire for each employee may be disclosed to the Office

of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information from this system of records may be disclosed to a consumer reporting agency as provided in 31 U.S.C. 3711.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper, in folders, in file cabinets, and on the Postal Rate Commission's computer network.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, or other identification number.

SAFEGUARDS:

Records are maintained in locked file cabinets or combination safes and on computers and computer networks that use password protections and other system controls to prevent unauthorized access by Postal Rate Commission staff. Firewalls prevent access to internal Commission documents by outsiders. All records and computer facilities are maintained in Commission offices, and public access to Commission offices is controlled.

RETENTION AND DISPOSAL:

Records are maintained for varying periods of time, in accordance with NARA General Records Schedules 2 (pay and leave) and 9 (travel).

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Officer, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

NOTIFICATION PROCEDURE:

RECORD ACCESS PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

CONTESTING RECORD PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from: the subject of the record; employment applications, references, and other employment-related sources; the official personnel file from the Office of Personnel Management; and internal Postal Rate Commission documents, including time and attendance records, leave slips, travel requests, performance evaluations, training records, and similar internal documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PRC–2

SYSTEM NAME:

Docket Room Records (PRC–2).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1333 H Street NW., Suite 300, Washington, DC 20268–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who intervene in Postal Rate Commission proceedings and individuals whose name and other identifying information appears in records filed in connection with Postal Rate Commission proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains names, addresses, and contact information for anyone who intervenes in a proceeding before the Postal Rate Commission; submissions, filings, answers, exhibits, and any other record provided to the Commission and made public under Commission rule 3001.42(b).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 3603.

PURPOSES:

These records are used under the Postal Rate Commission's rules and procedures in Commission proceedings, decisions, opinions, and other activities authorized by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All records in this system are public and will be disclosed to any person upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper, in folders, in file cabinets, and on the Postal Rate Commission's computer network.

RETRIEVABILITY:

Records may be retrieved by name or docket number.

SAFEGUARDS:

Records are maintained in the Postal Rate Commission's docket room, on computer networks, and on the Commission website. All records and computer facilities are maintained in Commission offices, and public access to Commission offices is controlled.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with approved record schedules. Most records pertaining to Commission decisions are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Officer, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

NOTIFICATION PROCEDURE:

RECORD ACCESS PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

CONTESTING RECORD PROCEDURE:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from intervenors in Postal Rate Commission proceedings and from Commission staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–27432 Filed 10–20–99; 8:45 am]

BILLING CODE FW–7710–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, November 1, 1999; 8:30 a.m., Tuesday, November 2, 1999.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: November 1 (Closed); November 2 (Open).

MATTERS TO BE CONSIDERED:

Monday, November 1—1:00 p.m. (Closed)

1. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC99–2, Weight-Averaged, Nonletter-Size Business Reply Mail.
2. NetPost—Mailing Online Major Market Test.
3. Mailing Online Filing.
4. Los Angeles, California, Terminal Annex.
5. Rate Case Filing.
6. Contract for External Audit Services.
7. Office of Inspector General FY 2000 Performance Plan.
8. Compensation Issues.
9. Personnel Matters.

Tuesday, November 2—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 4–5, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Semiannual Report to Congress on Summary of Investigative Activities (Actions Under 39 USC 3005 and 3007).
4. Quarterly Report on Service Performance.
5. Tentative Agenda for the December 6–7, 1999, meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–27657 Filed 10–19–99; 1:14 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24084; 812–11808]

Evergreen Equity Trust et al.; Notice of Application

October 14, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under rule 17d–1 under the Investment Company Act of 1940 (the ''Act'') for an order to permit certain transactions in accordance with section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered investment companies to pay to an affiliated lending agent, and the affiliated lending agent to accept, fees based on a share of the revenue generated from securities lending transactions.

APPLICANTS: Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen International Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, Evergreen Municipal Trust, Evergreen Money Trust, Evergreen Select Money Market Trust (collectively, the ''Funds''), First Union National Bank (''First Union''), and Evergreen Investment Management Company (''EIM'').

FILING DATE: The application was filed on October 8, 1999.

HEARING AND 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 November 8, 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 request should state the nature of the writer's interest, the reason for the request, and the issues contested. Person who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 200 Berkeley Street, Boston, MA 02116.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, 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 Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Each Fund is registered under the Act as an open-end management investment company. The Funds currently consist of 92 portfolios (''Portfolios''). EIM, a subsidiary of First Union Corporation, is registered under the Investment Advisers Act of 1940. EIM or an entity controlling, controlled by, or under common control with EIM serves as investment adviser to each Portfolio of the Funds (each, an ''Adviser''). First Union, a wholly-owned subsidiary of First Union Corporation, is a national banking association.[1]

2. Each Portfolio is permitted by its investment objectives, policies, and restrictions to lend its portfolio securities. Applicants may propose that the Funds engage First Union as custodian and that First Union act as lending agent for the Funds in transactions where the Funds loan portfolio securities to unaffiliated borrowers (''Borrowers''). First Union, as lending agent, would be responsible for, among other things, soliciting Borrowers from a pre-approved list of eligible Borrowers, entering into loans of pre-approved securities on pre-approved terms, negotiating loans, requesting Borrowers to add collateral when required, and performing other administrative functions.[2] In addition, First Union would, under guidelines established by the Adviser, invest cash collateral in instruments pre-approved by the Adviser.

3. A Fund's board of trustees (''Board''), including a majority of the trustees who are not ''interested persons'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will establish procedures to govern the securities leading program. These procedures will comply with the policies and procedures set forth by the

[1] Applicants also request that the relief apply to any other registered investment company that in the future is advised by EIM or an entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with EIM (''Future Funds''). Applicants state that all registered investment companies that currently intend to rely on the relief are named as applicants and that any Future Funds that rely on the relief will so do so only in accordance with the terms and conditions of the application.

[2] Applicants state that the duties to be performed by First Union will be consistent with and not exceed the parameters set forth in *Norwest Bank* (pub. avail. May 25, 1995).

Commission and its staff. The duties of First Union, as the lending agent, as well as procedures governing the securities lending, will be included in the Portfolio's agreement with First Union or otherwise detailed in writing. The ultimate responsibility for determining which securities are available to be loaned and to whom the securities may be loaned will reside with the Portfolio's Adviser, subject to the procedures approved by the Fund's Board.

4. Each Borrower of a Portfolio's securities will be required to tender collateral to be held by the Portfolio's custodian. In transactions where the collateral is other than cash, First Union typically will negotiate on behalf of a Portfolio a lending fee to be paid by the Borrower. The Borrower will deliver to the Portfolio's custodian U.S. Government securities or bank letters of credit equal to at least 100% of the value of the securities loaned, with the collateral to be increased, as necessary, to cover differences between the market value of the collateral and the market value of the loaned securities. At the termination of the loan, the Borrower will pay to the Portfolio the lending fee, or which First Union will receive a pre-negotiated percentage.

5. In transactions where the collateral consists of cash, the Portfolio typically will receive a portion of the return earned on the investment of the cash collateral by or under the direction of the Portfolio's Adviser. Depending on the agreement negotiated with the Borrower by First Union, a percentage of the return on the investment of the cash collateral may be remitted by the Portfolio to the Borrower. Cash collateral delivered by the Borrower to the Portfolio's custodian will equal at least 100% of the portfolio securities loaned, and will be supplemented to cover increases in the market value of the loaned securities, as necessary. Out of amounts earned on the investment of cash collateral, the Borrower would be paid the amount agreed upon, if any, and, out of any remaining earnings, First Union would receive its pre-negotiated percentage and the Portfolio would receive the remainder.

6. Applicants request relief to permit the Funds to pay First Union, and First Union to accept, fees based on a share of the proceeds derived by the Funds from their securities lending activities.

Applicants' Legal Analysis

1. Section 17(d) of the Act and Rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or any affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement or profit sharing plan in which the investment company participates. Section 2(a)(3) of the Act defines an ''affiliated person'' of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with, the other person, and if the other person is an investment company, any investment adviser of that company.

2. EIM, as investment adviser to the Funds, is an affiliated person of each Fund. Because EIM and First Union are under common control, First Union and EIM are affiliated persons and First Union is an affiliated person of an affiliated person of the Funds. Accordingly, applicants request an order under section 17(d) of the Act and rule 17d–1 under the Act to the extent necessary to permit each Fund to pay, and First Union as lending agent to receive, fees based on a percentage of the revenue generated by the Funds' securities lending program.

3. Rule 17d–1 authorizes the Commission to permit a proposed joint transaction. In determining whether to permit a transaction, the Commission is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment company is on a basis different from or less advantageous than that of the other participants. For the reasons discussed below, applicants believe that the requested relief satisfies that standards for relief set forth in rule 17d–1.

4. Applicants propose that the Funds adopt the following procedures to ensure that the fee arrangement and other terms of the relationship between the Funds and First Union are fair:

a. In connection with the initial approval of First Union as lending agent to a Fund, a majority of the Board of the Fund (including a majority of the Disinterested Trustees) will determine that: (1) The contract with First Union is in the best interests of the Fund and its shareholders; (ii) the services to be performed by First Union are required by the Fund; (iii) the nature and quality of the services to be performed by First Union are at least equal to those provided by others offering the same or similar services; and (iv) the fees for First Union's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature quality.

b. In connection with the initial approval of First Union as lending agent to a Fund, the Board will obtain competing quotes of the lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

c. Each Fund's contract with First Union for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of Disinterested Trustees) makes the findings referred to in paragraph (a) above.

d. The Board of each Fund, including a majority of Disinterested Trustees will (i) determine at each quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness.

e. Each Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modification thereto) described in the application or otherwise followed in connection with lending securities and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the Borrower, the terms of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions set forth in the application.

Applicants' Condition

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Portfolio will comply with all present and future applicable Commission and Commission staff positions regarding securities lending arrangements.

2. The approval of the Board, including a majority of Disinterested Trustees, shall be required for the initial and subsequent approvals of First Union's service as lending agent for the Fund, for the institution of all procedures relating to the securities lending program of the Fund, and for any periodic review of loan transactions for which First Union acted as lending agent.

3. No Portfolio may lend its portfolio securities to a borrower that is an

affiliated person of the Fund, EIM, First Union, or an affiliated person of any such person.

For the Commission by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27444 Filed 10–20–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24085; 812–11776]

GW Capital Management, LLC, et al.; Notice of Application

October 15, 1999.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1) 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 APPLICATION: Applicants request an order that would permit them to implement a ''fund of funds'' arrangement. The fund of funds would invest in other funds that are part of the same group of investment companies and in funds that are not part of the same group of investment companies in reliance on section 12(d)(1)(F) of the Act.

APPLICANTS: GW Capital Management, LLC (''Adviser''), Maxim Series Fund, Inc. (''Fund''), Orchard Series Fund (''Trust''), and One Orchard Equities, Inc. (''Distributor'').

FILING DATES: The application was filed on September 16, 1999. Applicant have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 9, 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, c/o Beverly A. Byrne, Esq., Maxim Series Fund, Inc., 8505 East Orchard Road, Englewood, CO 80111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or Michael W. Mundt, 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 Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is organized as a Maryland corporation and the Trust is organized as a Delaware business trust. The Fund and the Trust are registered under the Act as open-end management investment companies and are part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act). The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Fund and the Trust.

2. Applicants request relief to permit the series of the Fund and any other registered open-end management investment company that is part of the same ''group of investment companies'' as the Fund (collectively, the ''Profile Portfolios'') to purchase shares of series of the Fund, series of the Trust, and other registered open-end management investment companies or series that are part of the same ''group of investment companies'' as the Profile Portfolios (collectively, the ''Underlying Portfolios).[1] The Profile Portfolios also would invest in other registered open-end management investment companies that are not part of the same ''group of investment companies'' as the Profile Portfolios (the ''Other Portfolios'') in reliance on section 12(d)(1)(F) of the Act.

3. Shares of the Profile Portfolios are offered to separate accounts of Great-West Life & Annuity Insurance Company and its affiliates and separate accounts of unaffiliated insurers for the purpose of funding variable contracts issued by those insurance companies. Shares may also be offered directly to qualified pension and retirement plans. The Profile Portfolios do not impose any front-end sales charges, contingent deferred sales charges, or rule 12b–1 fees. Applicants state that the Profile Portfolios are intended as an efficient and cost-effective method of allowing investors who are pursuing long-term investment goals, namely, owners of variable insurance contracts and qualified plan participants, to structure a comprehensive asset allocation program with investments in the Underlying Portfolios and Other Portfolios consistent with the investors' investment time horizon.

Applicants' Legal Analysis

Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired companies, represent more than 10% of the acquiring companys total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted

[1] Applicants request relief for each existing or future registered open-end management investment company or series of such company that is part of the same ''group of investment companies'' as the Fund, and (1) is, or will be, advised by the Adviser or by any entity controlling, controlled by, or under common control with the Adviser; or (2) for which the Distributor or any entity controlling, controlled by, or under common control with the Distributor serves as principal underwriter. Each existing registered open-end management investment company that currently intends to rely on the order is named as an applicant. Any registered open-end management investment company that relies on the order in the future will do so only in accordance with the terms and conditions of the application.

pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term ''group of investment companies'' to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Because the Profile Portfolios will invest in shares of the Other Portfolios, they cannot rely on the exemption from sections 12(d)(1)(A) and (B) afforded by section 12(d)(1)(G).

3. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

4. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

5. Applicants request relief under section 12(d)(1)(J) of the Act from the limitations of sections 12(d)(1)(A) and (B) to permit the Profile Portfolios to invest in the Underlying Portfolios. Applicants are not requesting relief from section 12(d)(1)(F) and will rely on that section for investments in Other Portfolios.

6. Applicants state that the Profile Portfolios' investments in the Underlying Portfolios do not raise the concerns that sections 12(d)(1)(A) and (B) were designed to address, which include undue influence, duplicative fees, and overly complex fund arrangements. Because the Profile Portfolios and Underlying Portfolios are part of the same group of investment companies, applicants submit that there is little potential for the Adviser to exercise inappropriate control over the Underlying Portfolios. Applicants further state that the proposed conditions would appropriately address any concerns about the layering of advisory fees, sales charges, and other fees. Applicants state that the arrangements would not become overly complex because Underlying Portfolios and Other Portfolios generally will not invest in other investment companies in excess of the limits of section 12(d)(1)(A).

Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) 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; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants state that the Profile Portfolios and the Underlying Portfolios will be advised by the Adviser. As a result, applicants submit that a Profile Portfolio and Underlying Portfolio may be deemed to be affiliated persons by virtue of being under the common control of the Adviser, or to the extent that a Profile Portfolio owns 5% or more of the shares of an Underlying Portfolio. Applicants state that purchases and redemptions of shares of the Underlying Portfolios by the Profile Portfolios could be deemed to be principal transactions between affiliated persons under section 17(a).

2. Section 17(b) provides that the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt persons 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. Applicants request an exemption under sections 6(c) and 17(b) of the Act to permit the Profile Portfolios to purchase and redeem shares of the Underlying Portfolios.

4. Applicants state that the terms of the proposed transactions will be fair and reasonable and will not involve overreaching because shares of Underlying Portfolios will be sold and redeemed at their net asset values. Applicants also state that the investment by the Profile Portfolios in the Underlying Portfolios will be effected in accordance with the investment restrictions of the Profile Portfolios and will be consistent with the policies as set forth in the registration statement of the Profile Portfolios.

Applicant's Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. All Underlying Portfolios will be part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Profile Portfolios.

2. No Underlying Portfolio or Other Portfolio 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 that such Underlying Portfolio or Other Portfolio (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Portfolio or Other Portfolio to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

3. Any sales charges, distribution-related fees and service fees relating to the shares of the Profile Portfolios, when aggregated with any sales charges, distribution-related fees and service fees paid by the Profile Portfolios relating to the acquisition, holding or disposition of shares of the Underlying Portfolios and Other Portfolios, will not exceed the limits set forth in rule 2830 of the Conduct Rules of the National Association of Securities Dealers.

4. Before approving any advisory contract under section 15 of the Act, the board of directors of the Profile Portfolios, including a majority of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Portfolio or Other Portfolio advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Profile Portfolios.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–27498 Filed 10–20–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3216]

State of New York; (Amendment #2)

In accordance with a notice received from the Federal Emergency Management Agency, effective September 18, 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 18, 1999.

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.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 8, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–27476 Filed 10–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3212]

State of North Carolina (Amendment #1)

In accordance with a notice received from the Federal Emergency Management Agency dated October 4, 1999, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on September 15, 1999 and continuing through October 4, 1999.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 14, 1999, and for economic injury the deadline is June 16, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 8, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–27475 Filed 10–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3218]

State of South Carolina (Amendment #2)

In accordance with notices received from the Federal Emergency Management Agency dated September 30 and October 6, 1999, the above-numbered Declaration is hereby amended to include Dillon, Dorchester, Florence, and Orangeburg Counties in the State of South Carolina 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 14, 1999 and continuing through September 30, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Aiken, Barnwell, Calhoun, Darlington, Lee, Lexington, Marlboro, and Sumter 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 8, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–27477 Filed 10–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Georgia District Advisory Council; Public Meeting

The U.S. Small Business Administration, Georgia District Office, Advisory Council will hold a public meeting on Friday, November 5, 1999 at 8:30 a.m. at the Sheraton Augusta Hotel, 2651 Perimeter Parkway, Augusta, Georgia 30909, to discuss matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Charles E. Anderson, District Director, U.S. Small Business Administration, 1720 Peachtree Road, N.E., Suite 600, Atlanta, Georgia 30309, (404) 347–3012.

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 99–27478 Filed 10–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Oregon Advisory Council; Public Meeting

The U.S. Small Business Administration Oregon Advisory Council, located in the geographical area of Portland, Oregon will hold a public meeting from 8:00 a.m. to 2:00 p.m. Tuesday, October 26, 1999 at 6th Floor Conference Room, 1515 Bldg., 1515 SW Fifth Avenue, Portland, Oregon to discuss such matters as may be presented by members, SBA staff or others present.

For further information, write or call Donald S. Matsuda, Deputy District Director, U.S. Small Business Administration, 1515 SW Fifth Avenue, Suite 1050, Portland, OR 97201–5494, telephone number (503) 326–5221.

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 99–27479 Filed 10–20–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region V Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12 p.m. to 1 p.m., October 21, 1999 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Yolanda Lassiter, U.S. Small Business

Administration, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53203; fax (414) 297–3928.

Bettie Baca,

Counselor to the Administrator.

[FR Doc. 99–27474 Filed 10–20–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Delegation of Authority 235

By virtue of the authority vested in the Secretary of State by the laws of the United States, including section 1 of the Department of State Basic Authorities Act (22 U.S.C. 2651a), I hereby delegate to the Under Secretary of State for Political Affairs the authority to perform all functions conferred upon the Secretary of State by Executive Order No. 13129 of July 4, 1999, entitled ''Blocking Property and Prohibiting Transactions With the Taliban.'' Notwithstanding this delegation of authority, the Secretary of State or the Deputy Secretary of State may at any time exercise any authority conferred upon the Secretary by this Executive Order. Actions within the scope of this delegation heretofore taken are hereby ratified and confirmed.

This Delegation of Authority shall be published in the **Federal Register** and shall be effective upon date of signature.

Dated: October 14, 1999.

Madeleine Albright,

Secretary of State.

[FR Doc. 99–27547 Filed 10–20–99; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–35]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 10, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C. on October 14, 1999.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29119.

Petitioner: Era Aviation, Inc.

Section of the FAR Affected: 14 CFR 121.643(a)(2) and (3).

Descritpion of Relief Sought: To permit Era Aviation, Inc., to operate its DHC–6 aircraft under the fuel supply requirements of 14 CFR part 135 in lieu of the fuel requirements of part 121 supplemental operations.

Docket No.: 29657.

Petitioner: Constellation Historical Society and the Global Aeronautical Foundation.

Section of the FAR Affected: 14 CFR 91.529(b).

Description of Relief Sought: To allow CHS and GAF flight engineers to maintain currency in Locheed Constellation model aircraft using an Events Based Currency program in lieu of obtaining 50 hours of operating experience every 6 months.

Docket No.: 29577.

Petitioner: Bombardier Aerospace Corporation d.b.a. Bombardier Business Jet Solutions, Inc.

Section of the FAR Affected: 14 CFR 47.13(g) and 49.13(d).

Description of Relief Sought: To permit Bombardier Aerospace Corporation d.b.a. Bombardier Business Jet Solutions, Inc., Bombardier Aerospace Corporation, and Bombardier Business Jet Solutions, Inc., to use power of attorney on file with the Civil Aviation Registry, that do not have a specific expiration date, for a period of 6 years.

Docket No.: 29609.

Petitioner: The Bush Pilot, Inc.

Section of the FAR Affected: 14 CFR 43.3(a) and (g) and paragraph (c) of appendix A to part 43.

Description of Relief Sought: To permit BPI to perform the preventative maintenance functions listed in paragraph c of appendix A to part 43 on an aircraft operated under 14 CFR part 135 without holding a mechanics certificate.

Disposition of Petitions

Docket No.: 28452.

Petitioner: Boeing Commercial Airplane Group.

Section of the FAR Affected: 4 CFR 25.562(b)(2).

Description of Relief Sought/ Disposition: To exempt the Boeing Commercial Airplane Group from the floor warpage testing requirements of § 25.562(b)(2) for Boeing Models 737–700C/–900.

Grant, 8/20/99, Exemption No. 6425A.

Docket No.: 28559.

Petitioner: Rockwell Collins, Inc.

Section of the FAR Affected: 14 CFR 21.327(a).

Description of Relief Sought/ Disposition: To permit Rockwell to use a printout from its Order Management System for Class II product instead of the Application for Export Certificate of Airworthiness (Form 8130–1), even though Rockwell does not hold a production certificate.

Grant, 5/24/99, Exemption No. 6604A.

Docket No.: 29002.

Petitioner: Peninsula Airways, Inc. d.b.a. PenAir.

Section of the FAR Affected: 114 CFR 121.709(b)(3).

Description of Relief Sought/ Disposition: To permit properly trained PenAir flight crewmembers to install and/or remove medevac stretchers on PenAir Fairchild Metro III aircraft and

make the appropriate entries in the aircraft maintenance records.

Grant, 8/31/99, Exemption No. 6674A.

Docket No.: 29274.

Petitioner: Airborne, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit Airborne pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6990.

Docket No.: 29307.

Petitioner: Hughes Flying Service, Inc..

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit Hughes pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6993.

Docket No.: 29331.

Petitioner: Corporate Wings, Inc..

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit Corporate Wings pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6992.

Docket No.: 29363.

Petitioner: Charter Fleet International.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit CFI pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6991.

Docket No.: 29413.

Petitioner: Hiawatha Aviation of Rochester, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit Hiawatha pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6989.

Docket No.: 29515.

Petitioner: Peninsula Airways, Inc.

Section of the FAR Affected: 14 CFR 91.323(b)(4).

Description of Relief Sought/ Disposition: To permit PenAir to operate two G–21A aircraft, Registration Nos. N641 and N22932, at a maximum weight of 8,920 pounds

Partial Grant, 9/1/99, Exemption No. 6963.

Docket No.: 29552.

Petitioner: Northern Illinois Flight Center, Inc.

Section of the FAR Affected: 14 CFR 135.299(a).

Description of Relief Sought/ Disposition: To permit NIFC pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Denial, 9/3/99, Exemption No. 6988.

Docket No.: 29554.

Petitioner: Phillipsburg Aviation, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/ Disposition: To permit Phillipsburg to conduct local sightseeing flights at the annual Special Wish Foundation fundraising event on August 29, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of 14 CFR part 121 and part 135.

Grant, 8/27/99, Exemption No. 6959.

Docket No.: 29620.

Petitioner: The Boeing Company.

Section of the FAR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought/ Disposition: To permit certification of the Model 737–900 by showing compliance by similarity to the Boeing 737–700 hydraulic system and by an engineering design review of the added straight-line hydraulic tube installations of the Model 737–900 airplane.

Grant, 8/20/99, Exemption No. 6953.

Docket No.: 29631.

Petitioner: Federal Express Corporation.

Section of the FAR Affected: 14 CFR 121.344(b)(3).

Description of Relief Sought/ Disposition: To allow FedEx to operate three B–727 airplanes (Registration Nos. N190FE, N246FE, and N464FE; Serial Nos. 19083, 22068, and 21288, respectively) and two DC–10 airplanes (Registration Nos. N68052 and N68059; Serial Nos. 47806 and 46907, respectively) without installing, in each aircraft, the required DFDR until the next heavy maintenance check after January 15, 2000.

Partial Grant, 9/2/99, Exemption No. 6965.

Docket No.: 29690.

Petitioner: Western North Carolina Air Museum.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/ Disposition: To allow the Air Museum to conduct local sightseeing flights at the Air Museum's Open House held at the Hendersonville Airport during the Henderson County Apple Festival, September 4 through 7, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 9/2/99, Exemption No. 6964.

Docket No.: 29633.

Petitioner: Sandusky Flying Club.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/ Disposition: To allow SFC to conduct local sightseeing flights in the vicinity of the Sandusky City Airport, for its Dawn Patrol event on August 29, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 8/26/99, Exemption No. 6956.

Docket No.: 29688.

Petitioner: Robert Stone.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/ Disposition: To allow Mr. Stone to conduct local sightseeing flights at the annual Special Wish Foundation fundraising event on August 29, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 8/27/99, Exemption No. 6958.

Docket No.: 29697.

Petitioner: Spectrum Aeromed, Inc.

Section of the FAR Affected: 14 CFR 25.562 and 25.785(b).

Description of Relief Sought/ Disposition: To exempt Spectrum from the requirements of §§ 25.562 and 25.785(b) of the FAR for installation of medical stretchers on the Cessna Citation Model 560XL (Excel.).

Grant, 8/23/99, Exemption No. 6952.

Docket No.: 29712.

Petitioner: Corvallis Chapter of the Oregon Pilots Association.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendices I & J of part 121.

Description of Relief Sought/ Disposition: To allow OPA to conduct local sightseeing flights at Corvallis Municipal Airport, for the Corvallis Fly-In on August 28, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 8/27/99, Exemption No. 6952.

Docket No.: 29713.

Petitioner: Experimental Aircraft Association Chapter 988.

Section of the FAR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I & J of part 121.

Description of Relief Sought/ Disposition: To allow EAA Chapter 988 to conduct local sightseeing flights at Venango Regional Airport in Franklin, Pennsylvania, for a Fly-In on August 28 and 29, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 8/27/99, Exemption No. 6961.

[FR Doc. 99–27510 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Fayetteville Municipal Airport, Fayetteville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 22 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Dale Frederick, Manager of Fayetteville Municipal Airport, at the following address: Dale Frederick, Airport Manager, Fayetteville Municipal Airport, 4500 South School Avenue, Suite F, Fayetteville, AR 72701.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Fayetteville Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 5, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 28, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2001.

Proposed charge expiration date: January 1, 2000.

Total estimated PFC revenue: $960,303.00.

PFC application number: 99–03–C–00–FYV.

Brief description of proposed projects:

Projects To Impose and Use PFC'S

Localizer-type Directional Aid with Glide Slope, Taxiway Rehabilitation, and PFC Administrative Costs.

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Fayetteville Municipal Airport.

Issued in Forth Worth, Texas on October 5, 1999.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 99–27512 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–01–C–00–LMT) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Klamath Falls Airport Submitted by the City of Klamath Falls, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Klamath Falls Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before November 22, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harold E. Wight, Airport Director, at the following address: City of Klamath Falls, 6775 Arnold Avenue, Klamath Falls, Oregon 97603.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Klamath Falls Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; 1601 Lind Avenue SW, Suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–01–00–LMT) to impose and use PFC revenue at Klamath Falls Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 12, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Klamath Falls, Klamath Falls Airport, Oregon, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 14, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 2000.

Proposed charge expiration date: October 1, 2009.

Total requested for use approval: $787,521.

Brief description of proposed project: Airport master plan study; Taxiway extension project; Taxiway and apron reconstruction; Install Part 107 security gates; Reconstruct T—hanger taxiway; Seal coat runway 7/25; Taxiway, apron and access road construction; Construct perimeter fencing; Parking lot rehabilitation; Land acquisition; Terminal area improvements; Safety area study; Pavement maintenance study; Runway 7/25 safety area improvements; Acquire snow removal equipment; Acquire handicapped lift; and Runway safety area design and construction.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue, S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Klamath Falls Airport.

Issued in Renton, Washington on October 12, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–27503 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minot International Airport, Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 22, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mike Ryan, Airport Director, of the City of Minot, North Dakota at the following address: Minot International Airport, 25 Airport Road, Suite 10, Minot, North Dakota 58701–1457. Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot, North Dakota under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 30, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Minot, North Dakota was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 29, 1999.

The following is a brief overview of the application.

PFC application number: 99–04–C–00–MOT.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 2000.

Proposed charge expiration date: November 30, 2003.

Total estimated PFC revenue: $757,551.00.

Brief description of proposed projects: PFC Application/Administration; Acquire Two Passenger Loading Bridges; Acquire 1500 Gallon Airport Rescue and Fire Fighting (ARFF) Vehicle; Rehabilitate Porous Friction Course on Runways 13/31 and 8/26; Construct Blast Pads on Runway 13/31; Rehabilitate Taxiway C; Install Distance Remaining Signs & Relocate/Modify Signs; Construct Service Road; Acquire ARFF/Snow Removal Equipment (SRE)/Security Radios; Acquire 1500 Gallon ARFF Vehicle; Reconstruct and Mark Taxiway F; Install Access Control System; Install Security Fencing; Replace Segmented Circle, Rotating Beacon, and Install Airport Signs; Acquire SRE (Rotary Snow Blower); Upgrade Security System; and Rehabilitation Taxiway A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operator (ATCO) Class Carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA Office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Minot—Airport Directors offices at the Minot International Airport.

Issued in Des Plaines, Illinois on October 8, 1999.

Cameron Bryan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–27511 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bronx County, NY

AGENCIES: Federal Highway Administration (FHWA) and the New York State Department of Transportation (NYSDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA and NYSDOT are issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Bronx County, New York.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration (FHWA) Leo O'Brian Federal Building—9th Floor, Albany, New York 12207—Telephone (518) 431–4127 or Richard Maitino, Regional Director, New York State Department of Transportation—Region 11 Office, Hunter's Point Plaza, 47–40 21st Street—8th Floor, Long Island City, New York 11101—Telephone: (718) 482–4526.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) and the New York City Department of Transportation (NYCDOT), will prepare an environmental impact statement (EIS) on a proposal to rehabilitate, reconstruct, or replace the Shore Road Bridge (a.k.a. Pelham Park bridge) over the Hutchison River on Shore Road in Bronx County, New York.

The Shore Road Bridge serves as a critical link in the traffic network for the area, being one of only two routes that carries traffic to and from City Island, Pelham Bay Park, and Orchard Beach. The Shore Road Bridge is also a highly visible, heavily used structure. Its replacement raises a number of environmental issues including effects on parkland, historic resources, water quality, natural resources, and hazardous materials contamination.

Improvements to the bridge are considered necessary to provide for the existing and projected traffic demand, provide for safety improvements (standard shoulders and upgraded sidewalks and bikeways), and because the nearly 100-year old bridge is suffering structural degradation. Alternatives under consideration include (1) taking no action; (2) using alternate travel modes; 93) rehabilitating the existing bridge, and (4) constructing a new replacement bridge. Incorporated into and studied with the various build alternatives will be design variations of bridge type (moveable or fixed), materials (concrete or steel), and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

A public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing on the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 USC, 315; 23 CFR 771.123.

Issued on: October 12, 1999.

Douglas P. Conlan,

District Engineer, FHWA, Albany, New York.

[FR Doc. 99–27451 Filed 10–20–99 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6352]

Notice of Receipt of Petition for Decision that Nonconforming 1987–1995 Nissan Pathfinder Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1987–1995 Nissan Pathfinder multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1987–1995 Nissan Pathfinder MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into, and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is November 22, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1987–1995 Nissan Pathfinder MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1987–1995 Nissan Pathfinder MPVs that were manufactured for importation into, and sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1987–1995 Nissan Pathfinder MPVs to their U.S. certified counterparts, and found the vehicles to be substantially similar

with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the non-U.S. certified 1987–1995 Nissan Pathfinder MPVs, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1987–1995 Nissan Pathfinder MPVs are identical to their U.S. certified counterparts with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * *.*, 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 203 *Impact Protection for the Driver from the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Locking Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp on vehicles that are not already so equipped.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles other than Passenger Cars:* installation of a tire information placard.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicles to meet the requirements of 49 CFR Part 565.

Additionally, the petitioner states that the vehicles will be inspected prior to importation to assure that requisite parts have been marked in compliance with the Theft Prevention Standard at 49 CFR Part 541, and that the vehicles will be modified, if necessary, to conform to that standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 10 am to 5 pm]. It is requested but not required that 10 copies be submitted.

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 at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141 (a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 15, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–27507 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6353]

Notice of Receipt of Petition for Decision That Nonconforming 1992–1999 Honda Accord Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992–1999 Honda Accord passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1992–1999 Honda Accords that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) They are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is November 22, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is

substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1992–1999 Honda Accords are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1992–1999 Honda Accords that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1992–1999 Honda Accords to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1992–1999 Honda Accords, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1992–1999 Honda Accords are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * *,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that non-U.S. certified 1992–1999 Honda Accord passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) Installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bags and knee bolsters on 1992 and 1993 models and the driver's and passenger's side air bags and knee bolsters on 1994 through 1999 models with U.S.-model components if the vehicle is not already so equipped. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of reinforcing beams if the vehicle is not already so equipped.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that a vehicle identification number plate must be affixed to all non-U.S. certified 1992–1999 Honda Accord passenger cars to meet the requirements of 49 CFR Part 565.

The petitioner additionally states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard at 49 CFR Part 541, and that vehicles will be modified if necessary to comply with that standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

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 at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: October 15, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–27508 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6187; Notice 1]

Athey Products Corporation, Receipt of Application for Decision of Inconsequential Noncompliance

Athey Products Corporation (Athey) has determined that certain Mobil model Street Sweepers it produced are not in full compliance with 49 CFR 571.105, Federal Motor Vehicle Safety Standard (FMVSS) No. 105, ''Hydraulic and Electric Brake Systems,'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Athey has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Paragraph S5.5 of FMVSS No. 105 states that each vehicle with a gross vehicle weight rating greater than 10,000 pounds, except for a vehicle with a speed attainable in 2 miles of not more than 33 mph, shall be equipped with an antilock brake system that directly controls the wheels of at least one front axle and the wheels of at least one rear axle of the vehicle. The effective date of this requirement was March 1, 1999.

Between March 1, 1999 and July 31, 1999 Athey sold and/or distributed 21 Athey Mobil M8A model street sweepers and 56 Mobil M9D model street sweepers which were not equipped with antilock brake systems (ABS) as required by FMVSS No. 105.

Athey supports its application by stating that the noncompliant vehicles are capable of speeds in excess of 33 mph, but spend the majority of their operating time at speeds below 33 mph. According to Athey, a review of information from its customers indicated that these street sweepers spend 80% to 90% of their operation time at speeds below 33 mph. Athey further stated that the agency recognized that vehicle stopping distances and stability would not be substantially improved with ABS during maximum braking at speeds below 33 mph. Finally, in Athey's opinion, due to the low speed operation of these vehicles and the type of road use of street sweepers, maximum brake application does not normally cause lockup and the subsequent loss of vehicle control or jackknifing.

Athey further supports its application by stating that the hydraulic service brake system with which the street sweepers are equipped is capable of providing 43% more brake torque than necessary to meet the 30 mph stopping performance distance in FMVSS No. 105, Table II, 3rd effectiveness, column (d). The brake system on these street sweepers is also capable of providing 52% more brake torque than required to meet the stopping performance requirements of the 60 mph test (FMVSS No. 105, Table II, 3rd effectiveness, column (d)). Due to the excess braking capability of these vehicles, Athey believes its street sweepers are safe during their limited operation at speeds above 33 mph.

In Athey's opinion, valuable public health and safety benefits are gained by states and municipalities from the use of street sweepers to remove trash, pollutants, and road hazards that are capable of puncturing tires.

In addition to information supporting its arguments that the noncompliance with FMVSS No. 105 is inconsequential, Athey cited several other developments and circumstances that it considers relevant to its application. Athey stated that it attempted to secure the necessary ABS equipment from suppliers in order to meet the March 1, 1999 effective date for ABS installation, but experienced delays in receiving ABS equipment from suppliers due to a backlog of orders. Many other truck manufacturers had ordered ABS equipment and the suppliers were also developing and distributing similar equipment for air-braked trucks. According to Athey, ABS systems meeting the requirements of FMVSS No. 105 will be installed on all vehicles covered by the requirements and the company is currently working with the suppliers of ABS equipment. Further, immediately upon becoming aware of the noncompliance, Athey halted all further sales and/or distribution of the Mobile model M8A and M9D street sweepers.

Athey also noted that the agency had granted a temporary exemption to the Johnson Sweeper Company (JSC) under 49 CFR part 555 from the ABS requirements of FMVSS No. 105. The agency cited the low speed operation of the JSC street sweepers and a reduction in the number of sweepers to fill the need of municipalities if JSC sweepers were not available as factors in deciding to grant JSC the temporary exemption.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 22, 1999.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on October 18, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–27515 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–5143 (Notice No. 99–12]

Safety Advisory; DOT–3AL Cylinders in Carbon Dioxide Service; Manufacturer Product Recall

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: RSPA was recently notified of certain cylinders that are stamped incorrectly with the marking ''DOT–3AL3000''. The cylinders should have been stamped ''DOT–3AL1800''. The manufacturer, Luxfer (USA), has initiated a product recall of the affected cylinders which are being used in carbon dioxide service. The purpose of this notice is to advise owners, users, and requalifiers of the cylinders to follow the precautionary measures outlined in this notice.

FOR FURTHER INFORMATION CONTACT: Mark Toughiry or Stanley Staniszewski, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590–001; telephone number (202)366–4545.

SUPPLEMENTARY INFORMATION: Recently, RSPA was notified by Luxfer (USA) of the manufacture and sale of about 198 DOT–3AL specification cylinders incorrectly marked with a service pressure of 3000 pounds per square inch gauge (psig) instead of 1800 psig. The affected cylinders were manufactured in February 1994 and shipped during the first half of 1994. The model information is shown as follows: Coo5, 5 pound Carbon Dioxide (CO2) cylinders, Cast Code 787, Heat Treat Lot M98. Since contacting its customers about cylinders in May 1999, Luxfer (USA) has recovered seven cylinders in the following states: Maine, Pennsylvania, New York and Virginia.

The 191 unaccounted-for cylinders are marked with serial numbers X8321 through X8518. They may have been shipped to the following companies: Manitowoc Beverage System, Inc., Hart & Price, Inc., Joe Kirwan Company, Sanyo E & E Corporation, and Foxx Equipment Company.

If a hydrostatic pressure test is performed on one of these cylinders to the prescribed 5/3 times the marked service pressure, the cylinders are likely to fail at the 5,000 psig test pressure. RSPA is not aware of any injuries that have occurred as a result of these cylinders, but persons are advised that serious personal injury, death or property damage could result from a cylinder failure. All persons owning, using or having access to one of these cylinders should, as soon as possible, contact: Lee Birch, Product Compliance and Safety Manger, Luxfer (USA), 3016 Kansas Avenue, Riverside, CA 92507; telephone number (909) 341–2214; fax (909) 328–1117; Internet web site at *www.luxfercylinders.com*.

This safety advisory is available for review on the Internet by accessing the HazMat Safety Homepage at *http://hazmat.dot.gov*.

Issued in Washington, D.C. on October 15, 1999.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–27509 Filed 10–20–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 14, 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 22, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0168.

Form Number: IRS Form 4361.

Type of Review: Extension.

Title: Application for Exemption Form Self-Employment Tax for Use by Ministers, Members of Religious Orders and Christian Science Practitioners.

Description: Form 4361 is used by ministers, members of religious orders, or Christian practitioners to file for an exemption from self-employment tax on certain earnings and to certify that they have informed the church or order that they are opposed to the acceptance of certain public insurance benefits.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 10,270.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

[In minutes]

Recordkeeping	7
Learning about the law or the form	19
Preparing the form	17
Copying, assembling, and sending the form to the IRS	17

Frequency of Response: Other (one-time).

Estimated Total Reporting/Recordkeeping Burden: 10,167 hours.

OMB Number: 1545–1414.

Form Number: IRS Form 8846.

Type of Review: Extension.

Title: Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

Description: Employers in food or beverage establishments where tipping is customary can claim an income tax credit for the amount of Social Security and Medicare taxes paid (employer's share) on tips, other than tips used to meet the minimum wage requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 68,684.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Recordkeeping	7 hr., 25 min.
Learning about the law or the form.	18 min.
Preparing and sending the form to the IRS.	26 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 559,088 hours.

OMB Number: 1545–1487.

Regulation Project Numbers: REG–209827–96 and REG–111672–99 Final.

Type of Review: Extension.

Title: Treatment of Distributions to Foreign Persons Under Sections 367(e)(1) and 367(e)(2).

Description: Sections 367(e)(1) and 367(e)(2) provide for gain recognition on certain transfers to foreign persons under sections 355 and 332. Section 6038B(a) requires U.S. persons transferring property to foreign persons in exchanges described in sections 332 and 355 to furnish information regarding such transfers.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 217.

Estimated Burden Hours Per Respondent/Recordkeeper: 11 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,471 hours.

OMB Number: 1545–1492.

Form Number: IRS Form 10001.

Type of Review: Extension.

Title: Request for Closing Agreement Relating to Advance Refunding Issue Under Sections 148 and 7121 and Revenue Procedure 96–41.

Description: Form 10001 is used in conjunction with a closing agreement program involving certain issuers of tax-exempt advance refunding bonds. Revenue Procedure 96–41 established this voluntary compliance program and prescribed the filing of Form 10001 to request a closing agreement.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

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. 99–27449 Filed 10–20–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program: Availability of Fiscal Year 2000 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a Notice that the IRS has made available the grant application package for parties interested in applying for a Low Income Taxpayer Clinic Grant for Fiscal Year 2000. The IRS will award up to $6,000,0000 to qualifying organizations.

DATES: Grant applications for Fiscal Year 2000 funds must be received by the IRS (not postmarked) by November 26, 1999.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Attn: LITC Program Manager, OP:C:E:W:E, NCFB Room C–7–171, 5000 Ellin Road, Lanham, MD 20706. Copies of the grant application package (IRS Pub. 3319) can be downloaded from the IRS Internet site at: http://www.irs.ustreas.gov/prod/hot/index.html or ordered by calling 1–800–829-3676.

FOR FURTHER INFORMATION CONTACT: Eli McDavid, LITC Grant Program Manager, Volunteer and Education Section, (202) 283–0181 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 3601 of the IRS Restructuring and Reform Act of l998, Pub. L. No. 105–206, added new section 7526 to the Internal Revenue Code (''Code''). Section 3601 authorizes the IRS, subject to the availability of appropriated funds, to make grants to provide matching funds for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 3601 authorizes the IRS to provide grants to qualified organizations that provide legal assistance to low income taxpayers having disputes with the IRS or operate programs to inform individuals, for whom English is a second language, about their rights and responsibilities under the Code.

Selection Criteria

The following selection criteria will be used.

1. Experience in sponsoring a tax clinic and representing taxpayers in controversies with the IRS;

2. Initiatives developed to ensure quality assistance will be provided to low income taxpayers or individuals for whom English is a second language;

3. Qualifications of organization, experience in providing assistance to low income taxpayers or individuals for whom English is a second language, organizational structure, and experience in managing federal grant programs;

4. Reasonableness of proposed budget (a low income tax clinic must provide matching funds on a dollar-for-dollar basis for all grants received from the IRS);

5. Geographical area clinic will serve, number of taxpayers in area eligible for representation or who might be served by clinic, and/or number of taxpayers in geographical area for whom English is a second language;

6. Existence of other LITCs serving same population;

7. Quality of program offered by LITC, including qualifications of administrators and qualified representatives, system for monitoring student participation, system for monitoring cases referred, case follow-up, resolution of cases and record if any in providing service to low income taxpayers and taxpayers for whom English is a second language;

8. Quality of program for informing individuals for whom English is a second language of their tax rights and responsibilities, if applicable; and

9. Alternative funding sources available to clinic, including amounts received from other grants and contributions, and the endowment and resources of the institution sponsoring the clinic.

In addition to the foregoing criteria, to foster parity regarding clinic availability and accessibility for taxpayers nationwide, the IRS will consider the geographic area of applicants as part of the decision making process. The IRS will also seek to attain a proper balance of academic and non-profit organizations as well as a proper balance of start-up and existing clinics.

Comments

Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis.

Deborah A. Butler,

Assistant Chief Counsel, Office of Assistant Chief Counsel (Field Service).

[FR Doc. 99–27447 Filed 10–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending September 30, 1999.

Last name	First name	Middle name
ALTURKI	RAMI	KHALID
ASTRUP	CECILIE.	
ASTRUP	CECILIE	
BERGER	ELWYNN	CLAIR
BERKOWITZ	SOL	
BINGLEY	SUMI	LEE
BRUNELLE	MICHELEINE	MARIE
CAPPY	MICHAEL	LOUIS
CARMONT	JOHN	M.
CARMONT	MARIE	T.
CATTIER	CLAIRE	MARIANNE
CERVENY	EDWARD	JOSEPH

Last name	First name	Middle name
CHEUNG	VINCENT	SAI SING
CHIUN WANG	JOHN	HONG
CHOI	YEARN	HONG
CICERO	SALVADOR	ALFONSO
COE	DOUG.	
DE CASTROVERDE	JOSE	L.
DEVAL	ADRIAN	WILLIAM
DIONISSIOU	ANASTASIA.	
DOMINGUEZ	JOSE	NICOLAS
DOYLE	EILEEN	JUNE
EBSTEIN	AMIR	AVRAHAM
EL-WADY	NADIA	ABBAS
ESTEVE JR.	JOACHIM	JOSE
FIRMIN- BULLOUGH	IAN	GRAHAM
FORSTER	PHILIP.	
GARDNER	TANIA	MOZELLE
GASIOR	THOMAS.	
GATES-ROBERT	DIANE.	
GAY	CAROLE.	
GEBRIL	FARUK.	
GEDITZ	MARIE.	
GETHING	NICOLA	JANE
GILMOUR	JOHN	SCOTT
GRAY	SONJA	THERESIA
GROTTE	WILFRED.	
HANAFUSA	HIDESABURO.	
HARRIS	JENNIFER	ANN
HEIL	TANJA.	
HERBERT	DARYL	GEORGE
HERNAN	MIGUEL	E.
HOLLAND	IAN	HAROLD
HONEY	MARGARET	VIRGINIA
HOPCROFT	JOAN.	
HOTCHKISS	HELEN.	
HOTSON	DOROTHYF	LOUANN
HRUSKA	MANIAF	F
IRGENS-MULLER	ROBERTA	ANN
JANSSENS	HUGO	FJ.
JANSSENS	LIEVE.	
KELLER	BEATRICE.	
KELLER	YVAN.	
KIM	CHUNG	LIN
KIM	JULIE	JIN
KIM (YANG)	DONG	CHUL
KLASS	ILSE	LEONORE
KLINE	FRANK.	
KLUESENER	ADELE.	
KNAPPER	ELISABETH.	
KOSCHITZKY	DAVID.	
LECH	DORIS	IRENE
LIF	NING.	
LITZMAN	JACOB.	
LOMBARD-BLANC AKA BLANC-LOMB	CATHERINE	MARIE-LOUISE
LONGAN	KIEFFER.	
LUNT	MICHAEL	C. LUNT
MACRIS	ROBERT	N.
MASSEY JR.	WILLIAM	JACOB
MASSON	BERNARDE.	
MCCREA	NADINE	LOUISE
METHE	ANN	MARIE
MITCHELL	DAVID	BRUCE
MITCHELL	GEOFFREY	IAN
MOORE	ALFRED	T.
NEUMANN	MARGOT	HERMINE
NICHOLS	WILLIAM.	
ORNSTEIN	MONICA.	
OSBOURNE, JR.	THOMAS	PAUL
PAES	ALISA	MICHELLE
PINKSTON	RAMONA.	
POENSGEN	NORICA	A.
POLATSIDIS	GEORGOS	KARL
REID	EVELYNF	M.
REID	NEAL	EVAN
RUSSELL	DAVID	N.

Last name	First name	Middle name
SANCHEZ-DE-VANNY	JORGE	MARIO
SAZAK	SULEYMAN	SERVET
SCAFFORD	MARK.	
SCHALLER	KRISTINA	B.
SCHMIDL	REGINA	SHARON
SEKI	MASAMITSU.	
SHAMBLEAU	KIM	ALEC
SIBAJA	REBECCA.	
SIDEMAN	YARON.	
SIHVOLA	ALLAN	ANTTON
SODMANN	EDWARD	FERDINAND
STANTON	THOMAS	LLOYD
STIRZENBECHER	PETER	GEORGE
SWINDELLS	DAVID	W.
SWINDELLS	JOAN	M.
SWOVELAND	CARY	ROBERT
SWOVELAND	CYNTHIA	ELAINE
THEMELIS	THEOFANIS.	
TRUE JR.	ROY	ANTHONY
VERDEFLOR	OSCAR	R.
VOLCHEK	ELIZABETH	STEFANIE
WADSWORTH	GEORGE	COWLES
WAGGONER	DONALD	JOSEPH
WALTERS	MARGARET	PATRICIA
WELBY	KENNETH	BENTLEY
WESTPHALEN	JEFFREY	ALLAN
WHITE	DOUGLAS	J.
WILLIAMS	MEREDITH	LYNN
WILLIAMS-PARKER	MEREDITH.	
WOLSTEN HOLME	MONIKA	GERLINDE
WRIGHT	BEATRICE	MAYBELLE
ZONG	JAE	SOOK

Approved: October 5, 1999.

Doug Rogers,

Chief, Special Projects & Support Branch, International District.

[FR Doc. 99–27446 Filed 10–20–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0079]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information used to determine continued entitlement to benefits based on unemployment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before December 20, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to ''OMB Control No. 2900–0079'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Employment Questionnaire, VA Forms 21–4140, 21–4140–1 and 21–4140a.

OMB Control Number: 2900–0079.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: 38 CFR 4.16 permits VA to pay 100 percent disability compensation benefits to a veteran based on unemployability where, otherwise, the schedular rating is less than total. VA form 21–4140, 21–4140a and 21–4140–1 are used to gather the necessary information to determine continued entitlement to benefits based on unemployment.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,790 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 45,480.

Dated: September 2, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–27429 Filed 10–20–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0055]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before November 22, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0055.''

SUPPLEMENTARY INFORMATION:

Title: Request for Determination of Loan Guaranty Eligibility—Unremarried Surviving Spouses, VA Form 26–1817.

OMB Control Number: 2900–0055.

Type of Review: Extension of a currently approved collection.

Abstract: A completed VA Form 26–1817 constitutes a formal request by an unremarried surviving spouse of a veteran, for a certificate of eligibility for home loan benefits. The information is used to determine the applicant's basic eligibility for the benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 30, 1999, at page 35253.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 1,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0055'' in any correspondence.

Dated: September 9, 1999.

By direction of the Secretary.

Sandra McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–27430 Filed 10–20–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 64, No. 203

Thursday, October 21, 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 EDUCATION

National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee); Meeting

Correction

In notice document 99–25480, beginning on page 52777 in the issue of Thursday, September 30, 1999, make the following correction:

On page 52778, in the first column, in item number 8, in the first line, ''Carolina'' should read ''Central''.

[FR Doc. C9–25480 Filed 10–20–99; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday
October 21, 1999

Part II

Department of Housing and Urban Development

24 CFR Part 903
Public Housing Agency Plans; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 903

[Docket No. FR–4420–F–05]

RIN 2577–AB89

Public Housing Agency Plans

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: On February 18, 1999, HUD published an interim rule implementing section 511 of the Quality Housing and Work Responsibility Act of 1998. Section 511 introduces the public housing agency (PHA) plans—a 5-Year Plan and an Annual Plan. Through these plans a PHA will advise HUD, its residents and members of the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs. This rule makes final the policies and procedures described in the February 18, 1999 interim rule, taking into consideration the public comments received on the interim rule.

DATES: Effective Date: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: For further information contact Rod Solomon, Deputy Assistant Secretary, Office of Policy, Program and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4116, Washington, DC 20410; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The February 18, 1999 Interim Rule

On February 18, 1999 (64 FR 8170), HUD published an interim rule to implement section 511 of the Quality Housing and Work Responsibility Act of 1998 (Public law 105–276, approved October 21, 1998; 112 Stat. 2461) (referred to as the ''Public Housing Reform Act''). Section 511 of the Public Housing Reform Act, which added a new section 5A to the U.S. Housing Act of 1937 Act (42 U.S.C. 1437 *et seq;* see 1437c–1), introduces the public housing agency (PHA) plans—a 5-Year Plan and an Annual Plan. Through these plans a PHA will advise HUD, its residents and members of the public of the PHA's mission for serving the needs of low-income and very low-income families, and the PHA's strategy for addressing those needs.

The 5-Year Plan describes the mission of the PHA and the PHA's long range goals and objectives for achieving its mission over the subsequent 5 years. The Annual Plan provides details about the PHA's immediate operations, program participants, programs and services, and the PHA's strategy for handling operational concerns, residents' concerns and needs, programs and services for the upcoming fiscal year. Both planning mechanisms (the 5-Year Plan and the Annual Plan) require PHAs to examine their existing operations and needs (particularly the needs of the families they serve) and to design long-range and short-range strategies to address those needs.

The February 18, 1999 interim rule established the initial procedures and requirements for development, submission and implementation of the PHA plans. The interim rule became effective on March 22, 1999, and is codified at 24 CFR part 903 (entitled ''Public Housing Agency Plans''). The preamble to the February 18, 1999 interim rule described in detail the provisions of 24 CFR part 903. This preamble to the final rule does not repeat that description.

B. Electronic Template for the PHA Plans

In the preamble to the February 18, 1999 interim rule, HUD announced that it would develop software and eventually require electronic submission of the PHA Plan that would provide uniform formats and layouts. On July 30, 1999, HUD announced the availability of the PHA Plan Template, including instructions and supplemental guidance on preparation and submission of PHA Plans. The template is currently provided as a word processing document that will be downloaded by PHAs, completed, and submitted to HUD via the Internet. HUD's goal is to quickly transform the PHA Plans into an on-line submission system that will further facilitate streamlined PHA submissions to HUD. By using the electronic template, PHAs will provide responses to a number of structured questions designed to provide the most relevant data regarding local operations in a concise manner.

The PHA Plan template also serves as a central reference point for very detailed information about the PHA's operations and activities. This is accomplished through the template's listing of required ''supporting documents'' that must be available locally for public review and serve as a resource library for the community, while eliminating the need for extensive submissions to HUD. The PHA Plan template is available at HUD's homepage website at *http://www.hud.gov/pih/pha/plans/phaps-home.html.* In keeping with HUD's move to an electronic government, the PHA Plan website will become the primary source of information and resources regarding the PHA Plans. In addition, this PHA Plans website will serve as the location from which agencies download the electronic PHA Plan template for their use in developing the Plans. Once completed and ready for submission, PHAs will transmit the electronic PHA Plans to HUD via the HUD internet site. After HUD approval, these Plans will be placed on display on this same webpage.

C. The September 21, 1999 Amendments to the Interim Rule

On September 21, 1999 (64 FR 51045), HUD published a rule making two amendments to the February 18, 1999 interim rule. First, the September 21, 1999 rule amended § 903.3 to extend the due date for initial PHA plan submissions made by PHAs with fiscal years beginning on January 1, 2000. Specifically, the September 21, 1999 rule provides that these PHAs must submit their first PHA plans to HUD by December 1, 1999. Second, the September 21, 1999 rule amended § 903.23 to add a new paragraph (c) which provides that, for purposes of the submission of the first PHA plans, the date on which the PHA submits its plan will be considered to be the submission due date. This final rule reflects the changes made by the September 21, 1999 document.

Section II of this preamble highlights the significant changes made to the February 18, 1999 interim rule at this final rule stage. Section III of the preamble discusses the basic objectives of the PHA planning process. Section IV of the preamble discusses the participation of PHAs, residents, and other groups in this rulemaking through public forums held on this rule. Section V of the preamble discusses the issues raised on the rule by the groups that attended four public forums and the issues raised by the members of the public that commented on the rule during the 60-day public comment period.

II. Significant Changes Between the February 18, 1999 Interim Rule and This Final Rule

This rule makes final the policies and procedures contained in the February 18, 1999 interim rule, and takes into consideration the public comments received on the interim rule. The significant changes made to the interim rule are described below.

- In § 903.1 (What are the Public Housing Agency Plans?) paragraph (c) is revised in this rule to note that HUD also may prescribe the format of certain required attachments to be submitted with the PHA Plan or documents to be made available locally, but not submitted.
- Section 903.3 (When Must a PHA Submit the Plans to HUD?) reflects the changes that were made by the September 21, 1999 rule, discussed in Section II.B of this preamble.
- In § 903.7 (What Information Must a PHA Provide in the Annual Plan?), HUD removed the language in the introductory paragraph that lists the information that need not be included in the first Annual Plan. This paragraph is revised in this final rule to provide that HUD will advise PHAs by separate notice of the information that must be included in the first Annual Plan, as well as any special instructions or directions that may be applicable to first year filing of the Annual Plan.

In this introductory paragraph, HUD also has added language to clarify that the Annual Plan must be consistent with the goals and objectives of the 5-Year Plan.

In § 903.7(a)(2), HUD added language to require PHAs to make reasonable efforts to identify the housing needs of each group listed in paragraph (a)(1) of this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and generally available data.

In § 903.7(b) (statement of financial resources), HUD removed the word ''significant'' to describe resources that PHAs must list, and revised this language to provide that PHAs must list, by general categories, their resource commitments, such as PHA operating, capital, and other proposed resources.

In § 903.7(c) (statement of the PHA's policies that govern eligibility, selection and admissions), HUD has added language to paragraph (c)(2)(i) that simplifies and clarifies the provisions regarding deconcentration of poverty and income-mixing. Most importantly, HUD has clarified that the initiative applies to all family (general occupancy) developments; and that with respect to the identification of families, developments and buildings as higher income or lower income, PHAs that use a dividing line of the average income in these developments will be considered to be in compliance with the law.

With respect to the actions then to be taken, PHAs may offer incentives to eligible families that would help accomplish the deconcentration and income mixing objectives. Skipping of a family on a waiting list to reach another family with a lower or higher income is required, provided that such skipping is uniformly applied. Such skipping must be adopted by a PHA to the extent necessary to implement the statute's requirements. Skipping families is consistent with site-based and community-wide waiting lists. Admissions policies related to deconcentration do not impose specific quotas.

PHAs may consider a number of approaches as they examine designing an admissions policy to achieve the goals of deconcentration and income mixing, such as the use of skipping over certain families on waiting lists based on incomes; the establishment of certain preferences such as worker preferences; appropriate affirmative marketing efforts; additional applicant consultation and information; provision of additional supportive services and amenities; and rent incentives authorized by the Act. Of course, PHA policies must be in writing and followed consistently, and must affirmatively further fair housing.

In § 903.7(c)(1)(A), HUD has revised this paragraph to provide that the MTCS occupancy data upon which the PHA must assess changes in racial, ethnic or disability-related tenant composition, has been confirmed to be complete and accurate by an independent audit or is otherwise satisfactory to HUD.

In § 903.7(c)(1)(B), HUD revised this paragraph to provide that at least every three years (as opposed to biannually as required by the interim rule), PHAs must use independent testers or means satisfactory to HUD to assure that the site-based waiting list is not being implemented in a discriminatory manner.

In § 903.7(e) (statement of the PHA's operation and management), HUD revised paragraph (e)(1) to reflect that PHAs need only list (not describe) their rules, standards and policies that govern maintenance and management of their housing.

In § 903.7(g) (statement of the capital improvements needed), HUD revised the last sentence of this paragraph to state that PHAs receiving capital funding are required to include 5-year plans covering large capital items. This will both facilitate basic capital planning and asset management, and allow more flexible use of capital funds by increasing the number of items that have been subject to public review.

In § 903.7(h), (i), (j), and (k) which concern, respectively, statements pertaining to demolition and/or disposition, designated housing, required or voluntary conversion, and homeownership programs, HUD added language to each of these paragraphs to clarify that the application and approval processes discussed in these paragraphs are separate application and approval processes from the PHA Annual Plan submission and approval process.

In § 903.7(h), HUD has added a new paragraph concerning submission of an interim plan for demolition/disposition that was previously described in the preamble to the February 18, 1999 interim rule.

In § 903.7(l) (statement of the PHA's community service and self-sufficiency programs), HUD added language that requires the PHA to address any cooperation agreements, as described by section 12(d)(7) of the 1937 Act that the PHA has entered into or plans to enter into. This statutory section requires the PHA to make best efforts to enter into cooperation agreements with State, local, and other agencies that provide assistance to target supportive services to covered families and provide information to facilitate administration of requirements for community service and tying rents to welfare compliance.

In § 903.7(m), HUD revised paragraph (1)(iv) of this section to clarify that if a PHA expects to receive public housing drug elimination grant funds, the information required to be included by the Public Housing Drug Elimination Program regulations must be submitted with the PHA Plan.

In § 903.7(q) (statement of asset management), HUD clarifies that the PHA need not repeat information concerning asset management that is covered by other plan components.

In § 903.7(r) (additional information to be provided), HUD removed the requirement to submit a Table of Contents and Executive Summary. HUD's template eliminates the necessity of a separate requirement in the

regulation for a table of contents or executive summary.

In § 903.7(r), HUD adds language to provide that a PHA must identify in the Annual Plan the basic criteria that a PHA will use to determine what constitutes a ''substantial deviation'' from the 5-Year Plan, and a ''significant amendment or modification'' to either the 5-Year Plan or Annual Plan for purposes of § 903.21. HUD also added language to provide that a PHA must include in the PHA plan such other information as HUD may request. HUD will advise PHAs of any additional information through advance notice.

- In § 903.9 (Must a Troubled PHA Include Additional Information in its Annual Plan?), HUD has added a reference to the regulations of the Public Housing Management Assessment Program (PHMAP) (the predecessor to HUD's new assessment system, the Public Housing Assessment System (PHAS)) in recognition that some PHAs may have been designated as troubled under the PHMAP regulations (24 CFR part 901).
- In § 903.11 (Are Certain PHAs Eligible to Submit a Streamlined Annual Plan?), HUD added, in paragraph (b)(2), a cross reference to section 6(j)(2) of the 1937 Act that addresses PHAs at risk of being troubled.
- In § 903.13 (What Is a Resident Advisory Board and What Is Its Role in Development of the Annual Plan?), HUD revised paragraph (a)(1) to more closely track the statutory language. In paragraph (a)(2), HUD added language concerning the reasonable resources to be provided to Resident Advisory Boards by PHAs. In HUD's Capital Fund Formula proposed rule, published on September 14, 1999 (64 FR 49924), HUD advised in the preamble to this proposed rule that it would clarify in the PHA Plan final rule that reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

In § 903.13(b)(1), HUD provides an exception to the requirement to appoint a jurisdiction-wide resident council. This language as revised provides that if a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or its representatives as the Resident Advisory Board, except that members shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where necessary.

In § 903.13(b)(2), HUD clarifies that a tenant-based assistance program of significant size is one that is 20% or more of the PHA's assisted households.

In § 903.13(c), HUD clarifies that the PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing not only the final Annual Plan but also any significant amendment or modification to the Annual Plan. Section 511(g)(2) of the Public Housing Reform Act imposes this requirement.

- In § 903.15 (What is the Relationship of the Public Housing Agency Plans to the Consolidated Plan), HUD has revised this section to allow PHAs, subject to HUD approval, to change their fiscal years to encourage coordination with local Consolidated Plans.
- For § 903.17, HUD changed the title of this section to read ''What is the Process for Obtaining Public Comment on the Plans?'' In paragraph (b) of this section, HUD clarifies that not only the proposed PHA plans, but all attachments and documents related to the plans must be available for review by the public. HUD also added a new paragraph (c) to require PHAs to conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

In § 903.21, HUD added a new paragraph (b) to clarify that any significant amendment or modification to a PHA Plan is subject to the requirements of §§ 903.13, 903.15, and 903.17. As noted earlier, this requirement is consistent with section 511(g)(2) of the Public Housing Reform Act.

In § 903.23, HUD added a new paragraph (b)(4) to clarify that a plan deemed approved as a result of HUD's failure to respond by the 75th day after the PHA's submission does not apply to the plan of a troubled PHA. This provision is consistent with section 511(i)(4)(A) of the Public Housing Reform Act. In paragraph (d) of this section, HUD added language to clarify that not only the approved PHA plan, but all attachments and documents related to the approved plan must be available for review by the public.

In addition to these changes, HUD made editorial changes to certain provisions of the regulation.

III. The Goals of the PHA Plans—Comprehensive Planning; Local Accountability; Reduction in Submissions; and Increased Flexibility

The PHA plan concept is based on the highly successful consolidated planning process used for HUD's community planning and development programs. Like the Consolidated Plan for CPD programs, the PHA plans provide a planning mechanism by which a PHA can examine its long-range needs and its short-range needs, specifically the needs of the families that it serves, and design both long-term strategies and short-term strategies for addressing those needs. Like the Consolidated Plan, the PHA plans involve consultation with affected groups in the development of the plan. Through this planning mechanism, PHAs will make more efficient use of Federal assistance, more effectively operate their programs, and better serve their residents.

HUD has strived, in developing its PHA plan regulations, to keep the plan submission requirements complete but simple. A significant step in meeting this objective is HUD's issuance of the electronic template for the PHA Plans (as discussed earlier in this preamble). The electronic template with its ''question and answer'' format provides a comprehensive yet easy mechanism for PHAs to record and submit the information required for the PHA Plans.

To the extent practicable, the PHA Annual Plan will eventually consolidate all PHA information that is required to be submitted under existing HUD planning and reporting requirements into one document. The objective is for the PHA Annual Plan to eventually supersede submission requirements currently imposed on PHAs under various HUD programs. For example, see HUD's September 14, 1999 final rule regarding formula allocation for the Public Housing Drug Elimination Program (64 FR 4990), which provides that PHAs must submit their drug elimination plans with their PHA Annual Plan. In addition, the process for distributing capital funds is being combined with the PHA Plan process. (HUD's proposed rule on the allocation of capital funds was published on September 14, 1999 at 64 FR 49924.) HUD intends that the new PHA planning process, to the extent practicable, will allow for a PHA to plan for all of its program needs based on the PHA's fiscal year. This will assist PHAs in planning in a comprehensive manner and will expedite the release of public housing funds.

Further, as part of the HUD 2020 Management Reform effort, HUD is

moving toward electronic reporting for all required submissions under its programs. In addition to making submissions easier for its program participants (paper reduction), electronic data assists HUD and its program partners to exchange information more easily and to monitor activity, note trends in programs and the performance of the program participants (weaknesses and strengths) and better serve the families and communities that HUD programs are designed to serve. HUD believes that its electronic template for the PHA Plans is a significant first step in achieving these objectives.

IV. Public Participation in the Development of this Final Rule

Section 511 of the Public Housing Reform Act requires that before issuance of a final rule, HUD seek the recommendations on implementation of the PHA plans from organizations representing (1) State or local public housing agencies; (2) residents, including resident management corporations; and (3) other appropriate parties. Section 511 also requires HUD to convene not less than two public forums at which the persons or organizations making recommendations may express their views concerning the proposed disposition of their recommendations. In addition to the general solicitation of public comments on the February 18, 1999 interim rule, HUD specifically invited recommendations on implementation of the PHA plans from the three groups specified in the statute, and included under the third category, representatives of affected communities (See preamble discussion of the February 18, 1999 interim rule at 64 FR 8170).

In order to ensure broad public participation in this rulemaking, HUD held four public forums to discuss implementation of the PHA plans. These forums were held in Atlanta, Georgia, on May 4, 1999; Omaha, Nebraska, on May 19, 1999; Syracuse, New York, on June 28, 1999; and Washington, DC, on July 28, 1999. The final forum in Washington, DC allowed persons to participate via telephone from 33 sites around the country. At each of the forums, helpful recommendations and suggestions were made by the forum participants, issues were discussed and ideas exchanged on the PHA planning process, specifically the requirements established by the February 18, 1999 interim rule. Consistent with the statutory requirements, HUD advised the forum participants of its proposed disposition of the participants' recommendations when HUD had formulated a proposed disposition of a specific view or recommendation offered. For certain issues, HUD was unable to offer the forum participants a proposed disposition, because the issues required further deliberation by HUD, but HUD discussed with the participants the considerations involved in HUD's decisionmaking process.

Section V of this preamble, which immediately follows, provides a summary of the comments, issues and recommendations made on the February 18, 1999 interim rule, those made at the public forums, and those provided as written comments during the 60-day comment period on the rule.

V. Discussion of Public Comments Raised on the February 18, 1999 Interim Rule

The public comment period on the February 18, 1999 interim rule closed on April 19, 1999. Written comments were submitted by PHAs, organizations representing PHAs, legal services organizations, public interest/housing policy organizations, and various other organizations and individuals. In addition to the written comments, HUD also received comments and suggestions at the four public forums held throughout the country.

This section of the preamble presents a summary of the significant issues raised by the public commenters on the February 18, 1999 interim rule, both through written submission of comments and at the forum. The heading ''Comment'' states the comment or comments made by the commenter or commenters, and the heading ''Response'' presents HUD's response to the issue or issues raised by the commenters.

1. General Comments

Comment. HUD should view the planning process and the Plan itself as a mechanism for PHAs to express local choices. HUD should not use the Plan as a tool to impose substantive requirements on PHAs.

Response. HUD's views of the PHA planning process are consistent with those of the commenters. HUD views the PHA planning process as a mechanism for PHAs to express local choices consistent, however, with Federal statutory requirements. The requirements imposed by HUD on PHAs with respect to the PHA planning process are those required to be imposed by statute. The substantive requirements imposed on PHAs are those imposed through the statutes and regulations that govern the various HUD programs in which PHAs participate. The statutory and regulatory requirements governing the PHA planning process are directed to compiling basic information about PHA operations, missions and goals, and making that information available to HUD and to the public.

Comment. In order to ensure accuracy, HUD needs to work with PHAs to ensure software compatibility. HUD needs to address the problems with the MTCS and Community 2020 software packages, which are burdensome to use. HUD should provide PHAs with software early in the process. PHAs should be able to request local HUD offices to provide various MTCS printouts to help with preparation of the Plan.

Response. HUD is cognizant of PHA concerns about problems with the MTCS software and Community 2020 software. HUD has been working with PHAs to minimize problems and increase MTCS reporting. Based on data received through the end of September 1999, MTCS reporting is as follows: tenant-based section 8 is reported at 95%; public housing at 86%; and overall reporting at 88%. As with all new software products, problems will be uncovered and have been uncovered with respect to HUD 2020 software and MTCS but HUD is working to eliminate these problems. With respect to local assistance, HUD's local Public and Indian Housing offices are available to offer all needed assistance to PHAs.

Comment. It will be difficult to complete the Plan without additional funding.

Response. The PHA Plans provide for compilation in one location information that PHAs already have been required to put together under various other program regulations. By requiring, however, that this information be put together one time annually in one source, the administrative burden placed on PHAs will be decreased rather than increased. While there may be increased burden during the first year of PHA Plan submissions, once the first Plans are submitted the subsequent submissions should be prepared and submitted with significantly less burden. Additionally, HUD believes that the electronic template for the PHA Plans issued July 30, 1999, helps to reduce administrative burden in the preparation and submission of the PHA Plans. As requested by commenters HUD has made (and plans to continue to make) the PHA Plan software available at no cost.

Comment. HUD's decision to maintain separate submission and approval processes for activities such as demolition, disposition, conversion to

vouchers, designation, and public housing homeownership programs seems to contradict the Public Housing Reform Act's mandate to deregulate and consolidate. By creating the PHA Plan process, Congress intended to dramatically limit HUD's traditional discretionary powers to review and approve these specific programs. Maintaining submission and approval processes separate from the PHA Plan thwarts this intent.

Response. The PHA Plan regulations reference separate submission and approval processes for various activities such as demolition, disposition, and conversion to vouchers because the Congress did not provide for a common approval process in its enactment of the PHA Plan, and in particular provided for different approval standards for these activities. PHAs are encouraged to coordinate public consultation processes for these applications and simultaneously submit such Plans, but the approval processes remain separate.

Comment. The currently available census data is too old. Annual Plans should not be required until new census data is available in 2002.

Response. HUD has no statutory authority to defer submission of Annual Plans until the year 2002. HUD recognizes that the census data is not the optimum planning mechanism as the decade draws to a close; nevertheless it remains the official census data. To the extent that PHAs need to refer to census data, which is limited, PHAs can continue to use this data.

Comment. ''One size fits all'' approach of the PHA Plan does not work well for PHAs because of differences in size, number, and type of programs.

Response. HUD believes that the PHA planning mechanism provides sufficient flexibility for PHAs to make the necessary adjustments given the PHA's size, number and type of programs. This flexibility is also reflected in HUD's electronic template for the PHA Plans.

Comment. HUD has added oversight in the rule that is beyond what the Public Housing Reform Act requires.

Response. HUD's oversight of PHA programs and activities is consistent with the Public Housing Reform Act and the statutes and regulations governing the individual HUD programs covered by the PHA Plan.

Comment. HUD should set parameters for who can sue a PHA over a Plan.

Response. HUD has no authority to limit legal action in connection with a PHA Plan.

Comment. Fair housing considerations should be addressed in all aspects of the Plan. The final rule should specifically direct PHAs to comply with fair housing laws when making choices related in the Plan.

Response. Fair housing considerations are an important part of the PHA planning process and are addressed in the regulation. Please see § 903.7(o) the PHA certification requirement and the PHA's obligation to affirmatively further fair housing.

Comment. All policies should be in the Plan, not just discretionary ones. The purpose of the Plan is to provide a framework for local accountability. The Plan must be complete. All material must be included, even material already submitted to HUD. All rent policies should be included. Even with mandatory policies, PHAs have a lot of discretion.

Response. HUD believes that the rule provides for a PHA Plan that presents the necessary framework for local accountability. In addition, the rule provides that PHAs must make HUD-specified documents (which includes documents covering all critical operations of a PHA) available locally to the public for inspection. Therefore, the public has a complete view of the PHA's operations.

Comment. In the preamble to the interim rule, quantifiable goals are discussed. Where the Family Self-Sufficiency (FSS) Program is discussed, the goal should be determined by looking at how many families have replaced welfare income with earnings.

Response. PHAs are welcome to frame an FSS goal as suggested by the commenter.

2. Comments Regarding Timing of the Rule

Comment. The time frame for implementation in the interim rule is too short to do all the work and will create a serious burden for PHAs. This is particularly so given all the new changes required by the Public Housing Reform Act. HUD should allow for extensions and delay publication of the final rule to allow adequate time for enhanced rulemaking sessions. Additionally, HUD's estimate of time needed to complete the planning process does not take into account the lack of guidance and instructions provided by HUD. HUD should issue guidance, not prescriptive rules, and this help should be given early in the process, not later.

Response. The Public Housing Reform Act does not permit HUD to delay issuance of this final rule. HUD recognized, however, that additional time was needed by PHAs for submission of their first PHA Plans and HUD has provided the additional time in the rule published on September 21, 1999, and discussed earlier in this preamble. In addition to allowing more time to prepare and submit the plans, HUD believes that the electronic template assists PHA's in significantly reducing the time for preparation and submission of the plan elements. Issuance of the electronic template was accompanied by additional HUD guidance on the PHA Plans. (See Notice PIH 99–33 (HA), issued July 30, 1999.)

3. Comments Regarding Small PHAs

Comment. The rule will create a real hardship for small PHAs, who have limited staffs, budgets, and relatively few units. It is unrealistic to expect small PHAs to comply with the timelines established by the rule and the extra paperwork required by the rule. The requirement that Plans be submitted 75 days prior to end of FY 2000 is a major burden for small PHAs, who need time to complete an in-depth analysis. Another commenter stated that the requirement is also a burden because small PHAs will need extra funds to complete the Plan and the commenter stated that ''CDBG funds'' will not be available until after the Plan is due. In addition, coordination with the State's Consolidated Plan and forming Resident Advisory Boards will take considerable time for small PHAs. Small PHAs are also already overburdened with paperwork. The final rule should be delayed until HUD works with PHAs to further streamline the rule.

Response. As noted in responses to earlier comments, HUD has made considerable effort to reduce the administrative burden of the PHA planning process on all PHAs, and especially small PHAs. With respect to the timing, HUD provided through the September 21, 1999 final rule, the maximum additional time that it could provide in accordance with the statutory requirements. The statute itself is cognizant of the burden that uniform requirements can place on small entities, and allows HUD to provide streamlined PHA Plans for small PHAs which it has done. As HUD also has noted earlier, HUD believes that its electronic template considerably reduces the administrative burden on all PHAs especially small PHAs.

Comment. Small PHAs should not have to submit homeownership statements. Most small PHAs will probably never implement a homeownership program because they do not have the personnel or resources to undertake such a program.

Response. Under the streamlined submission for small PHAs, small PHAs are only required to provide statements for Section 8 Homeownership programs that they plan to operate. Again, HUD believes that the statements required by the PHA Plan electronic template significantly reduce the PHA's administrative burden.

Comment. Small PHAs should not be automatically required to address the crime prevention item because they have not had to address the security indicator in PHMAP.

Response. Small PHAs are only required to address the crime prevention items if they receive funding under the Public Housing Drug Elimination Program (PHDEP).

Comment. Numerous small PHAs have Federal expenditures of less than $300,000 per year. Since these PHAs are exempt from the Single Audit Act, they should only be required to submit audit information if HUD has approved the PHAs request for payment for a financial audit.

Response. The PHA Plan regulations do not require the submission of any financial information inconsistent with the Single Audit Act (31 U.S.C. 7501–7507) or OMB Circular A–133 (Audits of States, Local Governments and Non-Profit Organizations), and do not in themselves add audit requirements.

Comment. Small PHAs have limited resources. One commenter specifically asked whether CIAP funds can be used to complete the Plan. Another commenter asked whether operating reserves be used and reimbursed from capital funds.

Response. Capital and operating funds can be used to complete the Plan, consistent with the regulatory requirements of these programs.

4. Comments Regarding Section 8-Only PHAs

Comment. Why are high performing and small PHAs exempt from submitting a grievance procedures section and not Section 8-only PHAs. This must be unintended.

Response. Section 8-only PHAs are not exempt from the grievance procedures element of the PHA Plan. The template, however, basically requires that these PHAs make these procedures available locally.

Comment. Section 8-only PHAs should not have to comply with anything in this rule. Use of Section 8 is in the hands of residents. The Consolidated Plan already covers Section 8 issues and public notice is already required for Section 8 Administrative Plans.

Response. The statute includes PHAs that receive assistance under section 8(o) of the U.S. Housing Act of 1937. HUD has no authority to exclude these PHAs from the PHA planning process required under section 5A of the 1937 Act.

5. Issues on Which HUD Specifically Sought Comment

In the preamble to the February 18, 1999 interim rule, HUD specifically sought comment on certain issues (see 64 FR 8179). Those issues are listed here, as well as the comments received on these issues, and HUD's responses to the comments.

The Feasibility of Combining the 5-Year Plan and/or Annual Plan With the Submission of the Consolidated Plan Either in Whole or in Part

Comment. In response to this issue, many commenters would like to see the Consolidated Plan and the Annual Plan combined so that the process is not so burdensome and duplication is kept at a minimum. Most of these commenters, however, requested that this be an option and not a requirement. The commenters stated that while combining the plans makes sense for ''joint agencies'' (by this it is understood to mean agencies administering both Consolidated Plan and PHA Plan programs), it makes no sense for independent PHAs. At the very least, combining the two types of plans should not be a requirement for the first few years of plan submissions.

Response. PHAs have the option of submitting the Annual Plan simultaneously with the submission of the Consolidated Plan and coordinating public processes, provided that the statutory and regulatory requirements of both are met. Although the Congress provided for the Annual Plan to be consistent with the Consolidated Plan, it did not provide for the Annual Plan to be part of the Consolidated Plan. The Congress established separate requirements for development, submission and approval of the Annual Plan. Therefore the requirements of both plans must be met.

Comment. For PHAs that want to combine the planning process, HUD should assist by offering guidance on how to combine the processes and allowing PHAs to change fiscal years to match localities. The plans should be due at the same time.

Response. This rule allows PHAs, subject to HUD approval, to change fiscal years to match localities. HUD's July 30, 1999 Notice includes guidance that is helpful to PHAs interested in combining the PHA planning process with the Consolidated Planning process.

Ways to Streamline or Merge Current Information Requirements Already Reported Electronically by PHAs to HUD With the Additional Requirements Listed in This Rule

Comment. In order to streamline reporting, HUD should increase the accuracy of reports on the HUD website and should standardize budgeting, requisitioning, and reporting requirements for all funding.

Response. HUD believes that the electronic template is a significant step forward in meeting the commenter's concerns. HUD's Office of Public and Indian Housing, as well as other HUD offices, are working on standardization of required reports under HUD programs, and converting these to a simple electronic format that can be accessed through the internet.

Comment. PHAs should not have to include components that do not apply them.

Response. The PHA Plan regulation includes only those components of the Plan that PHAs are required by statute to submit. PHAs are only required to make available information that pertains to programs and activities they actually conduct.

How Should the Term ''Substantial Deviation'' be Defined

Comment. In the February 18, 1999 interim rule, HUD stated that a PHA would not be required to submit an annual update of the 5-Year Plan, but the PHA would be required to explain any substantial deviation from the 5-Year Plan in its Annual Plan. HUD solicited comment on how substantial deviation should be defined. Comments on how this term should be defined were as follows. Substantial deviation should be defined as any changes to a PHA's overall mission, any changes to the goals or objectives that affect services to residents, or significant changes to a PHA's financial situation. Substantial deviation should be defined as a complete revision or abandonment of one or more of the components in a PHA's 5-Year Plan. A substantial deviation should not include a delay in the implementation of any particular component caused by a PHA's business needs. Substantial deviation should apply only to the mission statement and not to goals or objectives. Community planning is not a static process, and goals and objectives must be able to be changed without requiring HUD approval each time. It should be sufficient that Resident Advisory Boards

and PHA Boards review and approve these changes. The definition of substantial deviation needs to take into account the social, political, and economic conditions of an area because if any of these factors changes, adjustments will need to be made in planning documents. Substantial deviation should mean a change in a PHA's mission statement or in the PHAs goals or objectives. Substantial deviation should not deal with meeting objectives, nor should it include deviations based on emergencies or circumstances out of a PHA's control. HUD should combine the 5-Year Plan and the Annual Plan. This would simplify the definition of substantial deviation because the issue would be covered by the term significant amendments. The definition of substantial deviation should be determined locally.

Response. HUD appreciates all the suggestions on how this term should be defined. These comments convince HUD that the definition of substantial deviation should be defined at the local level, as suggested by some of the commenters. HUD believes that substantial deviation should be defined at the local level as part of the public participation in the PHA planning process. PHAs together with their residents, local partners and affected and interested members of the public are in a better position to define these terms. The definition of this term, as well as others defined locally, must be noted in the PHA Plan. The definition must be applied to the goals and objectives as well as the mission statement.

With respect to combining the two plans, HUD notes that to a certain extent the 5-Year Plan and the Annual Plan are combined because they must be submitted at the same time, and the Annual Plan reflects the mission and long range goals of the PHA as provided in the 5-Year Plan. Additionally, HUD's electronic template for the PHA Plans provides for the submission to be made as one.

What Constitutes an Acceptable 5-Year Plan?

Comment. An acceptable 5-Year Plan should be one that a PHA believes in. HUD will not be able to review all 5-Year Plans, so this requirement only matters to PHAs.

Response. HUD is required to review all PHA Plans, 5-Year Plans and Annual Plans. A PHA's 5-Year Plan should provide for a mission and goals and objectives that a PHA believes in. HUD believes that these goals are likely to be consistent with the goals and objectives of the HUD programs under which the PHA receives funding.

Comment. The February 18, 1999 preamble statement about what constitutes an acceptable 5-Year Plan is correct, but meeting any goals depends on annual appropriations. Any 5-Year Plan should have to preface any goal with this acknowledgement. HUD cannot expect PHAs to meet goals if funding is lower than expected. HUD should make specific allowances in 5-Year Plans for the fact that increasing housing supply is dependent on HUD and Congress.

Response. PHAs may condition the achievement of goals on at least level annual appropriations where appropriate. PHAs should establish goals and objectives that are ambitious given current funding levels.

Comment. The 5-Year Plan should be a strategic plan outlining goals and objectives, strategies to meet goals and objectives, and barriers and measurements of achievements.

Response. HUD believes that this is exactly what the 5-Year Plan is, but to make the goals and objectives ones that can be practically achieved, they need to be described in terms of quantifiable goals and objectives.

Comment. HUD should consider a 5-Year Plan that substantially meets or in good faith attempts to address the 18 components.

Response. The 18 components constitute the substance of the Annual Plan. However, a 5-Year Plan that establishes quantifiable goals and objectives that substantially meet or show a reasonable good faith effort to address the purposes of the 18 components of the Annual Plan (which components describe the PHA's overall strategy for handling operations on an annual basis) will be considered acceptable.

The Manner of Submission of the Information Required Under the Annual Plan.

Comment. The manner of submission should be as flexible as possible and include fax, email, postal service, and Internet.

Response. With the introduction of the PHA Plan electronic template, HUD believes that it has provided a highly flexible manner of submission. Electronic submission provides for ease in preparation, revisions, and submission. For PHAs that do not have the capability to make electronic submission via the internet, HUD's local Offices of Public and Indian Housing will assist PHAs with electronic submission.

Comment. Several commenters expressed concern about electronic submission of the plan. Their concerns were as follows. HUD should provide free software for submission of the Plan, but should not require electronic submission in initial years so PHAs can focus on formulating Plans and not have to fit parameters of preconceived format. This is especially important because PHAs do not know how difficult the software will be to master, what ''bugs'' the software will have, and whether it will be compatible with other PHA systems. The Plan should not be submitted electronically because the Plan has to be available for public view. HUD and the public should review identical copies of the Plan.

Response. With respect to the Plan software, HUD has adopted an internet submission system that utilizes commonly-used office software. The electronic template for the Plan has been available free of charge. HUD has been testing the submission system before and after announcement of the template's availability on July 30, 1999. HUD believes that there should not be any delay in the use of the template for PHA Plan submissions. The template will significantly reduce the administrative burden on PHAs. HUD is ready to assist PHAs with its use and will respond rapidly to correct any ''bugs'' in the system.

With respect to the capability of PHAs to submit information electronically, in today's environment, HUD believes that all PHAs have access to computers and therefore this type of electronic capability but may not have internet capability. HUD's local Offices of Public and Indian Housing will assist these PHAs with electronic submission of PHA Plans to HUD Headquarters via the internet.

With respect to public review of the plan, electronic submission does not preclude a hard copy printout by the PHA of the information submitted electronically to HUD.

Comment. The Plan software used for submission should allow for hyperlinked access to public information found in other electronic submissions or as part of the Consolidated Plan.

Response. The PHA Plan is required to be submitted in electronic form, and HUD is working on quick and easy electronic access to public information found in other electronic submissions or as part of the Consolidated Plan.

Comment. The rule offers a positive feature in providing that PHAs will not have to resubmit previously submitted items. HUD should, however, move expeditiously to consolidate all required

submissions. Do previously submitted items include previously submitted unfunded CIAP applications? What does HUD mean by the local availability of previously submitted items? Does this mean a file cabinet, specific building, city, town, or can a PHA identify the local HUD office?

Response. With advancements in technology, HUD believes that eventually it as well as its program partners will be able to consolidate information (including items previously submitted in non-electronic forms) into an easily downloadable electronic document. HUD's Office of Information Technology is working to move HUD closer to that objective for this program as well as others. With respect to the location of locally available information, the PHA will identify in the PHA Plan the location closest to its main offices (if not made available at its main office) that contains the information that must be made available locally, including items previously submitted to HUD.

Comment. The final rule should clarify exactly where in HUD the Plan should be submitted.

Response. The PHA Plans are to be submitted to HUD via the internet. Through this submission, HUD offices that need to review the plans or elements of the plans can do so simultaneously.

HUD's addition of items to the Annual Plan submission and whether commenters recommend any other items for inclusion.

Comment. If HUD wants to add items to the Plan, they must do so by public notice and comment. HUD should not be allowed to add items not required by the Public Housing Reform Act.

Response. To the extent that items added by HUD to the Plan are not reasonably within the Plan's scope and do not constitute clarifications of information that clearly the statute envisions to be submitted, HUD will provide the opportunity for notice and comment. HUD also notes that it may be required to add items to the Plan as a result of new statutory requirements and subsequently enacted statutes may provide for immediate implementation of new Plan components and preclude the opportunity for notice and comment.

Comment. The regulation should require that PHAs state reasons for decisions made and any policy choices.

Response. The PHA Plan electronic template requires PHAs to indicate the reasons they selected particular strategies for addressing housing needs.

Comment. Several commenters offered suggestions on items that should or should not be part of the streamlined plans. PHAs that have been high performing for two consecutive years should only have to submit Plans with admissions, demolition/disposition, and fair housing certification. High performers and small PHAs should also be required to submit grievance policies, conversions, and community service programs because these programs directly affect residents. Streamlined Plans should include conversion, description of asset management, and Family Self-Sufficiency information because so many PHAs are either high performing or small.

Response. HUD appreciates the suggestions made by the commenters. At this time, HUD is not making changes to the streamlined plans to be submitted by high performing PHAs or small PHAs that are not troubled. The PHA Plan electronic template makes the Plan submission significantly easier. With respect to submissions regarding conversions, the conversion submission and approval process is a separate process as HUD has noted earlier in this preamble. Other documents covered by the PHA Plan but that are not part of the Plan submission are required to be available locally for review. The addition of documents to be made available locally but not submitted to HUD also will facilitate the public review.

Comment. What should high performing PHAs who are also small PHAs submit (1)?

Response. PHAs that are small PHAs and also designated high performing PHAs should submit the Plan elements described for high performing PHAs.

Comment. The final rule should clarify the definition of high performing PHA by adding the following language ''as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan''.

Response. HUD agrees with this comment and has added clarification language to the regulation.

What Should Constitute ''Significant'' Amendments or Modifications to Either the 5-Year Plan or Annual Plan?

Comment. Comments on what constitutes significant amendments or modifications were as follows. The final rule must clarify what a significant amendment is and when HUD needs to approve it. PHAs should be able to correct errors or omissions without having to restart the entire process. The final rule should define significant amendments as anything that substantively alters the policies as originally proposed or that might result in a different outcome for or treatment of tenants, participants, or applicants. Any amendment should be subject to a fair housing analysis. The definition of significant amendments should exclude any changes that are made as a result of new HUD regulations not in effect when the Plan was developed.

Response. HUD appreciates these comments and has decided that the changes that constitute significant amendment or modification should be defined at the local level. As noted earlier in this preamble (under the section which highlights changes made at the final rule stage), HUD has amended § 903.7(r) to provide that a PHA must include in the PHA Plan a brief statement identifying the basic criteria it will use for determining what constitutes a significant amendment or modification of its plan for purposes of § 903.21.

Whether the Final Rule Should Provide That a PHA Must Post Notice in the Projects Owned, Operated or Administered by the PHA That the Plan has Been Approved and Provide Information on Where the Plan may be Inspected, and Also Whether the PHA Should Post Notice in a Newspaper of General Circulation That the Plan has Been Approved and Information About its Availability for Review.

Comment. The final rule should adopt a requirement that PHAs should post a notice in a newspaper of general circulation that the Plan has been approved and information about its availability for review. The final rule should require that notices be posted at all developments and that copies of pending and final plans should be made available at all developments, not just the principal office of the PHA. In addition, residents should be able to view these plans in the evening and not just during normal business hours. The final rule should not require posting and publication of notice after the Plan is completed and approved.

Response. HUD appreciates the comments in response to this issue. HUD has decided not to change the rule at this time. HUD, however encourages PHAs to adopt these suggestions. Additionally, as part of the public input on the plans, the PHAs and the public may wish to adopt such a requirement as part of their local process.

Is the rule organized in a manner that is helpful and should the rule include a definition section?

Comment. The final rule should not adopt the conversational tone and question-and-answer format used in the

interim rule. This format is best reserved for supporting documents that are designed to provide additional guidance for complying with HUD regulations. The conversational tone and question-and-answer format detracts from the ability of governed entities to easily ascertain what is required of them and to locate provisions that govern specific questions with optimal speed and efficiency.

Response. The question-and-answer format is strongly encouraged by the Administration's Plain Language initiative. The concern is that too many regulations are incomprehensible because they are written using terms that are too legalistic and too entrenched in the language of Federal bureaucracy. The majority of HUD's regulations are now being written in this format, and without complaint from HUD's constituents. HUD notes that only one commenter made this comment. HUD notes that the PHA Plan template provides for consolidated, easily referenced information.

Comment. The final rule should contain a definition section.

Response. Many of the terms that HUD would generally define are already defined in regulations governing HUD programs in which PHAs are participants. HUD declines to repeat these definitions in this part. For other terms, HUD declines to be overly prescriptive and prefers to give PHAs greater flexibility by allowing them to define terms at the local level given local considerations.

6. Comments on Specific Provisions of the Interim Rule

Section 903.1 What are the Public Housing Agency Plans?

Comment. As the following comments indicate, several commenters were concerned about the format of the plans. Comments were as follows. HUD should not require PHAs to submit Plans when HUD has not specified the format for the Plan nor given guidance to PHAs on all issues. HUD should delay publication of the final rule until the rule can be clarified. HUD needs to define the format, substance, and length of the Plan. If HUD does not specify a format by July 1, 1999, initial Plans should be accepted in any format. PHAs should be able to simply reference other documents in the Plan and insert only brief summaries of those documents.

Response. As noted earlier in this preamble, HUD has addressed these concerns through its July 30, 1999 issuance of the PHA Plan electronic template and accompanying guidance, and HUD's decision to delay the date for the first submissions to December 1, 1999.

Section 903.3 When Must a PHA Submit the Plans to HUD?

Comment. HUD needs to clarify when the 75-day process starts and stops. The interim rule is not clear about when PHAs are required to submit their Plans.

Response. HUD's rule published on September 21, 1999, clarifies this process, and this language is included in this final rule.

Comment. Large PHAs should be able to submit separate Annual Plans for different jurisdictions or be allowed to submit Plans in phases.

Response. The statute does not allow for this type of submission. HUD believes that the framework for the Annual Plan adopted by the Congress is similar to that of the Consolidated Plan, and the objective of this framework is to consolidate information and present a single unifying plan that crosses jurisdictional lines where there are more than one jurisdiction. The additional objective is to provide for one annual submission by a PHA, not staggered submissions.

Section 903.5 What Information Must a PHA Provide in the 5-Year Plan?

Comment. Why is HUD requiring a 5-Year Plan when PHAs only get funding on a yearly basis?

Response. The 5-Year Plan is a statutory requirement. Even if PHAs only receive funding annually, it is funding that is assured annually at some level, and therefore the PHA should plan for its uses on a long-term basis.

Comment. The 5-Year Plan guidance needs further development. The guidance appears to be a vision statement and not actual work items to implement long range strategy. The required statements for the 5-Year Plan should be combined into the Annual Plan (as part of the Executive Summary) because the Annual Plan has to contain changes in the 5-Year Plan anyway.

Response. The guidance and PHA Plan template issued on July 30, 1999, provides additional guidance to PHAs on development and preparation of the 5-Year Plan, and on the format. PHAs are welcome to develop more detailed plans than that provided by the template.

Comment. The 5-Year Plan should be subject to only cursory HUD review.

Response. HUD's review must be consistent with the statutory mandate imposed on HUD.

Section 903.7 What Information Must a PHA Provide in the Annual Plan?

This section of the rule describes the information that the PHA must provide as part of the Annual Plan. There were a number of comments praising HUD's approach to not require the submission of certain items. There was also praise for elements of the Plan that high performing PHAs and small PHAs were not required to submit. The following presents the questions and concerns raised about the Plan elements.

Comment. The final rule needs to contain more detailed descriptions of what information is required under each section of the Plan so that PHA submissions are more consistent. For example, under § 903.7(b) (financial resources) how is funding to be broken down for Section 8; § 903.7(c) (eligibility, selection, and admissions) should state exactly what information is required; § 903.7(e) (operation and management) needs a clear list of what will satisfy a ''description of the management organization''; § 903.7(l) (community service and self-sufficiency) is unclear about what information is to be submitted.

Response. These comments were submitted before HUD issued its July 30, 1999 guidance and the PHA Plan electronic template. The PHA Plan template and guidance address these concerns.

Comment. The PHA Annual Plan should only include the information necessary to reach the strategies and goals described in the PHA 5-Year Plan. The final rule should not expand the list of items that are required, under section 511 of the Public Housing Reform Act, to be included in the Annual Plan. This will bring certainty to the PHA planning process and allow PHAs to steadfastly pursue the goals outlined in the 5-Year Plan.

Response. HUD believes that the PHA Plan regulation closely adheres to the statutory requirements and does not go beyond these requirements.

Comment. The February 18, 1999 interim rule provides that, before submission of the first PHA Annual Plan, PHAs may submit an interim PHA Annual Plan solely with respect to demolition and disposition. However, the interim Annual Plan must include a certification of consistency with the Consolidated Plan, and confirm that a public hearing was held on the proposed action and that the resident advisory board was consulted. (See the preamble discussion at 64 FR 8177–8178.) HUD should extend the interim plan provision to cover: (1) The new voucher payment standard; (2)

deconcentration and rent choice policies; and (3) any voluntary changes in admission preferences prior to the submission of the complete initial annual plan. This will help to ensure that residents participate in the development of these important policies, and that the policies are consistent with the Consolidated Plan.

Response. The interim plans for demolition or disposition addressed a particular issue in the statute and legislative history, to allow continued submission of applications for demolition or disposition prior to submission of the first annual PHA Plans. Interim plans are unnecessary for the other plan elements raised by the commenter.

Comments Regarding the Statement of Housing Needs

Comment. The provision of this data will be difficult for PHAs that do not collect the required waiting list information. It would be easier for the PHAs to provide the required information for families admitted during the PHA's last fiscal year.

Response. The statutory language is clear that the information that must be submitted under this Annual Plan element is waiting list information. The guidance to the template makes clear that PHAs are not being required to change their procedures regarding data verification to supply this data.

Comment. It is unclear what information PHAs are being requested to provide or what constitutes ''housing need.'' The final rule should clarify terms such as: ''affordable,'' ''supply,'' ''quality,'' ''accessibility,'' ''location,'' and ''size of units.'' Further, the rule is ambiguous as to what income groups should be considered for purposes of determining housing need. This must also be clarified.

Response. These terms are addressed in the guidance accompanying the PHA Plan template.

Comment. PHAs should not be required to assess housing needs based on the race or ethnicity of applicants for assisted housing. The interim rule is unclear whether a threshold number of applicants belonging to a certain racial/ethnic group triggers the need assessment, or whether a single applicant from that group is sufficient. Further, it is unclear how the information will help the PHA meet its obligation to serve low, very-low, and extremely low-income families. The rule is ambiguous regarding the ethnic/racial groups a PHA must identify. The collection of this data may also conflict with civil rights and fair housing requirements.

Response. The assessment of housing needs as provided in the regulation is consistent with HUD's obligation to affirmatively further fair housing. The guidance accompanying the PHA Plan template also addresses this issue.

Comment. PHAs should be able to use the ''Housing Needs and Market Analysis'' section of Consolidated Plan as their plan statement of housing needs. However, the terms used in the PHA plan interim rule differ from that used in the Consolidated Plan. HUD should provide guidance to assist PHAs in using the relevant provisions of the Consolidated Plan in preparing the annual plan statement of housing needs. Another commenter expressed the opposite viewpoint. The Consolidated Plan should not be used to develop the statement of housing needs. The Consolidated Plan is based on outdated 1990 census data. Further, the Consolidated Plan is rarely prepared by the PHA. PHA waiting list data is the most accurate indicator of the potential resident base. Accordingly, the PHA waiting list should be used to develop the annual plan statement of housing needs. Another commenter expressed opposition to use of waiting list data. The commenter stated that gathering waiting list data will create significant administrative burden for PHAs.

Response. The Consolidated Plan can serve as the basic source of the PHA's housing needs statement. The PHA, however, needs to complete the statement of housing needs as provided in the PHA Plan regulation. The PHA Plan template significantly simplifies this task. The use of waiting list data is a statutory requirement and HUD has no authority to remove this requirement.

Comments Regarding the Statement of Financial Resources

Comment. The interim rule is overly prescriptive when it asks PHAs to identify the planned uses of the financial resources by major category (i.e., operations, modernization and or development, etc.). This is addressed elsewhere in the Annual Plan and, therefore, it is redundant to require PHAs to address them in this portion of the plan.

Response. The financial information required by the rule is consistent with statutory intent and is the minimum necessary to allow public housing residents, local representatives, taxpayers, and other interested members of the public to sufficiently determine a PHA's planned uses of its financial resources. The PHA Plan template reduces the administrative burden of compiling and submitting this information.

Comment. HUD should clarify what financial data is required in the statement of financial resources. Are PHAs required to provide end data from the most recent calendar year, or from the most current fiscal year?

Response. The PHA Plan template clarifies that the financial data required to be included in the Plan concerns funds anticipated to be available during the upcoming fiscal year.

Comment. The statement of financial resources should include detailed PHA budgets with information regarding the operating and modernization of the public housing, as well as personnel, consultant and other contractors, equipment, supplies, utilities, and travel. With fully disclosed information, residents and the public will better be able to participate and reach the goals of the Public Housing Reform Act.

Response. Current operating and modernization budgets are required to be made available locally for review by the public.

Comments Regarding the Statement of Eligibility, Selection, and Admission Polices

1. Transfers

Comment. The PHA Annual Plan should include specific policies for the transfer of public housing residents to other public housing units within the PHA. Transfer policies and practices are of critical concern to residents and Resident Advisory Boards. Accordingly, all PHAs should have written policies and procedures governing transfers, which should be included in the PHA Annual Plan.

Response. Transfer policies are covered by the PHA Plan template. These policies typically also will be in the PHA's admissions and continued occupancy policies, which are required to be made available to the public locally.

2. Deconcentration

Comment. Several commenters raised concern about the deconcentration policies. Their concerns are as follows. Deconcentration requirements will lower occupancy rates, make waiting lists longer, and increase PHA administrative costs. HUD therefore should not expand on the statutory language and impose a deconcentration requirement on PHAs. HUD should accept the good faith, best efforts made by a PHA to achieve deconcentration. HUD should permit deconcentration to be addressed at a local level, and not establish prescriptive Federally mandated requirements. There are differences between rural, urban and

suburban agencies and individual reason for which families move. Any Federal requirements should acknowledge variations in local conditions, and provide PHAs with the flexibility to address those local issues. HUD should provide additional guidance on what constitutes an acceptable deconcentration policy. The final rule should provide that PHA deconcentration policies must affirmatively further fair housing and not discriminate against a protected class. Further, the final rule should explicitly prohibit PHAs from establishing or enforcing racial or financial quotas. The rule should also require that PHAs perform an Analysis of Impediments as part of their PHA plan process. (The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice).

Response. Section II of this preamble addresses the changes that HUD has made with respect to deconcentration. HUD believes that these changes address and balance the concerns of the commenters.

Comment. There is a conflict between the mission of the PHA to serve low-income families and the deconcentration requirements of the interim rule. If the PHA is supposed to focus on the needs of low income families, how can it also be expected to undertake efforts to attract higher-income families?

Response. HUD understands that these two objectives may appear in conflict with each other. HUD's focus and the PHA's focus remain on addressing the needs of low income families, but these needs are often best served and best addressed by housing that provides for a mix of family incomes—families that need HUD assistance but are not all in the same income range.

Comment. The deconcentration requirements should not apply if the PHA's developments all have similar average incomes. In such a situation there is no income concentration. Deconcentration should only be required if the difference hits a specific threshold, e.g. a 25% disparity.

Response. HUD declines to adopt a threshold disparity as recommended by the commenter. However, the new provisions added to the final rule on deconcentration provide a measurement for compliance. The rule provides that PHAs shall be considered to be in compliance with the deconcentration requirements if they determine the average household income in such developments and define higher-income families as those with incomes over 115% of this average, higher-income developments as those where the average family income is over 115% of this average, lower-income families as those with incomes under 115% of this average and lower-income developments as those where the average family income is under 115% of this average.

Comment. The deconcentration requirements should only be applicable to ''traditional'' public housing developments occupied entirely by households eligible for public housing. Mixed income developments, Jobs Plus sites, Welfare-to-Work sites, and other housing developments hosting other demonstration programs should not be subject to the deconcentration rules. These developments have special work incentives, different rent structures and other factors that attract or retain special subpopulations of public housing residents. Accordingly, they are not suitable for deconcentration efforts.

Response. The statute does not limit applicability of the deconcentration requirements to traditional public housing developments. Generally, HUD has no authority to set such limitations.

Comment. In order to realize deconcentration, FMRs must be increased in cities where the cost of housing is constantly increasing. This is one of the most critical methods that will allow housing residents a choice and an opportunity to lease in higher-income neighborhoods.

Response. HUD believes that its system for setting fair market rents generally meets this objective, but can be improved. HUD currently is reviewing this system.

Comment. HUD should not require a PHA to perform an analysis of household incomes until the MTCS data system can facilitate this type of analysis.

Response. The analysis is not dependent upon the MTCS data system but HUD recognizes that this system may facilitate the PHA's analysis. HUD has worked to correct problems with MTCS, and is working with PHAs to increase the level of reporting, as noted earlier in this preamble. HUD believes that PHAs should be able to utilize this system in performing their analysis.

Comment. The interim rule requires that PHAs use census tracts for purposes of developing their deconcentration policies. The use of census tracts for comparison of relative income does not work for many scattered-site developments as they are in multiple census tracks. The final rule should accommodate this problem by exempting scattered-site projects from the deconcentration plan requirements.

Response. The final rule does not require an analysis based on census tract data.

Comment. PHAs should be able to identify other factors (such as the size of units) that play a role in relative income in order to distinguish developments.

Response. The rule provides a safe harbor for defining lower income and higher income which is simple, then leaves substantial flexibility for implementation.

3. Targeting

Comment. The final rule should state that admissions policies must include income targeting policies and must specify that local preferences are subordinate to Congressional directive of targeting. HUD needs to publish regulations covering how targeting must work soon.

Response. These policies were first addressed in HUD's proposed rule on ''Changes to Admission and Occupancy Requirements in Public Housing and Section 8 Housing Assistance Programs'' published on April 30, 1999 (64 FR 23460). The final rule on this subject is expected to be published soon.

Comment. HUD should provide clear guidance about the interaction between targeting, deconcentration, and site-based waiting lists. Which takes precedence? How will HUD monitor or evaluate PHA success?

Response. Full compliance with both the specific income targeting minimum percentages of extremely low-income households and with deconcentration and income mixing provisions is required.

4. Site-Based Waiting Lists

Various proposals were made to modify the February 18, 1999 interim rule's treatment of site-based waiting lists. As the preamble to the interim rule discussed, the Senate Committee Report on the Senate version of the Public Housing Reform Act (Congressional Record of October 8, 1998, p. S11840) provides the most detailed statement on site-based waiting lists. That report cites several of the possible benefits of site-based waiting lists, but also acknowledges that past HUD limitations were based on concern about racial steering and a desire to prevent housing discrimination. HUD believes that the approach proposed in the February 18, 1999 interim rule is appropriately balanced in view of that legislative history. The approach generally allows adoption of site-based waiting lists, with protections to assure that applicants are aware of their choices and rights, but also calls for careful monitoring of

implementation. This final rule therefore generally retains these provisions, except that the requirement that MTCS data be confirmed by independent audit is supplemented by other means of verification acceptable to HUD and testing or other HUD-approved means of verifying appropriate implementation are required at least every three years rather than two years.

Comment. PHAs should not be required to use testers biannually. The requirement is excessive if there is no indication of possible civil rights violations. Testers should only be used to confirm problems where there is an indication of steering or other illegal activities. Other requirements such as the review of MTCS, absence of court orders, PHA certifications, ongoing review of policies and HUD's monitoring through FHEO are sufficient safeguards. HUD, and not PHAs, should provide testers.

Response. As noted in Section II of the preamble and in the introduction to this section of the public comments, HUD has revised this requirement on the frequency of the use of testers. The final rule provides that testers are to be used every three years. HUD believes that the role of testers is not only to confirm problems but to determine if problems exist that have not yet been raised.

Comment. Language in § 903.7(c)(1)(v)(C) (any steps necessary) is too broad and will result in a large burden for PHAs. The final rule should be revised to state, ''any reasonable or business practicable steps necessary.'' Additionally, site-based waiting lists should be subject to no more scrutiny than review of the Plan.

Response. HUD believes that the additional language recommended by the commenter is not necessary. ''Any steps necessary'' would include business practicable steps. With respect to review of site-based waiting lists, site-based waiting lists are part of the PHA Plan approval process; that is the only approval necessary.

Comment. Additional concerns raised about site-based waiting lists included the following. The final rule should ensure that site-based waiting lists increase housing choice and options for minorities. Policies should require that public housing applicants are advised of all subsidized housing in the area. PHAs should supply applicants with a list of every assisted housing development in the market area, including tax credit properties, and HUD should give this list to PHAs. HUD should design a standardized pre-application so that applicants could copy the form and submit to various projects. PHAs should be required to do a preliminary racial impact analysis. Requiring testers is a good idea. For projects going into initial occupancy, HUD should require a lottery system.

Response. HUD appreciates these comments, but declines to adopt up-front the recommendations for additional procedures to be imposed on PHAs. HUD believes that the rule takes the appropriate approach to site-based waiting lists, which is to provide the necessary direction and guidance to PHAs on the establishment of site-based waiting lists and describe the circumstances in which a PHA may adopt a site-based waiting list and provide for careful monitoring of implementation.

E. Rent Determination Policies

Comment. Does the statement of rents charged include the exception procedures for minimum rents?

Response. Yes, this statement includes the exception procedures for minimum rents.

Comment. Several comments on this rule were directed to the changes in rent policies made by the Public Housing Reform Act. These comments raised the following issues and questions. Since PHAs have to give residents 90 days to prove they have a long term hardship and cannot evict for nonpayment of rent, what effect will uncollected minimum rents have on PHMAP indicator? Can PHAs submit a modification request? Flat rents are based on rental value of units. What if rental value is more than the actual monthly cost to provide and operate? The final rule should clarify that PHAs can evict for nonpayment families on minimum rent who fail to request hardship exemption or on the 91st day for families who are denied hardship exemptions. PHAs will be at a disadvantage if residents can set their maximum rent payments. How can PHAs set a year-long budget when residents can change their rent payments at will? HUD should limit rent payment changes to once per year. The final rule should clarify minimum rent is discretionary for PHAs and can be between $0 and $50.

Response. All these issues will be addressed in HUD's final rule on Changes to Admission and Occupancy, expected to be published soon.

Comment. All rent policies should be in Plans, including mandatory policies.

Response. It is an unnecessary administrative burden imposed on PHAs to have them include in the Plan those PHA policies that only repeat statutory or regulatory requirements. Additionally, the addition of these policies would make the PHA Plan unwieldy.

F. Operations and Management

Comment. The Administrative Plan should be incorporated into the Annual Plan. HUD should provide guidance on what information from the Administrative Plan must be included in the Annual Plan.

Response. The PHA template provides guidance on information in the Administrative Plan that must be included in the Annual Plan. The PHA Plan regulation requires the Administrative Plan to be made available for review by the public locally.

Comment. The preamble to the interim rule states that this section is required for public housing and Section 8. The rule text only mentions public housing. The final rule should clarify the applicability of this requirement. Limiting the requirement to public housing is not allowed by the Public Housing Reform Act. Congress did not limit the statement to public housing. PHAs must be required to submit Section 8 Administrative Plans.

Response. The regulatory text mentions both public housing and Section 8 tenant-based assistance. Section 903.7(e) which addresses the statement of a PHA's operation and management provides in paragraph (e)(2) that the information pertaining to the PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. This is the only portion of this subsection that applies only to public housing. The rest of § 903.7(e) applies to both public housing and Section 8 tenant-based assistance.

G. Grievance Procedures

No significant issues were raised on this element of the plan.

H. Capital Improvements

Comment. The final rule should be revised to state that Comprehensive Grant Program (CGP) updates will continue to satisfy this requirement. HUD must distribute CGP formula amounts in a timely fashion to ensure inclusion in the Plan. Additionally, Annual Plans are due before CGP planning process would normally take place. Unless a separate notice is issued that describes how modernization program submission will be satisfied by Plans, PHAs should be able to reference existing submissions.

Response. HUD's Comprehensive Grant Program is being replaced by the Capital Fund Program. Accordingly, all

forms are being updated to reflect the new program. Guidance on the PHA Plan template, issued July 30, 1999, addresses how PHAs may satisfy Capital Fund planning requirements. As a transitional phase, PHAs will be permitted to use properly updated CGP forms.

I. Demolition/Disposition

Comment. This section should be incorporated in the Asset Management section.

Response. The statute provides for separate statements to be submitted on demolition/disposition and asset management. (See section 511(d)(8) and (d)(17)). However, HUD's PHA Plan template includes an optional chart by which the PHA can combine these and other plan sections.

Comment. The final rule should require that the PHA Annual Plans include: Reasons for demolition; a description of how the planned demolition meets statutory criteria for demolition or sale; identification of any studies relied upon that support the demolition (and the studies should be available to Resident Advisory Boards); a statement of specific requirements if consolidation of vacancies is planned; relocation plans; and an evaluation in light of the Consolidated Plan. The final rule also should require that the application for demolition and any supporting documents be available at PHA office.

Response. The PHA Plan regulation requires that demolition and/or disposition applications must be made available locally for review by members of the public. Affected or interested parties therefore have the opportunity to review and comment to the PHA on these applications if they so choose. As noted earlier in this preamble, demolition and/or disposition activities are subject, by statute, to a submission and approval process separate from the PHA Plan submission and approval process. It would be an unnecessary administrative burden to have a PHA duplicate in the PHA Annual Plan extensive information on planned demolition and/or disposition that the PHA must provide under the separate demolition/disposition approval process.

Comment. The interim demolition/disposition plan is unauthorized by law and is inconsistent with deregulation and streamlining goals the Public Housing Reform Act. HUD is prohibited from enacting early any piece of the Plan.

Response. The Public Housing Reform Act provisions concerning demolition/disposition were effective upon the statute's enactment. The interim plan fulfills Congressional intent that demolition/disposition activities not be interrupted or halted and that HUD continue to process demolition/disposition applications before, if necessary, approval of the first PHA plans.

Comment. The rule needs to clarify the contents of the interim demolition/disposition plan. Is the submission a statement or does the PHA have to submit all components of the Annual Plan.

Response. As noted earlier in this preamble, HUD has added language at the final rule stage to address submission of an interim demolition/disposition plan. Also, HUD's notice to PHAs on demolition/disposition processing requirements under the Public Housing Reform Act, PIH Notice 99–19, issued April 20, 1999, describes the information to be submitted in the interim demolition/disposition plan.

J. Designated Housing

Comment. PHAs that submit streamlined Plans should have to submit this information. The final rule needs to address how currently approved designated housing plans meet the requirements of the Public Housing Reform Act.

Response. Designated housing is subject to a separate application and approval process, and designated housing is subject to separate regulations. A streamlined plan does not need to repeat information that is already required to be submitted under a separate approval process, and the PHA Plan regulation does not need to duplicate information addressed in other regulations. Designated housing applications, however, are required to be made available locally for review by members of the public.

K. Conversion

Comment. The final rule should require an evaluation of conversion in relation to the Consolidated Plan, include certification from local officials, describe any demolition/disposition plan for units, set forth time table, and provide for certification of resident consultation.

Response. Demolition/disposition and conversion plans are subject to a submission and approval process separate from the PHA plan submission and approval process. These applications, however, are required to be made available locally for review by members of the public.

L. Homeownership

Comment. PHAs should be allowed to propose creative ways to increase homeownership opportunities.

Response. The PHA Plan rule reflects the statutory requirement with respect to the information that must be part of the PHA Plan. The statute requires a description of any homeownership programs of the agency under section 8(y) or for which the public housing agency has applied or will apply for approval under section 32 of the U.S. Housing Act of 1937. The fact, however, that the statute requires this information, and the rule reflects the statutory requirement, does not preclude PHAs from proposing creative ways to increase homeownership opportunities and these proposals can be part of the PHA's 5-Year Plan or other information that it may choose to provide in its Annual Plan.

Comment. PHAs should be required to establish measures to increase accessibility to homeownership programs for persons who have successfully participated in the Continuum of Care Program.

Response. HUD believes that establishing such a requirement exceeds HUD's statutory authority with respect to the PHA planning process.

M. Community Service and Self-Sufficiency

Comment. Several commenters addressed concerns not about information required to be included in the PHA Annual Plan with respect to community service and self-sufficiency, but implementation of these requirements. The comments raised the following concerns. Eviction for noncompliance with this requirement will be difficult to uphold in courts. PHAs will need additional insurance protection to cover increased number of volunteers. Residents who volunteer at a church/temple should be exempt from community service requirements. Does service on a Resident Advisory Board count towards community service. PHAs should not have to monitor community service unless they have an FSS program. Welfare agencies should conduct monitoring. The final rule should list the exemptions to the community service requirement listed in section 512(a)(2) of the Public Housing Reform Act. This requirement will create a huge burden with limited benefit. Residents should be able to self-certify compliance with this requirement.

Response. These issues will be addressed in HUD's final rule on ''Changes to Admissions and

Occupancy Requirements in Public Housing and Section 8 Housing Assistance Programs,'' which expected to be published soon.

Comment. Rulemaking for this requirement is incomplete. Will PHAs be required to submit an amendment to their Plans when the final rules are published. The community service requirement should not be implemented before January 1, 2001.

Response. HUD has completed the rulemaking for this requirement. HUD's final rule on Changes to Admission and Occupancy Requirements, which is expected to be published soon, addresses this requirement. HUD has informed the PHAs with fiscal years commencing January 1, 2000, that community service need not be a part of their PHA Plans for that fiscal year.

N. Safety/Crime Prevention

Comment. The requirement to check for lifetime registration for sex offenders is an unfunded mandate. Such checks undertaken by the Federal Bureau of Investigation (FBI) cost $27 and take 30–90 days. HUD should arrange for PHAs to obtain this data at no charge.

Response. This issue is not relevant to this rule, but pertains to HUD's rule on ''One Strike Screening and Eviction for Drug Abuse and Other Criminal Activity.'' The proposed rule for this subject was published on July 23, 1999 (64 FR 40262). HUD is developing the final rule.

Comment. The submission requirements should be modified to require submission of Public Housing Drug Elimination Program (PHDEP) grants only.

Response. For high performing and small PHAs, the final rule limits the submission to PHDEP grant information only.

Comment. Until HUD issues a separate notice how PHDEP will be satisfied by Plans, PHAs should be able to reference existing submissions.

Response. HUD issued its final rule on PHDEP formula allocation on September 14, 1999 (64 FR 49900).

O. Pets

Note: A number of commenters made substantive suggestions regarding how pet policies should be structured (as opposed to comments about the structuring of the PHA Plans). These comments will be responded to in the final rule concerning pet ownership in public housing.

Comment. The final rule should clarify when this submission is required. The February 18, 1999 interim rule states that this submission is not required until HUD issues its pet regulations, but there are already pet rules covering elderly and people with disabilities projects. In addition, the final rule should clarify whether PHAs must make a submission if they have their own pet policy in effect.

Response. The regulations governing pets in housing for the elderly or persons with disabilities are not required to be covered by the PHA Annual Plan. The Public Housing Reform Act requires a statement concerning the PHA's policies and requirements pertaining to the ownership of pets in public housing issued in accordance with section 31 of the 1937 Act. HUD's proposed rule to implement section 31 of the 1937 Act was published on June 23, 1999 (64 FR 33640). Approximately 4,000 timely public comments were received on this rule, and approximately 3,000 public comments continued to be submitted to HUD well past the August 23, 1999 comment deadline. HUD is developing the final rule.

P. Civil Rights

Comment. The deconcentration policies contradict the affirmatively furthering fair housing policies.

Response. HUD disagrees. Both policies work to improve housing options for low-income families.

Comment. HUD needs to issue further guidance regarding the maintenance of records to reflect analysis of programs and impediments. The guidance needs to address which programs will be analyzed, how the analysis is to be documented, and how often must the analysis be done?

Response. This final rule provides guidance concerning these analyses.

Q. Asset Management

Comment. This requirement is confusing and redundant. Much of this area is covered in other areas of the Plan.

Response. As noted earlier in this preamble, the statute requires a separate submission on asset management. However, the PHA Plan regulation (and the PHA Plan template) clarify that information related to asset management addressed under other Plan elements is not to be repeated in the asset management section.

Comment. This requirement is unclear, especially with regards to Section 8. More guidance is needed in the final rule.

Response. The electronic template issued by HUD on July 30, 1999, provides the additional guidance that is needed to satisfactorily respond to this element of the PHA Annual Plan.

Section 903.13 What is a Resident Advisory Board and What is its Role in Development of the Annual Plan?

Comment. When a Resident Advisory Board files a written request with HUD claiming that a PHA has failed to provide adequate notice and opportunity for comment, HUD's 75-day review limit should be tolled so that the PHA may respond to the claim.

Response. Section 903.13(c)(2) of the PHA Plan regulation addresses the commenter's concern.

Comment. It is very difficult and even impossible in some projects to obtain resident participation. In those cases where PHAs are unsuccessful in forming Resident Advisory Boards because of a lack of resident interest, the Resident Advisory Board requirement should be considered satisfied if the PHA has made adequate efforts to establish a Board. PHAs can only make resident participation opportunities available, they cannot require participation. Additionally, confidentiality is very important to section 8 participants and results in less of a desire to participate. If HUD wants to ensure residents participation, they should make such participation part of the lease requirement.

Response. HUD believes that the cases in which PHAs were unable to form Resident Advisory Boards will be few. If, however, PHAs have been unsuccessful in forming Resident Advisory Boards, they should notify HUD immediately and advise the efforts undertaken to establish Resident Advisory Boards. HUD will determine at that time what additional action may be necessary.

Comment. Resident Advisory Boards should be involved in the preparation of the 5-Year Plan as well as the Annual Plan.

Response. Section 903.19 of the rule permits the PHA to adopt its 5-Year Plan only after, among other things, the PHA has consulted with the Resident Advisory Board or other resident organizations about any changes made to the plan. Additionally, the 5-Year Plan is subject to public input and through this process, Resident Advisory Boards have the opportunity to be involved in the preparation of the 5-Year Plan.

Comment. The interim rule is unclear about whether Resident Advisory Boards can contact HUD directly to protest the 5-Year Plan in addition to the Annual Plan. The final rule should protect PHAs by providing only a restricted right of protest.

Response. Any party may complain to HUD concerning a PHA's

noncompliance with its plan or with the PHA Plan regulations.

Comment. The final rule should identify how Resident Advisory Boards will be financially supported, what funds are available, and what funds PHAs will provide. For example, can a PHA give stipends to residents and exclude them from rent calculations, or can the PHA use CIAP, CGP, or Capital funds? The final rule should make clear that the resources for Resident Advisory Boards include technical assistance. HUD should provide sufficient resources to Resident Advisory Boards to ensure that residents are effectively represented.

Response. The funds available to Resident Advisory Boards, resident organizations and for resident activities are generally the funds appropriated for HUD's public housing funded programs. For example, in the preamble to HUD's Capital Fund formula proposed rule published on September 14, 1999 (64 FR 49924), HUD noted that various funds allocated to Resident Advisory Boards, other resident organizations and for resident participation are eligible Capital Fund management expenses if the activities engaged in by these groups are directly related to Capital Fund activities. Funds are available to Resident Advisory Boards and other resident organizations from the public housing Operating Fund, and other HUD funded programs.

Comment. PHAs should be allowed to self-certify to compliance with Resident Advisory Board requirement.

Response. Section 903.13 only requires that PHAs, in submitting their final plans to HUD for approval, must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations. If the Resident Advisory Board did not provide recommendations, the PHA need only note that in its plan submission.

Comment. The final rule should require broader collaboration between PHAs and Resident Advisory Boards. The final rule should require PHAs to: produce a Plan development time-line before the Plan development process begins and share this time-line with Resident Advisory Boards; give Resident Advisory Boards early notice of when Plan development process begins and provide copies of drafts to Resident Advisory Boards; hold joint meetings with Resident Advisory Boards throughout the Plan development process; and give Resident Advisory Boards written notice of their right to seek recourse from HUD, the mechanisms to seek this recourse, and HUD contact information .

Response. The final rule clarifies that Resident Advisory Boards are to assist and make recommendations to PHAs regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan. HUD declines to impose, by regulation, requirements beyond those required by statute. HUD, however, encourages PHAs to involve Resident Advisory Boards as early in the plan development process as possible. Since PHAs must, by statute, involve Resident Advisory Boards in the PHA Planning process, PHAs should find it advantageous to consult with these Boards as early as possible.

Comment. Section 903.13 is confusing. HUD should add some discussion of the different scenarios a PHA may face forming a Resident Advisory Board and ensuring adequate Section 8 representation.

Response. A discussion of different scenarios that a PHA may face in forming a Resident Advisory Board is not appropriate for regulatory text. HUD will provide guidance on this issue through direct notices to PHAs and through the Office of Public and Indian Housing website at HUD's homepage.

Comment. Several comments were directed to the rule's requirement that where a PHA has a tenant-based assistance program of significant size, the PHA shall assure that the Resident Advisory Board or Boards has reasonable representation of families receiving tenant-based assistance. The comments raised the following issues. The definition of significant size for a Section 8 program should be 1,250 or more certificates. The definition of significant size should not be based on the ratio of public housing to Section 8 units. A Section 8-only PHA should be required to form an Resident Advisory Board regardless of the size of the program. The Resident Advisory Board requirement should be satisfied for Section 8-only PHAs if the PHA has an Family Self-Sufficiency (FSS) coordinating committee with resident participation.

Response. HUD continues to believe that only PHAs with a tenant-based assistance program of significant size should be subject to the Resident Advisory Board requirement. HUD has defined significant size to mean at least 20 percent of assisted households receive tenant-based assistance.

Comment. Any waiver of this requirement should be granted only after notice of waiver is given to all residents.

Response. The waiver of this requirement can only occur, in accordance with the statute, if the PHA demonstrates to the satisfaction of HUD that there exist resident councils or other organizations that adequately represent the interests of the residents of the public housing agency, and have the ability to perform the functions of a Resident Advisory Board. Since this requirement can only be waived if the residents are represented through some other organization, notification of the waiver of this requirement to all residents is unnecessary.

Comment. The final rule needs to provide criteria and guidelines for what constitutes adequate representation and what is an appropriate size for an Resident Advisory Board. The final rule should require that Resident Advisory Board composition take into account representation based on geographic neighborhood location and reflect the racial/ethnic makeup of resident households. In addition, all Resident Advisory Boards should be required to meet the requirements concerning the structure and selection of authority-wide resident councils contained in 24 CFR part 964.

Response. Resident Advisory Boards should not be viewed as a totally new concept. Both PHAs and public housing residents have experience with similar boards through resident councils. One of the responsibilities of resident councils is to advise PHAs in all aspect of public housing operations. Given the experience to date between PHAs and resident councils, HUD declines to provide more specific guidelines regarding representation. It is important to note, however, that the final rule provides for appointment of a jurisdiction-wide resident council that complies with HUD's regulations in 24 CFR part 964, or its representatives as the Resident Advisory Board. If a jurisdiction-wide resident council does not exist, local resident councils that are in compliance with part 964 shall be appointed, provided that the PHA may require the local council to choose a limited number of representatives. The PHA may appoint other members only to cover public housing or section 8 families not represented by a tenant council that complies with 24 CFR part 964.

Comment. It will take time for PHAs to include Section 8 participants in Resident Advisory Boards. PHAs should be required to address how they will address Section 8 participation in the Plan, but actual participation should not be required for the initial submission.

Response. HUD does not believe that the inclusion of Section 8 participants

in Resident Advisory Boards will take such time that PHAs will be unable to rely on this type of resident involvement in its first plans, especially considering that the first plan submission dates have been delayed by HUD.

Comment. The final rule should not require PHAs that already have resident councils to form Resident Advisory Boards. The final rule should specify, however, that any resident councils that are appointed as Resident Advisory Boards can be expanded and that PHAs can use both resident councils and Resident Advisory Boards.

Response. The statute provides for formation of Resident Advisory Boards. HUD's PHA Plan regulation, however, requires PHAs to appoint existing resident councils as Resident Advisory Boards when these councils meet the statutory and regulatory requirements.

Comment. There should be no automatic appointments to Resident Advisory Boards. The interim rule places too great a burden on PHAs to ensure compliance with 24 CFR part 964 and may lead to perception that PHAs are intruding into the internal workings of resident councils. Using resident councils as Resident Advisory Boards is unwieldy—a resident council could consist of as many as 50 residents. The Public Housing Reform Act does not require that any particular group have an absolute right to serve. HUD should leave it up to PHAs to design their own Resident Advisory Boards.

Response. HUD believes that the rule is clear on the appointment of Resident Advisory Boards. The rule provides that if a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or its representatives as the Resident Advisory Board, except that members shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where necessary. If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on Resident Advisory Boards, provided that the PHA may require that the resident councils choose a limited number of representatives. The PHA would appoint other representatives of families not represented by qualifying resident councils. HUD believes that this best supports the purposes and administration of part 964, which is the only regulation specifically protected by the Public Housing Reform Act.

Comment. Participation by Section 8 participants is not required by Public Housing Reform Act. Section 8 participants have little significant relationship with a PHA after initial lease up, and Section 8 program lacks the communication structure of public housing. Section 8 participants should not be included in Resident Advisory Board requirement.

Response. Section 8 tenant-based assistance is covered by the PHA planning process. HUD believes that it is important that Section 8 participants are therefore included in this process as well.

Comment. A PHA's city-wide resident council is an appropriate entity to discuss the Plan. Why does HUD require the group to change its name when it is discussing the Plan? It will only serve to confuse.

Response. There is no requirement for a resident council to change its name. The statute uses the term Resident Advisory Board and describes specific functions that the Resident Advisory Board must perform. The city-wide council need not change its name to Resident Advisory Board, but it should be clear to the residents that the council has been appointed the Resident Advisory Board as provided by the statute.

Section 903.15 What is the Relationship of the Public Housing Agency Plan to the Consolidated Plan?

Comment. Several comments were directed to the requirement that the PHA plan be consistent with the Consolidated Plan. These comments raised the following issues. Consistency should be defined as broadly as possible and should be worked out at the local level. HUD official who approves Consolidated Plan should be the same official who determines consistency. HUD should give examples of what it considers to be consistent Plans. Thirty days should be adequate for local government review Plan and certify that it is consistent with Consolidated Plan. HUD should work with States to ensure a workable process of determining consistency with Consolidated Plan.

Response. HUD appreciates these comments and agrees that consistency should be worked out at the local level. HUD, therefore, declines to include a definition in the rule.

Comment. HUD should devise an appeals process or a waiver of certification process to resolve disputes between Consolidated Plans and PHA Plans. There are several concerns about the Consolidated Plan process. For example, what if PHAs are not given adequate notice of the State process and Consolidated Plan does not adequately cover housing needs? What if the PHA Plan has to be consistent with various Consolidated Plans? What if the Consolidated Plans are themselves not consistent? What if a city's goals are not consistent with a PHA's goals and the PHA's goal are more consistent with national goals?

Response. HUD will take these comments into consideration but HUD is not adopting these concerns in this final rule. HUD notes that the statute requires a PHA Plan to be consistent with the consolidated plan and does not provide for exceptions. HUD believes that any inconsistencies between a PHA's plan and the Consolidated Plan would probably surface during the public hearing process. HUD also notes that the Consolidated Plan process is subject to HUD's regulations in 24 CFR part 91, which require public participation and consultation. Before adopting regulatory measures to address possible inconsistencies, HUD would like experience with the PHA planning process first to determine if there are these problems as suggested by the commenters, and these problems would not be resolved by either of the public participation and consultation processes that govern the Consolidated Plan and the PHA Plan.

Comment. The interim rule is not clear about what happens if the Consolidated Plan has expired. HUD should allow PHAs to certify that there is no active Consolidated Plan.

Response. Once a Consolidated Plan, once approved, continues in existence until a new or updated Consolidated Plan is submitted and approved.

Comment. If a deconcentration plan is inconsistent with Consolidated Plan's identified needs, PHAs should be required to explain steps taken to address this impact.

Response. PHAs are required to indicate why they chose the strategy they did for addressing housing needs.

Section 903.17 Must the PHA Make Public the Contents of the Plans?

Comment. Notices should be given to other organizations and agencies, such as legal services organizations, welfare agencies, local governments, and non-profit housing providers. Copies of Plans should be available at no cost to those who cannot afford to pay.

Response. With respect to notification about the plan to other organizations and agencies, the final rule requires PHAs to undertake reasonable outreach to encourage participation. With respect to copies of the plan, the final rule is

clear that this information must be available for public review.

Comment. The final rule should specify that notices must be in compliance with State public meeting laws.

Response. HUD need not adopt this requirement in the rule. PHAs must operate in accordance with applicable State laws.

Comment. The final rule should provide PHAs with alternate ways to provide residents with notice.

Response. The rule tracks the statutory requirement, and makes clear the extent of the public's opportunity for participation in the PHA Plan process. PHAs are encouraged to contact residents about the PHA plan and the public hearing process in ways that the PHA believes will provide for wide dissemination of this information and better solicit interest.

Comment. The final rule should require that the notice list the components of the Plan so that the public is clear as to the purpose of the Plan. The notice should also make clear that this is the public's only opportunity to comment.

Response. HUD declines to adopt such a requirement in the final rule. PHAs are welcome to list the Plan's components in the notice and are also encouraged to emphasize to the public that the hearing is the opportunity for the public to provide comments and have input before the plan's adoption.

Comment. The final rule should require a PHA Board to wait 30 days after the public hearing before it can approve the Plan).

Response. HUD declines to adopt this requirement. The 30-day wait may be a delay that is unnecessary given local circumstances. The public housing residents, the public and local officials may be totally supportive of the plan, and under these circumstances a 30-day delay for submission of the plan would serve no clear purpose.

Comment. The final rule should provide for public participation during the development of the Plan, not just when the Plan is ready to be adopted.

Response. The rule reflects the statutory requirement. HUD declines to impose a public participation requirement beyond that established by statute. PHAs, however, are free to involve the public in the development of the plan beyond the requirements imposed by the statute.

Comment. Some commenters suggested that the 45-day notice requirement should be reduced to 15 days. One commenter suggested that the requirement should be increased to 60 days.

Response. The 45-day notice requirement is set by statute. While HUD could extend the time period, HUD cannot reduce this period. The final rule reflects HUD's decision to adhere to the minimum statutory time period.

Comment. Items submitted in advance of the Plan, such as deconcentration policies and new preferences, should not be accepted without input from Resident Advisory Boards and public comment.

Response. All items that are part of the PHA Plan, regardless of whether submitted in advance, are subject to Resident Advisory Board input and the public hearing process.

Section 903.21 May the PHA Amend or Modify the Plan?

Comment. Several concerns were raised about the PHA's amendment or modification of the plan. Concerns were as follows. Section 903.21(a) may strip a PHA's executive director of the authority to reasonably modify certain policies, rules, or regulations without formal Board approval. Further, the final rule should clarify that a ''duly called'' meeting is not subject to the 45-day notice requirement. Section 903.21(b) will significantly slow implementation of changes by giving HUD 75 days to review amendments or modifications to the Plan. The final rule should delete this provision and, instead, require PHAs to submit significant changes as part of next Annual Plan. The final rule should require that only modifications to the mission statement be provided to HUD for approval. HUD should not be allowed more than 30 days to approve/disapprove amendments. The final rule should provide that when PHAs amend or modify a Plan, the public should be given 45 days notice of the meeting to discuss the change. The notice should include a description of any proposed changes.

Response. These requirements and time period with which the commenters are concerned derive directly from the statute, and track the statutory language.

Comment. Section 903.21 does not track all the required statutory language. In particular, § 903.21 does not include the requirements to meet with Resident Advisory Boards and to conduct a public hearing process.

Response. Consultation with the Resident Advisory Board is covered in § 903.13, and the public hearing process is covered in § 903.17.

Comment. Amendments should not be necessary for any changes made in response to HUD actions or decisions.

Response. Depending upon HUD's actions or decisions regarding its review of the PHA Plan, a PHA's failure to amend its Plan in response to HUD actions or decisions may mean that the PHA does not have an approved plan. If HUD's action requires no discretionary PHA action, no amendment would be required. Section 903.23 addresses these issues.

Comment. PHAs should be able to inform HUD of any modifications in the yearly progress report.

Response. PHAs are free to inform HUD of any modifications in its yearly progress report, but PHAs must comply with the provisions of the PHA Plan regulation for significant amendments and modifications.

Comment. The amendment process should not interfere with the day-to-day operations of a PHA.

Response. None of the PHA planning process should disrupt the day-to-day operations of a PHA. The PHA plan should contribute to more effective operations.

Comment. The final rule should require that Resident Advisory Boards be included in the amendment or modification process.

Response. The statute provides for this and the rule reflects this requirement.

Section 903.23 What is the Process by Which HUD Reviews, Approves, or Disapproves an Annual Plan?

Comment. HUD should indicate that any provisions of the Public Housing Reform Act that are not yet fully implemented by HUD and are components of the Plan will not be considered in the approval process.

Response. The PHA Plan template addresses what is currently required to be included in the PHA Plan. As provisions of the Public Housing Reform Act become implemented and are required by statute to be included in the PHA Plan, the template will be updated to reflect these provisions, and PHAs will be notified.

Comment. HUD should use a checklist to conduct reviews of Plans, and this checklist should be distributed to PHAs.

Response. The PHA Plan template serves as the checklist that will guide HUD in reviewing PHAs plans.

Comment. Troubled PHAs should not be ''deemed approved'' if HUD does not respond in 75 days. Section 511 contains exceptions for troubled PHAs. HUD needs to add language to § 903.23 to address this issue.

Response. The PHA Plan final rule reflects the exceptions for troubled PHAs provided in section 511(i)(4)(A).

Comment. In the initial year, HUD should not penalize PHAs for late or incomplete Plans. Generally, HUD should not penalize PHAs for late or incomplete Plans who make a good faith effort to comply.

Response. For the initial PHA plans, HUD has delayed the date of first submission as provided in the September 21, 1999 rule. Additionally, the PHA Plan template makes preparation and submission of the Plan much easier. With the template and additional time to prepare and submit plans, HUD does not believe that PHAs will be late or plans will be incomplete.

Comment. The final rule should clarify what the process is when HUD does not approve a Plan.

Response. HUD's notice to the PHA disapproving the plan will not only advise the PHA of the reasons for the disapproval but what action the PHA needs to take to obtain approval.

Comment. Based on experiences with MTCS and the physical inspection process, HUD has problems improving the accuracy of its information about PHAs. HUD should provide a mechanism for resolving disputes over inconsistencies in information contained in HUD databases. HUD should be required to identify the specific information it says is inconsistent and give PHAs the opportunity to corroborate or correct the information.

Response. The relevancy of this comment to the PHA Plan rule is not totally clear. HUD notes, however, that its physical inspection process has a mechanism for resolving disagreements over claims that information in HUD databases is inaccurate. This process is part of the Public Housing Assessment System. HUD has similar systems for correcting inaccurate information in other programs.

Comment. The final rule should provide a means for technical corrections, re-submission, and conditional approval if HUD review shows a need for minor changes.

Response. For minor changes, HUD believes that a formal process mandated by regulation is not necessary. HUD and PHAs should be able to easily address technical corrections and any necessity for minor changes.

Comment. Complaints about PHA non-compliance with the Plan should have to pass a materiality test before disrupting the HUD approval process.

Response. The regulation does not provide that any complaint about a PHA's non-compliance with the Plan will disrupt the HUD approval process. Whether a complaint is filed with HUD during the review process or after HUD approval has been given, HUD will investigate, but this investigation will not interfere with HUD's responsibilities to PHAs either as part of the PHA plan review and approval process or in other areas. When the investigation is complete, and a finding made, HUD will take appropriate action if action is required.

Comment. The final rule should make clear that a PHA will not need HUD approval for anything the PHA does not currently need HUD approval for.

Response. This is a broad statement but HUD believes that with respect to the PHA plans, the rule is clear on what requires HUD approval. This rule, however, only addresses the PHA Plan requirements.

Section 903.25 How Does HUD Ensure PHA Compliance With its Plan?

Comment. The final rule needs to contain more detail on how HUD will measure PHA compliance and what actions will be taken if a PHA is not in compliance.

Response. For the majority, if not all, of the elements that constitute the PHA Plan, compliance is measured by a PHA's compliance with existing program regulations. The PHA Plan brings together in one source, the PHA's policies, financial information, operating procedures, grievance procedures, and similar information, but a PHA's compliance with these policies or procedures is covered by other program regulations. Therefore, assuming that a PHA has an approved PHA Plan and follows it, a PHA's compliance will be measured by the PHA's compliance with existing program regulations.

Comment. HUD should refrain from taking enforcement actions against PHAs and should use the Plan for monitoring purposes only. The final rule should provide a process, similar to the one at 24 CFR part 135, subpart D, for receiving complaints against non-complying PHAs.

Response. HUD believes that its response to the preceding comments covers these issues as well. HUD's enforcement actions will largely be based on a PHA's compliance with existing program regulations.

VI. Findings and Certifications

Paperwork Reduction Act

The information collection requirements for the interim rule were approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2577–0226. Changes made to the information collection requirements at the final rule stage are not yet approved. The approval when recieved will be announced by separate notice. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12866

This final rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this final rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant under section (3)(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street SW, Washington DC, 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule implements, by statutory directive, a comprehensive planning system for PHAs (which also provides for a consolidated statement of PHA policies on various PHA operations) and also provides a consolidated reporting mechanism. The PHA plans ultimately should minimize administrative burden on all PHAs, including small PHAs, consistent with reasonable accountability. HUD is sensitive to the fact, however, that the uniform application of requirements on entities of differing sizes may place a disproportionate burden on small entities. In this regard, the final rule provides for submission of a streamlined plan by small entities. For all PHAs, HUD's PHA plan electronic template, issued July 30, 1999, significantly reduces the burden of preparation and submission of the PHA Plan.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal

government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule pertains solely to Federal assistance and no programmatic or policy changes would result from this final rule that affect the relationship between the Federal Government and State and local governments.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was prepared at the interim rule stage, in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements

For the reasons stated in the preamble, HUD adopts as final, the interim rule published on February 18, 1999 (64 FR 8170), by revising 24 CFR part 903 to read as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

903.1 What are the public housing agency plans?
903.3 When must a PHA submit the plans to HUD?
903.5 What information must a PHA provide in the 5-Year Plan?
903.7 What information must a PHA provide in the Annual Plan?
903.9 May HUD request additional information in the Annual Plan of a troubled PHA?
903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?
903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan.
903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?
903.17 What is the process for obtaining public comment on the plans?
903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?
903.21 May the PHA amend or modify a plan?
903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?
903.25 How does HUD ensure PHA compliance with its plans?

Authority. 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

§ 903.1 What are the public housing agency plans?

(a) There are two public housing agency plans. They are:

(1) The 5-year plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every 5 PHA fiscal years; and

(2) The annual plan (Annual Plan) that the PHA must submit to HUD for each fiscal year for which the PHA receives:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(b) The purpose of the plans is to provide a framework for local accountability and an easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning its operations, programs and services.

(c) HUD may prescribe the format of submission (including electronic format submission) of the plans, as well as the format of attachments to the plans and documents related to the plan that the PHA does not submit but may be required to make available locally. PHAs will receive appropriate notice of any prescribed format.

(d) The requirements of this part only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(e) In addition to the waiver authority provided in 24 CFR 5.110, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary determines that such waiver is necessary for the effective implementation of this part.

(f) References to the ''1937 Act'' in this part refer to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

§ 903.3 When must a PHA submit the plans to HUD?

(a) *5-Year Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part is the PHA fiscal year that begins January 1, 2000. The first 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning January 1, 2000. The first 5-Year Plans for such PHAs are due on December 1, 1999. For PHAs whose fiscal years begin after January 1, 2000, the 5-Year Plans are due no later than 75 days before the commencement of their fiscal year. For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year.

(2) PHAs may choose to update their 5-Year Plans every year as good management practice. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans.

(b) *The Annual Plan.* The first fiscal year that is covered by the requirements of this part is the PHA fiscal year that begins January 1, 2000. The first Annual Plans for such PHAs are due December 1, 1999. For PHAs whose fiscal years begin after January 1, 2000, the first Annual Plans are due 75 days in advance of PHAs fiscal year commencement dates. For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due 75 days in advance of the commencement of a PHA's fiscal year.

§ 903.5 What information must a PHA provide in the 5-Year Plan?

(a) A PHA must include in its 5-Year Plan for the 5 PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD, a statement of:

(1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and objectives, PHAs must adopt quantifiable goals and objectives for serving those needs wherever possible.

(b) After submitting its first 5-Year Plan, a PHA in its succeeding 5-Year

Plans, in addition to addressing its mission, goals and objectives for the next 5 years, must address the progress it has made in meeting the goals and objectives described in its previous 5-Year Plan.

§ 903.7 What information must a PHA provide in the Annual Plan?

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan submission date, of the information, described in this section that must be included in the first Annual Plan, and any additional instructions or directions that may be necessary with respect to preparation and submission of the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. Additionally, the information that the PHA must submit for HUD approval under the Annual Plan are the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these components. The PHA's Annual Plan also must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families and families with disabilities;

(iii) Households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) on this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data. The identification of housing needs should address issues of affordability, supply, quality, accessibility, size of units and location. The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and the PHA's reasons for choosing its strategy.

(b) *A statement of financial resources.* This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(c) *A statement of the PHA's policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies governing resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, and any assignment and occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act. The requirement to submit PHA policies governing assignment only applies to public housing. This statement also must include the following information:

(1) The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing projects. The statement must address any site-based waiting lists, as authorized by section 6(s) of the 1937 Act. This section permits PHAs to establish a system of site-based waiting lists that is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that such adoption is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity;

(v) The PHA provides for review of its site-based waiting list policy to determine if it is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit) or is otherwise satisfactory to HUD;

(B) At least every three years the PHA uses independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD; and

(C) Taking any steps necessary to remedy the problems surfaced during the review and the steps necessary to affirmatively further fair housing.

(2) The PHA's admissions policy with respect to deconcentration of very low-income families and income-mixing, as required by section 16(a)(3)(B) of the 1937 Act (42 U.S.C. 1437n). To implement this requirement, which is only applicable to public housing, PHAs must:

(i) Determine and compare the relative tenant incomes of each development occupied predominately by families with children. PHAs shall be considered to be in compliance with these requirements if they determine the average household income in all such developments combined and define higher-income families as those with incomes over this average, higher-income developments and buildings as those where the average family income is over this average, lower-income families as those with incomes under this average and lower-income developments and buildings as those where the average family income is under this average;

(ii) Consider what admissions policy measures or incentives, if any, will be needed to bring higher-income families into lower-income and buildings developments and lower-income families into higher income developments and buildings. PHA policies must devote appropriate attention to both of these goals. PHA policies must affirmatively further fair housing; and

(iii) Make any appropriate changes in their admissions policies.

(3) The policies governing eligibility, selection and admissions are applicable to public housing and tenant-based assistance, except that the information requested on site-based waiting lists and deconcentration, which information is applicable only to public housing.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that pertain to rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) *A statement of the PHA's operation and management.* (1) This statement must list the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA. The policies listed in this statement must include a description of any measures necessary for the prevention or eradication of pest infestation which includes cockroach infestation. Additionally, this statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(2) The information pertaining to PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information pertaining to PHA and program management and listing of administered programs applies to public housing and tenant-based assistance.

(f) *A statement of the PHA grievance procedures.* This statement describes the grievance and informal hearing and review procedures that the PHA makes available to its residents and applicants. This includes public housing grievance procedures and tenant-based assistance informal review procedures for applicants and hearing procedures for participants.

(g) *A statement of capital improvements needed.* With respect to public housing only, this statement describes the capital improvements necessary to ensure long-term physical and social viability of the public housing projects, including the capital improvements to be undertaken in the year in question and their estimated costs, and any other information required for participation in the Capital Fund. PHAs also are required to include 5-Year Plans covering large capital items.

(h) *A statement of any demolition and/or disposition.* (1) *Plan for Demolition/Disposition.* With respect to public housing only, a description of any public housing project, or portion of a public housing project, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(2) *Interim Plan for Demolition/ Disposition.* Before submission of the first Annual Plan, PHAs may submit an interim PHA Annual Plan solely with respect to demolition/disposition. The interim plan must provide the required description of the action to be taken, include a certification of consistency with the Consolidated Plan, and description of how the plan is consistent with the Consolidated Plan, and confirm that a public hearing was held on the proposed action and that the resident advisory board was consulted. Interim plans for demolition/disposition are subject to PHA Plan procedural requirements in this part (see §§ 903.13, 903.15, 903.17, 903.19, 903.21, 903.23, 903.25) except that if a resident advisory board has not yet been formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted. The actual application for demolition or disposition could be submitted at the same time or at a later date.

(i) *A statement of the public housing projects designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.* With respect to public housing only, this statement identifies any public housing projects owned, assisted, or operated by the PHA, or any portion of these projects, that the PHA has designated for occupancy only by the elderly families or only by families with disabilities, or by elderly families and families with disabilities or will apply for designation for occupancy by only elderly families or only families with disabilities, or by elderly families and families with disabilities as provided by section 7 of the 1937 Act (42 U.S.C. 1437e). The designated housing application and approval process is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(j) *A statement of the conversion of public housing to tenant-based assistance.* (1) This statement describes any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z–5), or the status of any building or buildings that the PHA may be required to convert to tenant-based assistance under section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 14371 note), or describes that the PHA plans to voluntarily convert under section 22 of the 1937 Act (42 U.S.C. 1437t). The statement also must include an analysis of the projects or buildings required to be converted under section 33. For both voluntary and mandatory conversions, the statement must include the amount of assistance received commencing in Federal Fiscal Year 1999 to be used for rental assistance or other housing assistance in connection with such conversion. The application and approval processes for required or voluntary conversions are separate approval processes. Approval of the PHA Plan does not constitute approval of these activities.

(2) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) *A statement of homeownership programs administered by the PHA.* This statement describes any homeownership programs administered by the PHA under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y)), or under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h)), or an approved HOPE I program (42 U.S.C. 1437aaa) or for any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z–4). The application and approval process for homeownership under the programs described in paragraph (k) of this section, with the exception of the section 8(y) homeownership program, are separate processes. Approval of the PHA Plan does not constitute approval of these activities.

(l) *A statement of the PHA's community service and self-sufficiency programs.* (1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act (42 U.S.C. 1437j(c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (l) of this section is applicable to both public housing and tenant-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) *A statement of the PHA's safety and crime prevention measures.* With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments, and the plan must provide, on a development-by-development or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(1) The statement regarding the PHA's safety and crime prevention plan must include the following information:

(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA; and

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities.

(2) If the PHA expects to receive drug elimination program grant funds, the PHA must submit, in addition to the information required by paragraph (m)(1) of this section, the plan required by HUD's Public Housing Drug Elimination Program regulations (see 24 CFR part 761).

(3) If HUD determines at any time that the security needs of a public housing project are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(n) *A statement of the PHA's policies and rules regarding ownership of pets in public housing.* This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing issued in accordance with section 31 of the 1937 Act (42 U.S.C. 1437a–3).

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), and also certify that it will affirmatively further fair housing. The certification is applicable to both the 5-Year Plan and the Annual Plan.

(2) PHAs shall be considered in compliance with the certification requirement to affirmatively further fair housing if they examine their programs or proposed programs, identify any impediments to fair housing choice within those programs, address those impediments in a reasonable fashion in view of the resources available, work with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement, and maintain records reflecting these analyses and actions.

(p) *Recent results of PHA's fiscal year audit.* The PHA's plan must include the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the 1937 Act (42 U.S.C. 1437c(h)).

(q) *A statement of asset management.* To the extent not covered by other components of the PHA Annual Plan, this statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) *Additional information to be provided.* (1) For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan;

(2) A PHA must identify the basic criteria the PHA will use for determining:

(i) A substantial deviation from its 5-Year Plan; and

(ii) A significant amendment or modification to its 5-Year Plan and Annual Plan.

(3) A PHA must include such other information as HUD may request of PHAs, either on an individual or across-the-board basis. HUD will advise the PHA or PHAs of this additional information through advance notice.

§ 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled under section 6(j)(2) of the 1937 Act (42 U.S.C. 1437d(j)(2)), under the Public Housing Management Assessment Program (24 CFR part 901) or under the Public Housing Assessment System (24 CFR part 902) include its operating budget, and include or reference any applicable memorandum of agreement with HUD or other plan to improve performance and such other material as HUD may prescribe.

§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled under section 6(j)(2); and

(3) PHAs that only administer tenant-based assistance and that do not own or operate public housing.

(b) All streamlined plans must provide information on how the public

may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions. A streamlined plan must include the following information:

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(2) For small PHAs that are not designated as troubled or that are not at risk of being designated as troubled under section 6(j)(2) of the 1937 Act the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y). The information required by § 903.7(m) must be included only to the extent this information is required for the PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year.

(3) For PHA's that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?.

(a) A Resident Advisory Board is a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(2) The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

(b) Each PHA must establish one or more Resident Advisory Boards, as provided in paragraph (b) of this section.

(1) If a jurisdiction-wide resident council exists that complies with the tenant participation regulations in 24 CFR part 964, the PHA shall appoint the jurisdiction-wide resident council or its representatives as the Resident Advisory Board, except that members shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where such representation is required under paragraph (b)(2) of this section. If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on or more Resident Advisory Boards, provided that the PHA may require that the resident councils choose a limited number of representatives.

(2) Where the PHA has a tenant-based assistance program of significant size (where tenant-based assistance is 20% or more of assisted households), the PHA shall assure that the Resident Advisory Board or Boards has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation.

(3) Where or to the extent that resident councils that comply with the tenant participation regulations do not exist, the PHA shall appoint Resident Advisory Boards or Board members as needed to adequately reflect and represent the interests of residents of such developments; provided that the PHA shall provide reasonable notice to such residents and urge that they form resident councils with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in § 903.21.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the Plan to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located. The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice.

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

(2) For State agencies that are PHAs, the applicable Consolidated Plan is the State Consolidated Plan.

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Consolidated Plan process, by the State or local officials, as applicable.

§ 903.17 What is the process for obtaining public comment on the plans?

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5-Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s), the required attachments and documents related to the plans, and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

§ 903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?

A PHA may adopt its 5-Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

(a) The PHA has conducted the public hearing;

(b) The PHA has considered all public comments received on the plan;

(c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

§ 903.21 May the PHA amend or modify a plan?

(a) A PHA, after submitting its 5-Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, as defined in § 903.7(r)(2), the PHA:

(1) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and

(2) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in § 903.23.

(b) Each significant amendment or modification to a PHA Plan submitted to HUD is subject to the requirements of §§ 903.13, 903.15, and 903.17.

§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

(a) *Review of the plan.* When the PHA submits its Annual Plan to HUD, including any significant amendment or modification to the plan, HUD reviews the plan to determine whether:

(1) The plan provides all the information that is required to be included in the plan;

(2) The plan is consistent with the information and data available to HUD and with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(3) The plan is not prohibited or inconsistent with the 1937 Act or any other applicable Federal law.

(b) *Disapproval of the plan.* (1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any significant amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any significant amendment or modification to the plan:

(i) Does not provide all the information that is required to be included in the plan;

(ii) Is not consistent with the information and data available to HUD or with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; or

(iii) Is not consistent with applicable Federal laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan, or the date on which the PHA submits its significant amendment or modification to the plan, HUD will issue written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the PHA submits the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that were submitted, and to be reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(4) The provisions of paragraph (b)(3) of this section do not apply to troubled PHAs. The plan of a troubled PHA must be approved or disapproved by HUD through written notice.

(c) *Designation of due date as submission date for initial plan submissions.* For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual Plans submitted by a PHA will be considered to have been submitted on their due date (December 1, 1999 or 75 days before the start of the PHA fiscal year, as appropriate; see § 903.3).

(d) *Public availability of the approved plan.* Once a PHA's plan has been approved, a PHA must make its approved plan and the required attachments and documents related to the plan, available for review and inspection, at the principal office of the PHA during normal business hours.

§ 903.25 How does HUD ensure PHA compliance with its plan?

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

Dated: October 14, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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Part III

Department of Housing and Urban Development

24 CFR Part 964

Public Housing Agency Organization; Required Resident Membership on Board of Directors or Similar Governing Body; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 964

[Docket No. FR–4502–F–02]

RIN 2577–AC13

Public Housing Agency Organization; Required Resident Membership on Board of Directors or Similar Governing Body

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: On June 23, 1999, HUD published a proposed rule to implement section 2(b) of the United States Housing Act of 1937, which was added by section 505 of the Quality Housing and Work Responsibility Act of 1998. Section 2(b) requires, with certain exceptions, that the membership of the board of directors or similar governing body of a public housing agency (PHA) must contain not less than one member who is directly assisted by the PHA. This final rule makes effective the policies and procedures described in the June 23, 1999 proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: Effective Date: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives, Room 4116, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000; telephone (202) 708–0713; or Paula Blunt, Office of Public and Indian Housing, Room 4226, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000; telephone (202) 619–8201. Hearing- or speech-impaired individuals may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. With the exception of the ''800'' number, these are not toll-free telephone numbers.

SUPPLEMENTARY INFORMATION:

I. The June 23, 1999 Proposed Rule

On June 23, 1999 (64 FR 33644), HUD published a proposed rule to implement section 505 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998; 112 Stat. 2461, 2522) (the ''Public Housing Reform Act''). The Public Housing Reform Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. Among other goals, the changes made by the Public Housing Reform Act are designed to provide for more resident involvement, and to increase resident participation and awareness in creating and maintaining a positive living environment.

Section 505 of the Public Housing Reform Act amended section 2 of the United States Housing Act of 1937 (42 U.S.C. 1437) (the ''1937 Act''). New section 2(b)(1) of the 1937 Act requires, except in certain cases, that:

> the membership of the board of directors or similar governing body of each public housing agency shall contain not less than 1 member—(A) who is directly assisted by the public housing agency; and (B) who may, if provided for in the public housing agency plan, be elected by the residents directly assisted by the public housing agency.

New section 2(b)(2) of the 1937 Act establishes two exceptions to the resident board member requirement. First, public housing agencies (PHAs) that are located in a State that requires the members of a board of directors or similar governing body of a PHA to be salaried and to serve on a full-time basis are excepted from the resident board member requirement. Second, PHAs with less than 300 units are excepted from the resident board member requirement if they meet two conditions:

(1) The PHA must provide reasonable notice to the resident advisory board of the opportunity for residents to serve on the PHA board of directors or similar governing body; and

(2) The PHA must wait a reasonable time after the resident advisory board has received this notice.

Resident advisory boards participate in the PHA planning process and assist and make recommendations regarding the PHA Plan. The membership of a resident advisory board is made up of individuals who adequately reflect and represent the residents assisted by the PHA. (See 24 CFR 903.13 for additional information regarding resident advisory boards.) Part 903 of 24 CFR (entitled ''Public Housing Agency Plans'') was established by interim rule published on February 18, 1999 (64 FR 8170).

The June 23, 1999 rule proposed to implement section 2(b) in a new subpart E to 24 CFR part 964, which contains HUD's regulations concerning resident participation and resident opportunities in public housing. The preamble to the June 23, 1999 proposed rule describes in detail the proposed amendments to 24 CFR part 964.

II. Significant Changes Between June 23, 1999 Proposed Rule and This Final Rule

This final rule makes effective the policies and procedures contained in the June 23, 1999 proposed rule and takes into consideration the public comments received on the proposed rule. The major changes made by this final rule in response to public comment are described below. The rationale for these changes are discussed in greater detail in Section III of this preamble.

1. *Covered funding.* The final rule clarifies that, subject to certain exceptions, the statutory resident board member requirement applies to any PHA that has a public housing annual contributions contract with HUD or that administers Section 8 tenant-based rental assistance. The requirement does not apply to any State financed housing assistance or Section 8 project-based assistance.

2. *State and local procedures.* Sections 964.435 (which describes initial implementation of the resident board member requirement) and 964.440 (which describes the procedures for filling an open board member seat) of the proposed rule are not included in this final rule. These sections established specific board-level procedures that were intended to assist PHAs in implementing the resident board member requirement. HUD decided not to include these sections in the final rule and instead leave the type of implementation details covered by §§ 964.435 and 964.440 to State and local governments to resolve. It is important to note, however, that the exclusion of these sections from the final rule does not relieve covered PHAs of the responsibility to implement the resident board member requirement. The resident board member requirement took effect beginning on October 1, 1999. HUD believes that implementation of this new requirement should occur as soon as possible after this date. All covered PHAs must take the steps necessary to comply with this requirement if they have not done so already.

In addition, as a result of the decision to remove §§ 964.435 and 964.440, the definitions of the terms ''elected board member'' and ''related unit of general local government'' have not been included in the final rule because they are no longer necessary.

3. *Exceptions to resident board member requirement.* For purposes of clarity, this final rule reorganizes the listing of the exceptions to the statutory resident board member requirement.

The description of the exception for small PHAs is still located in § 964.425 (which has been re-designated as ''Small public housing agencies''). The other two exceptions—for PHA boards with full-time salaried members and for PHAs with no governing boards—have been relocated to § 964.405 (which describes the scope of the applicability of the resident board member requirement).

4. *PHAs that only administer Section 8 assistance.* The final rule clarifies that PHAs that only administer Section 8 assistance qualify for the ''small PHA'' (i.e., those with less than 300 public housing units) exception to the resident board member requirement regardless of the number of Section 8 vouchers they administer.

5. *Eligibility for ''small PHA'' exception.* The final rule clarifies that, in order to qualify for the ''small PHA'' exception, the PHA must satisfy all of the conditions described in § 964.425. Specifically, the PHA must: (a) have less than 300 public housing units (or no public housing units); (b) provide reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board; (c) not be notified of the intention of any resident to participate on the governing board within a reasonable time; and (d) repeat notification to the resident advisory board at least once every year. If any of these conditions are not satisfied, the PHA is subject to the resident board member requirements. For example, if a small PHA (after providing the required notice to the resident advisory board) is notified of a resident's intention to serve on the governing board, the PHA must comply with the requirements of new 24 CFR part 964, subpart E.

6. *''Reasonable time'' must not be less than 30 days.* The final rule provides that, in order to qualify for the ''small PHA'' exception, the PHA must provide residents with at least 30 days to express their interest in serving on the PHA governing board.

7. *Resident participation on the board must include matters regarding covered assistance.* The final rule clarifies that a resident board member must be allowed to take part in PHA board decisions related to the administration, operation, and management of Federal public housing programs and Section 8 tenant-based assistance programs. This rule does not extend to matters that: (a) Exclusively relate to other types of housing assistance (such as State financed housing assistance); or (b) do not involve housing assistance (as may occur where the city or county governing body also serves as the PHA board).

However, a PHA may choose to expand the scope of resident member involvement to matters not covered by this rule.

8. *Eligible resident.* The final rule provides that, in order for a resident to be eligible for board membership, the resident's name must appear on the lease and the resident must be at least 18 years of age.

9. *Resident board member no longer directly assisted.* The final rule clarifies that a resident board member who is no longer directly assisted by the PHA may be removed for that cause from the PHA board, where such action is permitted under State or local law. Alternatively, the board member may be allowed to complete his/her current term as a member of the PHA governing board. However, the board member may not be re-appointed (or re-elected) to the governing board for purposes of serving as the statutorily required resident board member.

10. *Minimum qualifications for board membership.* The final rule provides that any generally applicable qualifications for board membership also apply to residents, unless the application of the requirements would result in the governing board not containing at least one eligible resident as a member. Further, PHAs and localities may not establish eligibility requirements for board membership that are solely applicable to residents.

11. *Election procedures.* The final rule adopts several of the relevant election procedures described in § 964.130. This section establishes the requirements governing the election of public housing resident councils. Further, any election procedures devised by the PHA must facilitate fair elections.

12. *Conflicts of interest.* The final rule clarifies that a resident board member may take part in any matters before the board so long as that matter is not applicable to that resident in a personal capacity. A resident board member may only be excluded from participation in a matter that uniquely applies to that resident, and the resident may be involved in any matter that is generally applicable to residents. The final rule also makes clear that having a lease with the PHA does not constitute a conflict of interest for the resident board member. Further, the rule clarifies that a board member's status as a public housing resident or recipient of Section 8 tenant-based assistance does not constitute a conflict of interest.

13. *Conforming change.* The final rule also makes a technical, non-substantive change to 24 CFR part 964. Specifically, the rule removes outdated § 964.110, which describes HUD's policy regarding resident membership on the PHA governing board. These provisions have been incorporated in new subpart E.

III. Discussion of Public Comments Received on the June 23, 1999 Proposed Rule

The public comment period on the June 23, 1999 proposed rule closed on August 23, 1999. HUD received 71 comments on the proposed rule. Comments were submitted by PHAs; the three main organizations representing PHAs; legal services organizations; resident organizations; low-income housing advocates; and various other organizations and individuals.

This section of the preamble presents a summary of the significant issues raised by the public commenters on the May 29, 1998 proposed rule and HUD's responses to these comments.

A. Support for Proposed Rule

Several commenters supported the proposed amendments to 24 CFR part 964. One of the commenters wrote to express his strong support for the rule based on his experience as the executive director of a PHA that has had a resident board member for 25 years. However, the majority of the commenters writing in support also expressed concerns regarding the implementation of the resident board membership requirements.

B. Opposition to Resident Board Member

Several commenters opposed the resident board membership requirement. Although these commenters provided a variety of reasons for their opposition, they all agreed that a PHA board should not be required to include a public housing resident as a member.

Comment: Residents are not qualified to serve on PHA board. Several of the commenters wrote that public housing residents lack the necessary experience and expertise to serve on a PHA board. One of these commenters wrote that resident board members, many of whom have never owned property or managed a bank account, will be required to make sound financial and management decisions. Another commenter wrote that most of the qualified residents are elderly or caring for families and, therefore, unable to serve on a PHA board. The commenters feared that resident board members would lower the standard for PHA board membership and weaken the PHA's ability to garner local support. The commenters also worried that the requirement would

discourage qualified persons from serving on the PHA board.

Comment: Requirement will endanger confidentiality of board deliberations and create conflicts of interest. Several commenters wrote that resident members would endanger the confidentiality of board deliberations. Other commenters wrote that the requirement may pose a conflict of interest for a resident required to make decisions that will financially impact the resident's family. Several commenters worried about the potential for abuse of power by a resident board member.

Comment: Requirement presents logistical difficulties. Several commenters wrote about the logistical difficulties presented by the PHA board membership requirement. For example, one commenter wrote that in rural areas PHAs will have difficulty ensuring that a resident board member travels the necessary distance to attend PHA board meetings. The commenter also wrote that board meetings are often held during working hours, which makes it difficult for employed residents to attend.

Comment: Residents are not interested in serving on PHA boards. Other commenters wrote that PHAs often have difficulty attracting resident participation. According to the commenters, this could result in a resident board member who does not fully or enthusiastically participate in decisionmaking. One commenter wrote that the lack of resident interest indicates that public housing residents do not have the necessary responsibility or dedication to serve on a PHA board.

Comment: Requirement is unnecessary—residents already have input in PHA management and operations. Several commenters wrote that the PHA board membership requirement is unnecessary. These commenters noted that residents currently have the right to provide input in public housing management and operations through the resident advisory board and other forums.

HUD Response. (This response applies to all of the comments discussed in this section III.B.) HUD's part 964 regulations have always encouraged active resident participation in PHAs, including involvement in management and operation (§ 964.15) and resident membership on PHA governing boards (§ 964.110). HUD understands that these commenters have concerns regarding the effectiveness of requiring a resident board member. HUD is not in a position, however, to revise or rescind this requirement because it is a statutorily mandated requirement. As noted in the preamble to the July 2, 1999 proposed rule and the preamble to this rule, section 2(b) of the 1937 Act requires that each PHA governing board contain at least one member who is directly assisted by the PHA. Congress enacted new section 2(b) because Congress viewed the resident board member requirement as necessary to promote a better understanding of resident concerns and to foster better relations and communication between residents and PHAs (S. Rep. No. 105–21, at 7 (1998)).

C. Federalism Concerns

Many commenters raised concerns regarding the Federalism implications of the proposed rule. The comments reflect the belief that the proposed rule infringes on the rights of PHAs, as well as the rights of States and localities. The commenters wrote that accomplishing the statutory goal of including a resident member on each PHA board will be much more difficult than the proposed rule contemplates. A large portion of the comments point out that section 2(b) conflicts with many State laws governing PHA board membership. Several of the commenters wrote that adding an additional seat to an elected board would conflict with the State election laws and infringe on the rights of States. Many of the commenters asked HUD to seek a change to the law where the organization of the board is not conducive to resident participation, such as where the board is the city council.

One of the commenters wrote that section 2(b) may be unconstitutional. According to the commenter, section 2(b) would unconstitutionally ''rewrite State housing authority laws,'' and ''prescribe the manner in which appointing authorities will exercise the prerogative of appointment, which derives from State statute.'' The commenter wrote that the ''Federal government may neither issue directives requiring the States to address particular problems, nor command the State's officers, or those of their political subdivisions, to administer or enforce a Federal regulatory program'' (quoting the United States Supreme Court decision in *Printz* v. *United States,* 521 U.S. 98 (1997)). The commenter also noted that many PHAs operate programs that ''have nothing to do with the Federal government.'' However, the ''Federal mandate contained in (section 2(b) and the proposed rule) necessarily affects the nonfederal activities of'' PHAs.

The commenter acknowledged that the Federal government may attach conditions to the receipt of Federal funding. However, the commenter wrote that ''the mandates involved here are directed, not to the [PHA] that is party to the (Annual Contributions Contract (ACC)), but to the appointing authority, which is not.'' The commenter also acknowledged that the Federal government can preempt State law, but did not believe that preemption was justified in this context. Specifically, the commenter did not find explicit statutory language authorizing peremption, nor the existence of ''a regulatory scheme so pervasive as to imply (a Federal) intent to occupy a particular field.'' Neither did the commenter believe that preemption would be justified due to a conflict between State law and section 2(b).

HUD Response. HUD agrees that this rulemaking, which seeks to implement the explicit statutory directive of section 2(b), may have direct effects on States and localities. The Federalism implications of the rulemaking, however, derive solely from the statutory text and substance of section 2(b). The scope of the rule is exclusively concerned with implementation of the statutory resident board membership requirement.

HUD believes that this rulemaking is necessary to: (1) Provide guidance to PHAs in fulfilling this requirement; (2) minimize the potential burdens on States and local governments in carrying out the statutory mandate; and (3) ensure that the Federal objective of increasing resident involvement in public housing is achieved. In most instances where section 2(b) provides HUD with the flexibility to leave a matter to the discretion of a State or locality, HUD has elected to do so. As is noted in the summary of comments below, many commenters requested additional regulatory guidance on a variety of matters related to the statutory resident board membership requirement. In most of these instances, HUD has declined to adopt the suggestion made by the commenters on the basis that States and localities should have flexibility in implementing the requirements of section 2(b). In one instance, HUD decided not to include two sections of the proposed rule (§§ 964.435 and 964.440) specifically to provide States and localities with the flexibility to reconfigure their PHA governing boards to comply with the requirements of section 2(b) in a manner best suited to local conditions.

HUD is not in a position to determine the Constitutionality of section 2(b). However, HUD has concluded that section 2(b) preempts any conflicting State laws regarding PHA board membership. This final rule reflects this

statutory preemption, and does not constitute a decision on HUD's part to preempt State law through its rulemaking authority.

Executive Order 12612, *Federalism*, was issued on October 30, 1987 (52 FR 41685). The Order requires that executive branch agencies take Federalism concerns into account when developing and implementing agency policy initiatives that have substantial, direct effects on States or their political subdivisions, or on the relationship or distribution of power among the various levels of government. Section 4 of Executive Order 12612 contains special provisions governing the preemption of State law by Federal statutes and regulations. Specifically, section 4 of the Order provides that:

> To the extent permitted by law, Executive departments and agencies shall construe, in regulations and otherwise, a federal statute to preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

Although section 2(b) does not expressly provide for the preemption of State laws governing PHA board membership, HUD has concluded that ''firm and palpable'' evidence exists for concluding that the Congress intended the preemption of State law in those cases where the ''State authority directly conflicts'' with the Federal resident board membership requirement.

The first reason for HUD's conclusion is the statutory language of section 2(b). The statutory resident board membership requirement is explicit:

> Except as provided * * * the membership of the board of directors or similar governing body of each (PHA) shall contain not less than 1 member * * * who is directly assisted by the (PHA).

The exceptions referred to are: (1) For small PHAs with less than 300 units; and (2) for PHAs in States that require that PHA board members be full-time salaried employees. The two statutory exceptions reflect Congressional awareness that the resident board membership requirement may be burdensome for small PHAs or conflict with certain State requirements. Nevertheless, the Congress elected to provide exceptions only for the two narrow situations described above. Accordingly, HUD has concluded that the statutory language of section 2(b) contains firm and palpable evidence that the Congress intended the resident board membership requirement to be broadly applicable, regardless of conflicting State law.

HUD's second reason for its conclusion is based on the dominant Federal interest in the public and assisted housing programs administered under the 1937 Act. HUD's August 22, 1988 (53 FR 31926) notice implementing Executive Order 12612 provides that HUD will infer preemption where ''the field is one in which Federal interest is sufficiently dominant to provide firm and palpable evidence that Congress intended to preclude enforcement of State laws on the same subject.'' HUD believes, for the following reasons, that the section 2(b) requirements satisfy this test.

The 1937 Act, a Federal statute, establishes the basic framework for most of the public and assisted housing programs operated by PHAs throughout the country. HUD is the Federal agency responsible for establishing and enforcing the regulatory and contractual requirements necessary to carrying out the purposes of the 1937 Act. With few exceptions, HUD is the primary source of funding for public housing developments assisted under the 1937 Act. Given this dominant Federal role in the administration of 1937 Act programs, HUD has concluded that section 2(b) preempts any conflicting State laws governing PHA board membership.

Further, as one of the commenters acknowledges, the Federal government may establish conditions on the receipt of Federal funds. For the recipients of the Federal funds, these conditions preempt any conflicting State or local requirements. As this final rule makes clear, the resident board member requirement is a condition to the receipt of funding under the 1937 Act. For example, the requirements of section 2(b) apply solely to PHAs that have an ACC with HUD or that administer tenant-based rental assistance under section 8 of the 1937 Act (see § 964.405). Additionally, resident participation is required only for those PHA board decisions related to Federally funded public housing and Section 8 tenant-based assistance programs. The requirements of section 2(b) do not extend to PHA board decisions that exclusively affect other types of housing assistance, or that do not regard housing assistance. (See § 964.430(a)(2).) As a condition of 1937 Act funding, the statutory resident board member requirement supersedes any conflicting State or local requirements regarding PHA board membership for those PHAs receiving assistance under the 1937 Act.

D. Other General Comments Regarding the Proposed Rule

Comment: Stipends and Per Diems Should be Excluded from Income. Two commenters wrote that stipends and per-diem expenses are common for PHA board members. The commenters suggested that HUD exclude these items from the income of the resident board member. Otherwise, the board member would risk an increase in rent, which is calculated based on resident income.

HUD Response. HUD agrees that counting such stipends as ''income'' for the purposes of determining rent could serve as a deterrent to residents who would otherwise be interested in serving on the PHA Board. HUD is addressing this issue in the final rule on Admission and Occupancy to reflect that stipends for services rendered as a resident board member are to be treated as resident services stipends, which are exempted from a resident's income to the extent other such stipends are exempt. (For additional details regarding the Admission and Occupancy rule, see the proposed rule published on April 30, 1999 (64 FR 23460).)

Comment: What happens to a resident board member who is no longer ''directly assisted'' by the PHA? Several commenters asked whether a resident who is no longer directly assisted by the PHA (due to eviction, etc.) could continue to serve on the PHA board. Some of the commenters wrote that requiring the resident to leave the board might conflict with State or local requirements governing the selection and removal of board members. Other commenters asked whether the resident who replaces the removed board member would complete the original board membership term or start a new term.

HUD Response. A resident board member who ceases to be directly assisted by the PHA is no longer an ''eligible resident'' as defined in § 964.410. Such a board member may be removed from the PHA board for that cause, where such action is permitted under State or local law. State laws and PHA policies should be changed, where necessary, to reflect that resident board members who cease to be directly assisted by the PHA may be removed from the board for cause. Alternatively, the board member may be allowed to complete his/her current term as a member of the PHA governing board. However, the board member may not be re-appointed (or re-elected) to the governing board for purposes of serving as the statutorily required resident board member.

Comment: Final rule should provide for the removal of disruptive resident board members. One commenter suggested that HUD revise the proposed rule to provide for the removal of unruly or disruptive resident PHA board members.

HUD Response. As previously noted, section 2(b) of the 1937 Act and § 964.430 of this final rule, provide that a resident board member is a full member of the governing board. As a full member, the resident board member is subject to the same rules regarding behavior as any other board member. HUD does not see any need to impose additional procedures regulating the behavior of resident board members. Moreover, the imposition of such procedures specific to resident board members would undermine the resident board member's position as a full member of the governing board and would run counter to Congress' intent in enacting the resident board member requirement.

Comment: Final rule should contain a mechanism for resident complaints, investigation, and consequences of PHA noncompliance. One commenter made this suggestion.

HUD Response. HUD has not adopted the change suggested by this commenter. PHAs that fail to comply with the requirements of this final rule are subject to the same noncompliance and enforcement procedures that apply to other 1937 Act requirements. Consequently, HUD does not see the need to implement additional compliance procedures.

Comment: Rule should provide for training and provision of resources to resident board member. Two commenters wrote that the final rule should provide for the training of resident board members by an independent training entity on all aspects of PHA operations. The commenters also suggested that resident board members should be provided with adequate resources (office space, phone, photocopier, etc.) to carry out their duties.

HUD Response. HUD has not changed the rule to reflect this request. Resident board members are to be treated as any other member of the governing board. If all board members are provided with resources, such as office space and office equipment, these must also be made available to the resident board member. HUD will not, however, require that PHAs supply additional resources to the resident board member. HUD continues to encourage PHAs to maintain partnerships to provide training to residents consistent with § 964.140.

Comment: What happens if there is only one resident who expresses interest in serving on the board? Several commenters posed this question.

HUD Response. Appointing authorities are not required to appoint any specific member to the board of directors. If there is limited interest among residents so that the PHA or appointing authority believes there is no real choice in who becomes a board member, the PHA or appointing authority may undertake outreach efforts to identify a pool of interested residents. However, a PHA is required to have a resident on its board, regardless of the number of residents who are interested.

E. Comments Regarding § 964.405—Applicability

Proposed § 964.404 identifies the types of assistance to which the resident board membership requirement applies. The proposed rule provides that new subpart E is applicable to ''any [PHA] that has a public housing annual contributions contract with HUD or a housing assistance payments contract with HUD under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).''

Comment: Does the resident board membership requirement apply to PHAs that only administer Section 8 assistance? Several commenters asked whether the resident board membership requirements are applicable to PHAs that do not administer public housing programs, but do administer Section 8 assistance. One of the commenters wrote that the wording of proposed § 964.405 is confusing because it refers to a Section 8 ''housing assistance payment [HAP] contract with HUD.'' The commenter noted that under the tenant-based Section 8 program, there is no HAP contract *with* HUD. Another commenter noted that section 2(b) establishes an exception for small PHAs based on the number of ''public housing units'' operated by the PHA. According to the commenter, this statutory language implies that PHAs that do not operate any ''public housing units'' are totally exempt from the resident board membership requirements.

HUD Response. PHAs that only administer Section 8 assistance are subject to the resident board membership requirement. However, they fall within the category of PHAs with less than 300 public housing units, regardless of the number of Section 8 vouchers they administer. This means that these PHAs are exempt from the resident board member requirement, provided: (1) They have given adequate prior notice to the resident advisory board of the opportunity for a resident to become a resident board member, and (2) that within a reasonable time of such notice, the PHA has not been notified of any residents who are interested in such participation. This rule makes the necessary qualification to § 964.425, which describes the ''small PHA'' exception to the resident board member requirement.

The final rule also clarifies that the resident board membership requirement applies to PHAs that ''administer tenant-based rental assistance under Section 8 of'' the 1937 Act. The change is in response to the commenter who noted that under the tenant-based Section 8 program there is no HAP contract with HUD.

HUD also notes that, under the interim rule on PHA Plans published in the **Federal Register** on February 18, 1998 (64 FR 8170), all PHAs (including those that only administer Section 8 assistance) are required to establish a resident advisory board. (The PHA Plan interim rule is codified at 24 CFR part 903.)

F. Comment Regarding § 964.410—Additional Definitions

Proposed § 964.410 defines various terms that are applicable to the resident board membership requirements described in new 24 CFR part 964, subpart E.

Comment: Definition of ''directly assisted'' should be narrowed/broadened. Proposed § 964.410 defines ''directly assisted'' to mean ''a public housing resident or a participant in the tenant-based section 8 program.'' Two commenters objected to this definition. One of the commenters suggested that the scope of the definition be narrowed to only include Federal programs. The commenter noted that many PHAs administer State housing programs that should not be subject to Federal requirements. However, the second commenter suggested that the definition include all persons assisted by the PHA, including those assisted under Department of Agriculture Rural Development projects.

HUD Response. The final rule clarifies that ''directly assisted'' means residing in public housing or receiving Section 8 tenant-based assistance. Direct assistance does not include any State-financed housing assistance programs, section 8 project-based assistance, or Section 8 new construction assistance.

Comment: Definition of ''elected board member'' should exclude residents who serve on PHA board as a result of being elected to another office. The proposed rule defines ''elected board member'' to mean ''either a

member of the governing board who is elected directly to the governing board or *who serves on the board as a result of being elected to another office''* (emphasis supplied). One commenter wrote that the definition should be revised to exclude resident board members who serve on the board as a result of being elected to another office. According to the commenter, including such members in the definition frustrates the democratic electoral process contemplated by section 2(b).

HUD Response. As a result of the decision to remove § 964.435 from the final rule, the definition of the term ''elected board member'' is no longer necessary and has also been removed from the final rule. This comment and the following discussion are included in the final rule, however, because the situation where a resident board member may serve on a governing board as a result of being elected to another office may still occur.

There are a number of jurisdictions in which certain local elected officials may also act, by virtue of their elected office, as members of the PHA governing board. For example, a city council may also act as the local PHA governing board. In cases like these, when a person is elected to the city council they are also, automatically, ''elected'' to the PHA governing board. These members have dual roles. The definition of ''elected board member'' in the proposed rule makes clear that these elected officials are elected board members. If a PHA resident is elected to such a ''dual-purpose'' local office, then that resident may also serve as the statutorily required resident board member under section 2(b).

The comment suggests that this creates a conflict if the PHA Plan provides for the resident board member to be ''elected by the residents directly assisted by the (PHA).'' The conflict appears to stem from the fact that the resident board member has not been directly elected by the residents, as provided for in the PHA Plan. In this case, however, there is no conflict.

The requirement to have at least one resident board member is mandatory, while provision for direct elections is merely permissive. If provided for in the PHA Plan, section 2(b) states that a resident may be directly elected by residents. Even if it is provided for in the PHA Plan, section 2(b) does not require the direct election by residents. Therefore, if a resident becomes a board member by virtue of holding some other elected office, that resident may also qualify as the statutorily required board member under section 2(b), even though the resident was not directly elected by residents. However, the locality is free to decide that the ''dual purpose'' resident should not also serve as the statutorily required resident board member. The locality could then hold the election provided for in the PHA Plan, and have the resident board member directly elected by the public housing residents.

Comment: Definition of ''eligible resident'' should include additional criteria. Proposed § 964.410 provides that a resident is eligible to serve on a PHA board if the resident ''is directly assisted by a [PHA] and is eighteen years of age or older.'' Several commenters requested that the definition provide additional eligibility criteria. For example, one of the commenters suggested that the criteria for board membership should be the same as for membership in a public housing Resident Council. However, the commenter also suggested that the Resident Council eligibility requirements at § 964.125 should be revised so that residents whose names do not appear on the lease are eligible for board membership. Other commenters recommended that only residents in good standing should be eligible for PHA board membership. One commenter suggested that any minimum qualifications for PHA board members should also apply to residents. Another commenter requested clarification on whether Section 8 Existing or New Construction residents are eligible to serve on a PHA board.

HUD Response. In response to these comments, HUD reevaluated the requirements contained in the definition of the term ''eligible resident'' to make sure that the definition was appropriate and capable of being implemented in a fair and consistent manner. HUD is concerned about implementation of the resident board member requirement being delayed because of conflicts over secondary issues such as the definition of an eligible resident. Accordingly, HUD has made the following changes to the definition of ''eligible resident.''

HUD has decided to include in the definition that to be eligible, a resident must be named in the lease. The reason for this change is to make clear exactly who may become a resident board member and to avoid any possible conflicts about who is a resident directly assisted by a PHA. A person is a resident directly assisted if he or she is are listed on the lease.

HUD agrees with the commenters who wrote that any general minimum qualifications for board membership should also apply to residents. HUD has revised the proposed rule to adopt this suggestion. However, these requirements cannot excuse a PHA's failure to comply with the requirements of section 2(b). A PHA must have at least one resident board member despite these minimum qualifications. Further, PHAs and localities may not establish eligibility requirements for board membership that are solely applicable to residents.

HUD has decided not to include a requirement that a resident be in good standing. HUD believes that the term ''good standing'' may be defined in different ways by each PHA and could be used to exclude a resident from participation without good cause. Other than the requirement that a resident must be named in the lease, the definition of ''eligible resident'' remains the same as in the proposed rule.

G. Comments Regarding § 964.420—Election of Resident Board Member

Proposed § 964.420 provides that residents directly assisted by a PHA may elect a resident board member, if provided for in the PHA Plan.

Comment: PHA should be required to advise residents of election procedures. One commenter suggested that a PHA should be required to advise all residents of the election procedures in writing. Another commenter recommended that the a PHA should be required to certify that it has advised the PHA resident advisory board that resident board members may be elected.

HUD Response. HUD believes that most decisions regarding election procedure should be determined locally. However, HUD agrees that some minimal standards must be met. Accordingly, HUD has revised the proposed rule to adopt several of the relevant provisions of 24 CFR 964.130, which describes the election procedures for public housing resident councils. Specifically, the final rule requires that the PHA must provide residents with at least 30 days advance notice for nominations and elections. The notice should include a description of the election procedures, eligibility requirements, and dates of nominations and elections. Further, any election procedures devised by the PHA must facilitate fair elections.

Comment: Resident council election procedures should be incorporated in final rule. One commenter suggested that the resident council election procedures described in § 964.130 should be incorporated in new subpart E. According to the commenter, this will ensure that sufficient notice is provided to residents before elections, and that election are held on a fair and frequent basis.

HUD Response. As noted in the response to the previous comment, HUD has revised the proposed rule to adopt several of the relevant provisions of 24 CFR 964.130, which describes the election procedures for public housing resident councils.

Comment: Final rule should require the election of resident board members. Several commenters wrote that the final rule should require that resident board members be elected. According to the commenters, this will ensure that the board membership process is fair and democratic.

HUD Response. The statute provides that the decision to allow an elected resident board member is to be made locally. Section 2(b) does not establish a right to an elected resident board member, it merely allows for the possibility and requires that this choice become part of the PHA Plan. The purpose of informing residents of the fact that a resident board member may be elected is to allow residents to petition their PHAs to allow elected resident board members. In the end, however, the decision to allow elected resident board members is a local one.

H. Comments Regarding § 964.425—Exceptions

Proposed § 964.425 describes the exceptions to the resident board membership requirements. Specifically, the proposed rule exempts PHAs that are not governed by a PHA board, or are located in a State that requires board members to serve on a full-time salaried basis. The proposed rule also provides that PHAs with less than 300 public housing units are exempted from the resident board member requirement, provided the PHA has: (1) Provided reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board; and (2) not been notified of the intention of any resident to participate on the governing board within a reasonable time of the resident advisory board receiving the notice.

As noted in Section II of this preamble, this final rule reorganizes the listing of the exceptions to the statutory resident board member requirement. The description of the exception for small PHAs is still located in § 964.425. The other two exceptions—for PHA boards with full-time salaried members and for PHAs with no governing boards—have been relocated to § 964.405 (which describes the scope of the applicability of the resident board member requirement).

Comment: Reasonable notice should be provided to all residents. Several commenters wrote that a PHA should be required to provide reasonable notice to all residents, not just the resident advisory board. One commenter wrote that the notice could accompany the monthly rent notifications, or the mailings regarding the PHA Plan process. Another commenter suggested that the notice could be posted at each public housing site and rental office.

Several commenters were concerned that PHAs that do not administer public housing programs under the 1937 Act (but do administer Section 8 assistance) might not be able to comply with the notification requirement. According to these commenters, such agencies do not have resident advisory boards.

HUD Response. HUD has not incorporated this request into the final rule. Section 2(b) of the 1937 Act specifies that notice must be given to the resident advisory board. Section 2(b) does not require or provide for the notification of all public housing residents. The procedures for ensuring that residents are made aware of the opportunity to participate on the PHA board should be determined locally (including how the resident advisory board will notify the residents of such opportunities, and when that notice needs to be given).

In response to the commenters concerned about the ability of PHAs that do not administer 1937 Act public housing programs to comply with the notification requirements, HUD again notes that its interim rule on PHA Plans (February 18, 1999; 64 FR 8170) requires that all PHAs establish resident advisory boards (see § 901.13(b) of the interim rule).

Comment: Final rule should specify what constitutes a ''reasonable time''. To qualify for exemption, small PHAs must also provide residents with a ''reasonable time'' to express their intention to participate on the governing board. Several commenters suggested that the final rule should specify what constitutes a ''reasonable time.'' Two commenters recommended that the rule provide for a 45-day period. Another commenter suggested a 120-day period. One of the commenters suggested that PHAs provide residents with written procedures for indicating their interest in serving on the governing board.

HUD Response. In developing this final rule (and the June 23, 1999 proposed rule), HUD wished to provide PHAs with flexibility in implementing the resident board member requirement. The language of this final rule tracks the statutory language of section 2(b) and requires that PHAs must provide residents with a reasonable time to express their interest in serving on the PHA governing board. HUD does not believe it would be appropriate to dictate by regulation exactly how much time is ''reasonable,'' nor what procedures should govern resident expressions of interest. HUD defers to PHAs to make these determinations on a local basis. However, HUD agrees that a minimum time period should be established to ensure that residents have adequate time to indicate their interest. Accordingly, this final rule provides that the ''reasonable time'' provided by PHAs must not be less than 30 days.

Comment: HUD should establish additional exemptions. Several commenters advocated that HUD expand the list of exceptions to the resident board membership requirement. For example, one commenter recommended that HUD should exempt PHAs with less than 500 public housing units. Two commenters suggested that the final rule exempt PHAs already subject to State or local resident board membership requirements. Another commenter wrote that HUD should extend the exemption for full-time salaried PHA boards to include part-time board members. Several commenters advocated the exemption of PHAs that do not administer public housing or Section 8 programs as their principal means of providing housing assistance.

Several commenters wrote that PHA boards consisting of elected officials (such as city council members or county commissioners) should not be subject to the resident board membership requirements. These commenters noted that these officials often take oaths of office and are, therefore, subject to a different standard of accountability than a public housing resident. Other commenters advocated an exemption for elected PHA boards.

HUD Response. Section 2(b) provides clear and narrow exceptions to the resident board member requirement. The statute does not provide HUD with the authority to establish additional exceptions.

Comment: Small PHAs should be required to comply with resident board membership requirement. One commenter wrote that all PHAs, even those with under 300 units, should be required to include a resident member on the governing board. Another commenter urged that HUD not revise the proposed rule to expand the list of exceptions.

HUD Response. The statutory language of section 2(b) explicitly exempts small PHAs with less than 300 units from the resident board membership requirement if they follow certain procedures. Accordingly, HUD does not have the statutory authority to

adopt the suggestion made by the commenter.

I. Comments Regarding § 964.430—Nondiscrimination

Proposed § 964.430 provides that a ''resident board member is a full member of the governing board.'' Further, proposed § 964.430(c) provides that a PHA board ''may not exclude any resident board member from participating in any matter before the governing board on the grounds that the resident board member's lease with the [PHA] either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity.''

Comment: State or local conflict of interest requirements should be applicable to resident board members. Several commenters objected to the proposed conflict of interest language quoted above. According to these commenters, the proposed rule is not strict enough, and would allow residents to unfairly benefit from their policy making position. The commenters suggested that State and local conflict of interest requirements, which apply to the other members of the PHA board, should also be applicable to resident board members.

HUD Response. Section 2(b) of the 1937 Act makes clear that resident board members must be treated as full members of the PHA governing board. In implementing this requirement, HUD has attempted to address possible conflicts of interest issues by providing a resident may not take part in any decisions or activities that relate specifically to that resident in a personal capacity. However, section 2(b) is clear that a resident must not be precluded from board membership and activities based on his or her status as a resident of public housing or a recipient of Section 8 tenant-based assistance.

Comment: Suggested clarification to conflict of interest provision. One commenter suggested that the language of proposed § 964.430(c) be clarified to provide that a resident may vote on all matters of general applicability, including issues regarding rents. The commenter recommended the following addition to the proposed regulatory language: ''* * * unless the matter is clearly applicable to the resident board member only in a personal capacity *which applies uniquely to that member and not generally to residents or to a subcategory of residents*'' (emphasis supplied to indicate additional language). Another commenter suggested that HUD issue additional guidance regarding the conflict of interest governing resident participation on a PHA board. The commenter wrote that such guidance would prevent misinterpretation of the conflict of interest provisions and facilitate compliance with these requirements.

HUD Response. HUD has revised the rule generally to adopt the language suggested by the first commenter. HUD agrees with the commenter that the addition of this language clarifies the conflict of interest requirements, and will assist PHAs and residents to comply with these provisions. HUD believes that the regulatory language of revised § 964.430(c) makes clear that a resident board member may take part in any matters before the board so long as that matter is not applicable to that resident in a personal capacity. A resident board member may only be excluded from participation in a matter that uniquely applies to that resident, and the resident may be involved in any matter that is generally applicable to residents.

HUD wishes to reiterate that having a lease with the PHA does not constitute a conflict of interest for the resident board member. If such a lease could be viewed as constituting a conflict of interest, the intent of section 2(b) would be frustrated. Under such an interpretation, no resident with a lease with the PHA would be able to serve on its governing board. HUD also wishes to clarify that, for similar reasons, the board member's status as a public housing resident or recipient of Section 8 tenant-based assistance does not constitute a conflict of interest. Such an interpretation would prevent residents directly assisted by the PHA from serving on the governing board.

In response to the second commenter, HUD may issue additional guidance regarding the conflict of interest provisions (or other provisions of this final rule) as necessary. Such guidance may be issued in a handbook, **Federal Register** notice, or other appropriate means.

Comment: Resident participation should be limited to Federal programs. Several commenters noted that PHAs administer non-Federal housing programs. These commenters recommended that the final rule limit the participation of the resident board members to those decisions regarding Federal assistance.

HUD Response. This final rule clarifies that a resident board member must be allowed to take part in decisions related to the administration, operation, and management of Federal public housing programs and Section 8 tenant-based rental assistance programs. This rule does not extend to matters that: (1) Exclusively relate to other types of housing assistance (such as State financed housing assistance); or (2) do not involve housing assistance (as may occur where the city or county governing body also serves as the PHA board). However, a PHA may choose to expand the scope of resident member involvement to matters not covered by this rule.

J. Comments Regarding § 964.435—Initial Implementation of Resident Board Member Requirement

Proposed § 964.435 provides that if the PHA board consists of appointed board members, the first seat on the board that becomes open on or after October 1, 1999, would have to be filled by an eligible resident. If the board consists of elected board members, the chief executive officer of the unit of general local government whose jurisdiction coincides most directly with the jurisdiction of the PHA would have to create at least one additional seat on the board, by December 31, 1999, and would have to fill that seat with an eligible resident. In the case of multi-jurisdictional PHAs, the chief executive officers of each unit of general local government that comprises the jurisdiction of the PHA would be jointly responsible for creating and filling any additional seats.

HUD received a number of public comments on the initial implementation procedures described in proposed § 964.435. Several of these commenters raised the Federalism concerns summarized in section III.C of this preamble. As noted, HUD has responded to these concerns by not including § 964.435 in the final rule. In developing the regulations implementing section 2(b), HUD wished to grant PHAs and localities flexibility in complying with the resident board member requirement. Rather than specifying regulatory procedures for the appointment of residents to a PHA board, HUD has decided to leave these procedures to each locality. HUD is mindful of the implementation difficulties presented by the statutory resident board member requirement, and encourages the development of local solutions to these problems.

Several commenters raised questions or issues about the specific procedures described in proposed § 964.435. As a result of the decision not to include § 964.435 in the final rule, these public comments are no longer applicable to this final rule and are not discussed in the summary below.

Comment: May a PHA choose to elect a resident board member in a jurisdiction where PHA board members

are typically appointed? One commenter posed this question.

HUD Response. The statutory language of section 2(b) is clear—residents directly assisted by the a PHA may elect a resident board member, if provided for in the PHA Plan. A PHA could, therefore, choose to elect a resident board member in a jurisdiction where PHA board members are usually appointed. The winner of the election would then be appointed and serve as the statutorily required board member under section 2(b). However, the choice to hold such an election would need to be provided for in the PHA Plan.

Comment: HUD should postpone implementation date until July 1, 2000. Several commenters wrote that the implementation dates provided in the proposed rule are unrealistic. The commenters noted that many jurisdiction will have to revise their local laws in order to permit the appointment of a resident board member. The commenters suggested that HUD delay the implementation dates to permit localities to conform their laws governing the selection and appointment of board members to the requirements of section 2(b). Several commenters proposed an implementation date of July 1, 2000, which reflects the probable effective date of the necessary legislation.

HUD Response. While HUD has decided not to include § 964.435 in the final rule, section 503 of the Public Housing Reform Act is clear that the amendments made by the statute, including the resident board member requirement, will take effect beginning on October 1, 1999. HUD believes that implementation of section 2(b) should occur as soon as possible after this date if a PHA is not already in compliance. Congress provided a one year period from enactment to implementation to provide PHAs and localities with adequate notice of the resident board member requirements.

Comment: Implementation should be ''phased-in''. Many commenters suggested that HUD ''phase-in'' implementation of the board membership requirement. These commenters wrote that the final rule should allow PHAs to implement the new requirement at some point during a specified period (the next 5 board vacancies, 2 years, etc.) These commenters feared that the proposed implementation schedule might force the removal of the most knowledgeable PHA board member, in order to make room for a resident.

HUD Response. HUD has not adopted the change suggested by these commenters. As noted in the response to the previous comment, the resident board member requirement becomes effective beginning October 1, 1999. HUD believes that implementation of section 2(b) should occur as soon as possible after this date. All covered PHAs must take the steps necessary to comply with this requirement if they have not done so already. It has been one year since section 2(b) became law, providing States and PHAs time to address the concerns this provision raises and to determine how best to implement this statutory requirement.

Comment: Implementation date should not be postponed. One commenter advocated that HUD adopt the proposed implementation schedule without change. The commenter wrote that implementation should not be delayed.

HUD Response. HUD agrees with this commenter that implementation of the resident board member requirement should occur as soon as possible after October 1, 1999. All covered PHAs must take the steps necessary to comply with this requirement if they have not done so already. As noted above, States and PHAs have had time to address the concerns raised by section 2(b) and to determine how best to implement this statutory requirement.

K. Comments Regarding § 964.440—Filling an Open Board Member Seat

Proposed § 964.440 describes the procedures governing the filling of an open board seat by a resident. HUD received a number of public comments on proposed § 964.440. Several of these commenters raised the Federalism concerns summarized in Section III.C of this preamble, above. As noted, HUD has responded to these concerns by not including § 964.440 in the final rule. In developing the regulations implementing section 2(b), HUD wished to grant PHAs and localities with flexibility in complying with the resident board member requirement. Rather than specifying regulatory procedures for the appointment of residents to a PHA board, HUD has decided to leave these procedures to each locality. HUD is mindful of the implementation difficulties presented by the statutory resident board member requirement, and encourages the development of local solutions to these problems.

Several commenters raised questions or issues about the specific procedures described in proposed § 964.440. As a result of the decision not to include § 964.440 in the final rule, these public comments are no longer applicable to this final rule and are not discussed in this summary.

IV. Findings and Certifications

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, under HUD's regulations at 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule implements section 505 of the Public Housing Reform Act (42 U.S.C. 1437), which requires with certain exceptions, that the board of directors or similar governing body of a PHA contain not less than one member who is directly assisted by the PHA. Section 505 and this final rule provide flexibility for smaller PHAs through an exception for PHAs that have less than 300 public housing units. Consequently, HUD does not believe that this final rule will have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (captioned ''Federalism''), has determined that the policies contained in this final rule will have federalism implications. Specifically, the requirement that the membership of the board of directors or similar governing body of a PHA must contain not less than one member who is directly assisted by the PHA will have direct effects on any State or local laws that govern the organization of PHAs.

HUD provided copies of the June 23, 1999 proposed rule to each of the 50 State Attorney Generals and specifically invited their comments on the proposed regulatory requirements. HUD has also prepared and submitted to the Office of Management and Budget a Federalism Assessment that addresses the Federalism implications raised by this rulemaking.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned ''Regulatory Planning and Review'') and determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 964 as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

1. The authority citation for 24 CFR part 964 is revised to read as follows:

Authority: 42 U.S.C. 1437, 1437d, 1437g, 1437l, 1437r, 1437t, and 3535(d).

2. Amend § 964.3 as follows:

a. Revise paragraph (a);

b. Redesignate paragraph (e) as paragraph (f); and

c. Add new paragraph (e).

The addition and revision to § 964.3 read as follows:

§ 964.3 Applicability and scope.

(a) The policies and procedures contained in this part apply to any PHA that has a Public Housing Annual Contributions Contract (ACC) with HUD. This part, except for subpart E, does not apply to PHAs with housing assistance payments contracts with HUD under section 8 of the U.S. Housing Act of 1937.

* * * * *

(e) Subpart E of this part implements section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437), which provides for resident membership on the board of directors or similar governing body of a PHA. Subpart E applies to any public housing agency that has a public housing annual contributions contract with HUD or administers tenant-based rental under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

* * * * *

§ 964.110 [Removed]

2. Remove § 964.110.

3. Add subpart E to read as follows:

Subpart E—Resident Board Members

Sec.

964.400 Purpose.
964.405 Applicability.
964.410 Additional definitions.
964.415 Resident board members.
964.420 Resident board member may be elected.
964.425 Small public housing agencies.
964.430 Nondiscrimination.

Subpart E—Resident Board Members

§ 964.400 Purpose.

The purpose of this subpart is to implement section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437).

§ 964.405 Applicability.

(a) *General.* Except as described in paragraph (b) of this section, this subpart applies to any public housing agency that has a public housing annual contributions contract with HUD or administers tenant-based rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) *Exceptions.* The requirements of this subpart do not apply to a public housing agency that is:

(1) Located in a State that requires the members of a governing board to be salaried and to serve on a full-time basis; or

(2) Not governed by a governing board.

§ 964.410 Additional definitions.

The following additional definitions apply to this subpart only:

Directly assisted. Directly assisted means a public housing resident or a recipient of housing assistance in the tenant-based section 8 program. Direct assistance does not include any State financed housing assistance or Section 8 project-based assistance.

Eligible resident. An eligible resident is a person:

(1) Who is directly assisted by a public housing agency;

(2) Whose name appears on the lease; and

(3) Is eighteen years of age or older.

Governing board. Governing board means the board of directors or similar governing body of a public housing agency.

Resident board member. A resident board member is a member of the governing board who is directly assisted by that public housing agency.

§ 964.415 Resident board members.

(a) *General.* Except as provided in §§ 964.405(b) and 964.425, the membership of the governing board of each public housing agency must contain not less than one eligible resident board member.

(b) *Resident board member no longer directly assisted.* (1) A resident board member who ceases to be directly assisted by the public housing agency is no longer an ''eligible resident'' as defined in § 964.410.

(2) Such a board member may be removed from the PHA board for that cause, where such action is permitted under State or local law.

(3) Alternatively, the board member may be allowed to complete his/her current term as a member of the governing board. However, the board member may not be re-appointed (or re-elected) to the governing board for purposes of serving as the statutorily required resident board member.

(c) *Minimum qualifications for board membership.* Any generally applicable qualifications for board membership also apply to residents, unless the application of the requirements would result in the governing board not containing at least one eligible resident as a member. Further, PHAs and localities may not establish eligibility requirements for board membership that are solely applicable to residents.

§ 964.420 Resident board member may be elected.

(a) *General.* Residents directly assisted by a public housing agency may elect a resident board member if provided for in the public housing agency plan, adopted in accordance with 24 CFR part 903.

(b) *Notice to residents.* The public housing agency must provide residents with at least 30 days advance notice for nominations and elections. The notice should include a description of the election procedures, eligibility requirements, and dates of nominations and elections. Any election procedures devised by the public housing agency must facilitate fair elections.

§ 964.425 Small public housing agencies.

(a) *General.* The requirements of this subpart do not apply to any public housing agency that:

(1) Has less than 300 public housing units (or has no public housing units):

(2) Has provided reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board;

(3) Has not been notified of the intention of any resident to participate on the governing board within a reasonable time (which shall not be less than 30 days) of the resident advisory board receiving the notice described in paragraph (a)(3) of this section; and

(4) Repeats the requirements of paragraphs (a)(2) and (a)(3) of this section at least once every year.

(b) *Public housing agencies that only administer Section 8 assistance.* A public housing agency that has no public housing units, but administers Section 8 tenant-based assistance, is eligible for the exception described in paragraph (a) of this section, regardless of the number of Section 8 vouchers it administers.

(c) *Failure to meet requirements for exception.* A public housing agency that is otherwise eligible for the exception described in paragraphs (a) and (b) of this section, but does not meet the three conditions described in paragraphs (a)(2) through (a)(4) of this section, must comply with the requirements of this subpart.

§ 964.430 Nondiscrimination.

(a) *Membership status.*—(1) *General.* A resident board member is a full member of the governing board.

(2) *Resident participation must include matters regarding Federal public housing and Section 8 tenant-based assistance.* A resident board member must be allowed to take part in decisions related to the administration, operation, and management of Federal public housing programs and Section 8 tenant-based rental assistance programs. This rule does not extend to matters that:

(i) Exclusively relate to other types of housing assistance (such as State financed housing assistance); or

(ii) Do not involve housing assistance (as may occur where the city or county governing body also serves as the PHA board).

(3) *Public housing agency may expand scope of resident participation.* A public housing agency may choose to expand the scope of resident member involvement to matters not required under paragraph (a)(2) of this section.

(b) *Residence status.* A governing board may not prohibit any person from serving on the governing board because that person is a resident of a public housing project or is assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) *Conflict of interest.* A governing board may not exclude any resident board member from participating in any matter before the governing board on the grounds that the resident board member's lease with the public housing agency, or the resident board member's status as a public housing resident or recipient of Section 8 tenant-based assistance, either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity and applies uniquely to that member and not generally to residents or to a subcategory of residents.

Dated: October 14, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–27301 Filed 10–20–99; 8:45 am]

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Federal Register

Thursday
October 21, 1999

Part IV

Department of Housing and Urban Development

24 CFR Part 982

Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program; Formula for Allocation of Housing Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4459–F–03]

RIN 2577–AB96

Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program; Formula for Allocation of Housing Assistance

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule specifies the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, this rule is the product of a negotiated rulemaking, following implementation, as further required by statute, of a HUD notice on this subject.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Dalzell, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 708–1380. (This is not a toll-free number.) Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The statutory provision that provides the foundation for this rule is section 8(dd) of the United States Housing Act of 1937 (the 1937 Housing Act)(42 U.S.C. 1437(dd)), as added by section 556(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (''Public Housing Reform Act''). The new section 8(dd) directs HUD to establish an allocation baseline amount of assistance (budget authority) to cover the renewals, and to apply an inflation factor (based on local or regional factors) to the baseline. The new provision states as follows:

(dd) *Tenant-Based Contract Renewals.*—Subject to amounts provided in appropriation Acts, starting in fiscal year 1999, the Secretary shall renew all expiring tenant-based annual contribution contracts under this section by applying an inflation factor based on local or regional factors to an allocation baseline. The allocation baseline shall be calculated by including, at a minimum, amounts sufficient to ensure continued assistance for the actual number of families assisted as of October 1, 1997, with appropriate upward adjustments for incremental assistance and additional families authorized subsequent to that date.

Section 556(b) of the Public Housing Reform Act required the Department to implement section 8(dd) of the 1937 Housing Act through notice not later than December 31, 1998, and to issue final regulations on the allocation of tenant-based Section 8 annual contributions contract renewal funding that are developed through the negotiated rulemaking process no later than October 21, 1999.

On December 30, 1998, the Department issued HUD Notice 98–65 to implement the provision, satisfying the requirement of section 556(b) to implement the new provision through Notice not later than December 31, 1998. The Department published a notice in the **Federal Register** on February 18, 1999, advising the public of the provisions of HUD Notice 98–65. The Department has developed this final rule implementing the requirements of section 8(dd) of the 1937 Housing Act through a negotiated rulemaking process, in accordance with the statutory requirements of section 556.

II. Negotiated Rulemaking

HUD convened a negotiated rulemaking advisory committee to assist in developing this final rule—the Section 8 Housing Certificate Fund Negotiated Rulemaking Committee. (See publication of notice of establishment of the Committee on April 26, 1999, 64 FR 20232.) The charter for the Committee stated: ''The purpose of the Committee is to discuss and negotiate a rule that would change the current method of distributing funds to public housing agencies (PHAs) for purposes of renewing assistance contracts in the tenant-based Section 8 program. The committee will consist of persons representing stakeholder interests in the outcome of the rule.'' Records of the advisory committee's deliberations can be found at http://www.hud.gov/pih/pih.html.

The members of the advisory committee were as follows:

Housing Agencies

Massachusetts Department of Housing and Community Development, Boston, MA
New Jersey Department of Community Affairs, Trenton, NJ
Southeastern Minnesota Multi-County Housing and Redevelopment Authority, Wabasha, MN
Oklahoma Housing Finance Agency, Oklahoma City, OK
Fort Worth Housing Authority, Fort Worth TX
Minneapolis Metropolitan Council Housing and Redevelopment Agency, Saint Paul, MN
Santa Cruz County Housing Authority, Santa Cruz, CA
Burlington Housing Authority, Burlington, VT
Michigan State Housing Development Authority, Lansing, MI
New York City Housing Authority, NY, NY
Atlanta Housing Authority, Atlanta, GA
Cincinnati Metropolitan Housing Authority, Cincinnati, OH
Housing Authority of the City of Los Angeles, Los Angeles, CA
Stillwater Housing Authority, Stillwater, OK
Spokane Housing Authority, Spokane, WA
Jacksonville Housing Authority, Jacksonville, FL
Panama City Housing Authority, Bay County, FL
Alameda County Housing Authority, Hayward, CA
Housing Authority of New Orleans, New Orleans, LA
Stustman County Housing Authority, Stustman County, ND

Public Interest Groups

Center on Budget and Policy Priorities, Washington, DC
New Community Corporation, Newark, NJ
Disability Rights Action Coalition for Housing
Section 8 Resident Council of New Orleans, Inc., New Orleans, LA

Independent Accounting and Consulting Firms

Fenton, Ewald & Associates, PC
IMRglobal—Orion Consulting, Inc.

National/Regional PHA Associations

National Leased Housing Association (NLHA)
National Association of Housing and Redevelopment Officials (NAHRO)
Council of Large Public Housing Authorities (CLPHA)
Public Housing Authority Directors Association (PHADA)

(Note that 1. Fenton, Ewald & Associates, PC was made an alternate due to its representative's time constraints and that the Southeast Regional Section Eight Housing Association (SERSHA) was added as a member of the Committee)

Federal Government

U.S. Department of Housing and Urban Development

The Committee met in Washington, DC, on April 27 and 28, 1999, on June 2 and 3, 1999, on June 21 and 22, 1999, on July 19 and 20, 1999, on August 19 and 20, 1999 and on September 28 and 29th, 1999. (See notices of meetings: 64 FR 26923, May 18, 1999 and 64 FR 30450, June 8, 1999.) These Committee meetings were led by Larry Susskind and David Fairman of the Consensus Building Institute (''CBI''), as facilitators/mediators. Tom Fee and Michael Lewis, also of CBI, assisted in the facilitation/mediation. Kelly

Davenport of CBI provided further assistance, taking minutes of the meetings.

HUD appreciates the active participation in this negotiated rulemaking process by such knowledgeable groups. The participants spent many days reviewing materials, working with others in small groups to prepare draft position papers, attended meetings of the Committee, and participated in teleconferences. Ultimately, the members reached consensus on the content of this rule. During the course of their deliberations, they provided valuable advice to the Department on broader issues, not reflected in this rule.

III. Discussion of Comments

A. General

This section provides a brief overview of the most important issues discussed in the meetings of the Committee over the course of its deliberations. This overview of the issues is not a detailed recitation of the more than 12 days of meetings or the multiple additional work group meetings/conference calls that took place during the term of the Committee's charter but rather highlights the significant issues considered by the Committee. In addition to providing HUD with recommendations related to this regulation on the methodology for allocating Section 8 renewal funding, the Committee also provided recommendations on related issues (including policy on ACC reserves) that HUD intends to implement through a **Federal Register** Notice. This overview of the discussion of the Committee focuses only on the issues related to the regulation itself and not on the issues discussed in conjunction with developing separate Notice(s).

B. Establishing the Baseline

To initiate discussion of housing assistance allocation methods, HUD staff provided background information to the Committee regarding the various methods used over time to calculate renewals. An explanation of the current renewal funding Notice, PIH 98–65 (HA), including the process for setting the baseline and awarding renewal funding for Fiscal Year 1998, was reviewed by HUD staff.

Issue. The Committee discussed specific details regarding accounting rules and anomalies of the current method of calculating the allocation of renewal funding. Several members expressed concern that there was the possibility of discrepancies between historical documented unit counts and the unit counts in HUD's data systems. Members questioned whether a crosscheck of the data in the HUDCAPS system against their own data was possible. Some members felt that the October 1, 1997 baseline data were somewhat arbitrary and could adversely impact agencies. Members suggested alternative ways to setting the baseline units, such as choosing dates other that October 1, 1997. Concerns about using October 1, 1997 included that this date ''freezes'' many inequities among PHAs (e.g., rewarding those who continued leasing during the 90-day freeze period declared by HUD). A suggestion was made to use October 1, 1998 as the baseline date, because at this time all PHAs would have had time to adjust to HUD interim rules and guidelines on baseline accounting and renewal funding.

Response. HUD noted that it had confidence that data discrepancies in HUDCAPS are minor, and that most of the discrepancies between HUDCAPS and PHA data would be attributable to data entry problems, or differences in interpretations of unit or project classifications. HUD representatives stated that they would check the kinds of information that could be shared and how this information could be shared. HUD representatives stated that they had revised the baseline determination method to ensure that each PHA would receive the higher of the number contracted or the number leased on October 1, 1997. HUD indicated that the statute required a focus on the state of housing authorities as of October 1, 1997 and that using other dates would not satisfy the statutory mandate.

Conclusion: The Committee reached consensus that the baseline number of units should be the higher of the number of units leased as of October 1, 1997 or the number of units reserved by HUD as of October 1, 1997. The Department has added approximately 19,000 units to its previously reserved number of units as a result of the comparison. This increase in the number of units as well as transactions that have taken place since October 1, 1997 will be reflected in the baseline established as of December 31, 1999, in accordance with the rule. In response to the Committee's recommendation, HUD will establish a mechanism for PHAs to request an adjustment of the baseline unit number assigned to them if they can demonstrate that the number in HUD's system is inaccurate.

C. Unit-Based vs. Dollar Based Funding Allocation

Issue. The Committee discussed moving from the current ''unit-based'' funding system (using units multiplied by an adjusted per unit cost as the basis for determining annual funding amounts) to a ''dollar-based'' system: A dollar-based system would fund PHAs by adjusting their previous year's dollar grant amount to account for changes in local rental costs, without considering how many units were rented through the program in the previous year. Initially there appeared to be a preference for a dollar-based system, for reasons of administrative simplicity and ability to serve more households if costs are contained. Some Committee members raised concerns regarding switching to a dollar-based system, because it might lead to significant swings in the number of families assisted year-to-year.

The Committee extensively explored possible adjustment factors that would be applied to PHA's previous year grant amount in a dollar-based system. The Committee reviewed data analysis from Andersen Consulting Corporation that compared the accuracy of different adjustment factors against the actual experience of approximately 400 housing authorities over the course of 3 years (1995–1997) for which reliable historical data was available. The most reliable predictor of future costs proved to be changes in a housing authority's most recent year's actual costs in HUDCAPS. The analysis uncovered significant problems in using MTCS data for the purpose of calculating renewals at this time.

Response. HUD indicated that it is cognizant of its obligation to protect existing assisted families from losing their assistance due to a shortfall in funding. In addition a number of the reasons why per unit costs might vary would not be related to the PHA's discretionary actions (e.g., the need to meet new income targeting requirements).

Conclusion: After much discussion, the Committee and HUD reached consensus that the Department should have authority to use the current unit-based method for the next several years. Given the limitations of current data systems and adjustment factors, the unit-based system has the best potential to predict fluctuations in per unit costs and to ensure reasonably adequate funding to support the reserved number of units in a housing authority's inventory.

Issue. Some members of the Committee, including HUD, expressed concern that the current method creates a disincentive for PHAs to contain per-unit costs, because the higher a PHA's per-unit costs, the higher its funding for the next year. Additionally, the current

system creates a disincentive for PHAs to lease more than their contracted number of units, because their funding allocations are determined based on the number of reserved units, not the leased number of units.

Other members of the Committee asserted that costs are largely outside of the control of a PHA. Rents are set by the local market and the size of the family. The PHA does not control the local rental market and has little control over the family size, because it has to follow the waiting list. Tenant contributions are affected for the most part by tenant incomes. Again, this factor is largely controlled by residents themselves, as well as the local job market. However, in some important instances, a PHA can influence the per-unit cost. These instances include, but are not limited to, rent reasonableness, subsidy standards, and payment standards. (For this purpose, ''subsidy standards'' refer to a PHA's policy for determining the appropriate unit size for a particular household.)

Committee members also made the point that PHAs themselves do not benefit from an increase in the grant amount for renewals, because their administrative fee is not tied to the grant amount used to subsidize families. The administrative fee formula actually provides an incentive for cost containment, because a PHA would benefit from being able to lease more units—which could only be accomplished by lower per-unit costs.

Members of the Committee also emphasized how difficult it would be to isolate how much of a change in per-unit costs was attributable to actions taken by a PHA as opposed to market/demographic changes totally outside the control of the PHA.

Response. HUD is concerned that the regulation's methodology not create an incentive or bias toward higher per-unit costs as a result of PHA policies that can affect per-unit costs. Such a bias can result both from the current rule's characteristic of adapting to higher costs over time without penalty and from its subtraction of funding to support additional units that a PHA is able to put under lease because of cost saving measures. HUD acknowledged that there are very significant difficulties administratively in isolating the effects of PHA policies on cost per unit. HUD proposed that the rule give it flexibility to put in place checks and balances that would offset the impact of PHA policies on per-unit costs and ultimately the allocation amount.

Conclusion: HUD's proposed mechanism for addressing cost containment is embodied in paragraph (g) of the rule. Paragraph (g)(1) permits HUD to put in place mechanisms to step in to prevent a PHA from becoming overextended and exceeding its allocated funding. Paragraph (g)(2) gives HUD the ability to act on either a case-by-case or a systemic basis. If the Department's analysis of the program costs and related factors determines that systemic adjustments, including cost containment and other cost adjustments, to the program are necessary because of threats to the future availability of funding, HUD has agreed that it would consult with PHA representatives and other relevant stakeholders before putting such a policy in place. HUD further indicated that any such cost adjustment would be consistent with the legitimate program goals. These goals are:

(1) Deconcentration of poverty and expanding housing opportunities;

(2) Not imposing unreasonable rent burdens on residents;

(3) Compliance with the income targeting requirements of the Public Housing Reform Act;

(4) Consistency with applicable consolidated plan(s);

(5) Assuring rent reasonableness;

(6) Maintaining program efficiency and economy;

(7) Providing service to additional households within budgetary limitations; and

(8) Providing service to the adjusted baseline number of families.

Paragraph (g)(3) gives HUD the flexibility to keep PHAs with declining per unit costs from losing funding under the regulation and to allow additional households to be served if costs are contained. Many factors are intersecting to influence per unit costs at this time (including the merger of the certificate and voucher program, the requirement for income targeting, the requirement that payment standards not impose unreasonable rent burdens, the flexibility of housing authorities to set payment standards between 90% and 110% of FMR on their own as well as the continued implementation of this rule's methodology that indexes funding closely to per unit costs). HUD will gain program experience as it monitors program costs and analyzes the reasons for fluctuations in costs.

D. Inflation Factors

Issue: The Committee considered other more up-to-date measurement of rents, or weighting the Annual Adjustment Factor so that the most recent inflation data count for more than older data. Additionally, the Committee recommended that inflation factors be more closely attuned to individual PHAs' housing markets: examples included local rents, and the use of local government or real estate agency data on rents.

Response: Based on its program experience, HUD staff advised that some of these options could work, but that the smaller the sample area, the higher the cost to obtain statistically valid data on costs. Sometimes the more accurate the Annual Adjustment Factors (AAFs) could produce lower rather than higher inflation factors for some PHAs. A review and comparison of the Annual Adjustment Factor and the National Inflation Factor were presented.

Conclusion: The Committee agreed to keep the AAF as it exists in the rule for the time being. HUD will examine whether it can get better data and more predictable information in the future. At the Committee's request, HUD added a provision that will allow it to consider requests from PHAs on a case-by-case basis in instances where because of special circumstances the AAF is not accurately predicting per unit cost.

IV. Renewal Funding Level Consideration

The renewal formula included in this regulation assumes continuation of the current system, in which the Department allocates sufficient funds to renew 100 percent of the units reserved for a PHA, even though many PHAs do not use all of the allocated funds. The Department subsequently recaptures funds that PHAs do not use after the end of their fiscal years. This system of initially overfunding on a national basis and then recapturing, has the advantage of assuring that each PHA will have the necessary renewal funds, but it also has created some confusion in Congress and elsewhere.

At the end of the fiscal year 2000 appropriations process, the Senate Appropriations Committee raised substantial concerns about the tenant-based assistance program that appear to be partly related to this system. The Administration is exploring the feasibility and desirability of an approach that would minimize overfunding and subsequent recapture, while still meeting the basic requirement that each PHA have the necessary funding for timely renewals. The evaluation and any Administration proposals will be mindful of the consensus reached by the negotiated rulemaking committee.

V. Explanation of Rule Text

Renewal Units

This rule revises part 982, governing tenant-based assistance. It adds a new

defined term, ''renewal units'' to the definitions found at § 982.4. This rule also adds a new § 982.102 to outline a multi-step process for calculating the number of units that constitute ''renewal units.'' The total number of renewal units will be assigned to one or more (if applicable) of a housing agency's funding increments. Ultimately, the Department will multiply the number of renewal units times the adjusted per unit cost to calculate the amount of funding a housing agency will receive to renew a given funding increment.

Applicability

This rule will apply to the renewal of funding increments that expire in calendar year 2000 and thereafter (the initial increments covered by the regulation would be those that expire on January 31, 2000). The Department adjusted to a calendar year basis for allocating renewal funding in the first quarter of 1999. The Department adjusted to a calendar year basis to ensure that it would have adequate time to process renewal funding in advance of expirations even if appropriations are not finalized until late in a given fiscal year or early in a subsequent fiscal year. The regulation also makes it clear that it applies to units that a housing agency project bases pursuant to regulatory flexibility to project base up to 15% of the tenant-based units that are reserved for it.

Renewal Methodology

The new § 982.102 outlines the method for calculating renewal funding. The Department does have the ability to adjust the amounts allocated if the Department's appropriation is not sufficient to fully fund all housing agencies pursuant to the regulation.

Determining the Amount of Budget Authority Allocated for Renewal of an Expiring Funding Increment

The basic calculation the Department performs to determine the renewal funding for an expiring increment is multiplication of the number of renewal units assigned to the increment by the adjusted per unit cost.

For example, the Department calculated the adjusted baseline number of units for the Main Street Housing Authority to be 115 for the year 2000. It then multiplied the adjusted baseline number of units (115) by the final per unit cost ($4979) to calculate the gross amount of renewal funding for the housing authority, $572,585.

Determining the Number of Renewal Units

The Department will determine the number of renewal units for each calendar year as of the last day of the previous calendar year through a 3-step process.

Step 1—The Department will calculate the initial baseline. It will be set at the reserved number of units (the number of units awarded to the housing agency during the history of the program) as of December 31, 1999. The statute requires that the Department ensure, at a minimum, sufficient funding for the number of families assisted as of October 1, 1997. The Department has already compared the number of reserved units as of October 1, 1997 with the number of program families assisted as of that date. In instances in which the number of program families exceeded the reserved units as of October 1, 1997, the Department reserved additional units to account for the difference. These additional units were awarded to housing agencies in or before September of 1999. Because of the actions the Department has taken to account for the October 1, 1997 statutory minimum, it believes the number of reserved units will already have taken into account the statutory October 1, 1997 requirement when it sets the initial baseline as of December 31, 1999. In the event the Department has made an error in its analysis to ensure adherence to the statutory minimum, the Department has the ability to correct for such an error in 982.102(d)(3).

For example, on December 31, 1999, the Department's records indicated that it had reserved 110 units for the housing authority. The Department would set the initial baseline at 110 units.

Step 2—Each calendar year, the Department will review all of the transactions that have altered the number of reserved units since it set the initial baseline. The Department will make adjustments to add to the initial baseline any additional units awarded to the housing authority by the Department supported from additional funding reserved since setting of the initial baseline. Adjustments to the baseline number of units will include units supported by incremental funding as well as other funding such as that awarded to provide continued assistance to assisted families pursuant to the conversion of project based assistance to tenant-based assistance. The Department also will include adjustments for budget authority reallocated from one housing authority to others. In this case, the adjusted baseline of the PHA whose budget authority is being reallocated would decrease, reflecting the decrease in budget authority, and the adjusted baseline of PHAs to which the budget authority is being reallocated would increase.

For example, in calendar year 2000, the Main Street Housing Authority received 10 incremental units in the Family Unification Program. In 2000, the authority also had 10 units added to its inventory as a result of the conversion of a property from project based to tenant-based assistance. All 20 of these additional units would be added to the initial baseline to calculate the adjusted baseline number of units, 130 for the year 2001.

Step 3—In its final step in determining the number of renewal units that will be used to calculate renewal funding, the Department will further adjust the baseline number by subtracting the number of units supported by contracts that are not scheduled to expire until after the end of the calendar year. The baseline number of units includes such non-expiring units; however, the Department has previously allocated sufficient budget authority to support such units beyond the time period for which it is allocating renewal funding.

For example, the Department's records indicate that the Main Street Housing Authority has 15 units in its Initial Baseline number of units that are not scheduled to expire until 2002. The Department would then subtract 15 units from the Main Street Housing Authority's 130 units to revise the Adjusted Baseline Number of Units to 115. Similarly, in the event that the Department awarded budget authority for 50 incremental units for Welfare to Work in 2000 that would not expire until 2001, the Department would subtract the 50 units from the baseline in 2000 because they would not expire during that year.

Determining the Adjusted per Unit Cost

The Department will derive an annual actual per unit cost using a 3 step process.

Step 1—The Department will extract the total expenditures for all of the housing authority's Section 8 tenant-based assistance programs and the unit months leased information from the most recent approved year end statement (Form HUD–52681) that each housing authority has filed with the Department. The Department will divide the total expenditures for all of the housing authority's Section 8 tenant-based assistance programs by the unit

months leased to derive an average monthly per unit cost.

Step 2—The Department will multiply the monthly per unit cost by 12 (months) to obtain an annual per unit cost.

Step 3—The Department will then multiply the result of step 2 above by the Section 8 Housing Assistance Payments Program Contract Rent Annual Adjustment Factors (table 1 amount with the highest cost utility included) for the applicable intervening Federal Fiscal Years between the time of the last year end statement and the time of the renewal to generate an adjusted annual per unit cost.

For example, the Main Street Housing Authority's 1998 Year End Statement (the most recent one approved) indicated that it expended $120,000 in its tenant-based Section 8 assistance programs and that it achieved 300 unit months leased. The Department would take the total expenditure ($120,000) and divide it by the unit months leased (300) to calculate the monthly per unit cost ($400) and then multiply the result by 12 months to obtain an actual annual per unit cost ($4,800).

To continue the example, the Annual Adjustment Factors for the Main Street Housing Authority were 1.5% in 1999 and 2.2% for 2000. The Department would take the original annual per unit cost ($4,800) and adjust it by 1.5% ($4,872) and then again by 2.2% to obtain the resulting adjusted per unit cost ($4,979).

Many housing agencies have jurisdictions that cover multiple rental markets with separate AAFs. In such instances, the Department will use the highest AAF that applies to a portion of the housing agency's units and use it as the adjustment factor.

For example, the Main Street Housing Authority is a regional agency that covers a metropolitan area with an AAF for 1999 set at 2.1% and for 2000 set at 1.9%. The housing authority's jurisdiction also covers several non-metropolitan counties outside of the metropolitan area assigned an AAF for 1999 of 1.5% and for 2000 set at 2.0%. In this instance, the Department will use the higher metropolitan area AAF for 1999 (2.1%) and the higher non-metropolitan area AAF for 2000 (2.0%).

CACC Amendment To Add Renewal Funding

The Department intends to process renewal funding if possible at least a month before a given funding increment is due to expire. A normal renewal will extend the expiration date for one year.

Modification of Allocation of Budget Authority

The regulation permits HUD to address the issue of cost containment through this provision. Paragraph (g)(1) permits HUD to put in place mechanisms to step in to prevent a PHA from becoming overextended and exceeding its allocated funding. Paragraph (g)(2) gives HUD the ability to act on either a case-by-case or a systemic basis. If the Department's analysis of the program costs and related factors determines that systemic adjustments to the program, including cost containment and other cost adjustments, are necessary because of threats to the future availability of funding, HUD has agreed that it would consult with PHA representatives and other relevant stakeholders before putting such a policy in place. Paragraph (g)(3) gives HUD the flexibility to keep PHAs with declining per unit costs from losing funding under the regulation and to allow additional households to be served if costs are contained.

Ability To Prorate and Synchronize Contract Funding Increments

Notwithstanding the formula amount that HUD derives pursuant to the regulation, the Department is permitted to prorate the renewal of units that expire on different dates throughout the year in order to have their expiration date match the expiration of other units within the housing authority's inventory and/or a given point in time in relation to the housing authority's fiscal year. The Department will consider using this flexibility in order to merge the multiple sets of units for the purpose of allocating renewal funding in the future. The Department desires to consolidate increments as much as possible in order to reduce the tracking required for thousands of separate increments. The Department will endeavor to synchronize and/or merge all increments so as to expire 6 months after the housing agency's fiscal year. Such a schedule would permit the Department to use a year end statement that is less than a year old to calculate current per unit costs at the time of the renewal.

For example, the Main Street Housing Authority has 115 units that require renewal on April 1, 2000 and also has 20 units that were awarded to it on August 1, 1999 that would require renewal on August 1, 2000. If the Department decided to merge the two sets of units for future renewals, it would have the ability to prorate the renewal of the 20 units so that they would expire on April 1, 2001, simultaneously with the expiration of the other 115 units. The Department would be able to merge the two sets of units into one set of 135 units for the purpose of calculating future renewal funding.

Reallocation of Renewal Units

This provision gives HUD the ability by **Federal Register** notice to permanently de-reserve units and their associated budget authority from a PHA with performances deficiencies (particularly underleasing) and to reallocate the budget authority to other PHAs. The reallocation would not preclude a PHA from being awarded new units in the future.

VI. Findings and Certifications

Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency analyze the impact of a rule on small entities whenever it determines that the rule is likely to have a significant impact on a substantial number of small entities. Most small PHAs do not qualify as ''small governmental entities'' under the Act. However, this rule, developed in consultation with a negotiated rulemaking committee including representatives of small PHAs, will not be likely to have a significant impact on a substantial number of small PHAs or on the few of them that qualify as ''small governmental entities.'' Therefore, no further analysis is required under the Act.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing (other than tenant-based rental assistance), rehabilitation, alteration, demolition, or new construction. This rule also does not establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under HUD regulations (24 CFR 50.19(c)(1)), this rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and is not subject to environmental review under related laws and authorities (24 CFR 50.4).

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political

subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulatory Review

The Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review,* issued by the President on September 30, 1993. Any changes made in this proposed rule after its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Catalog

The Catalog of Federal Domestic Assistance numbers for these programs are 14.855 and 14.857.

List of Subjects in 24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies.

Accordingly, HUD amends part 982 of title 24 of the Code of Federal Regulations as follows:

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

1. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

2. Amend § 982.4(b) by adding the definition of *Renewal units,* in alphabetical order, to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Renewal units. The number of units, as determined by HUD, for which funding is reserved on HUD books for a PHA's program. This number is used is calculating renewal budget authority in accordance with § 982.102.

* * * * *

§§ 982.102 and 982.103 [Redesignated as §§ 982.103 and 982.104]

3. Redesignate §§ 982.102 and 982.103 as §§ 982.103 and 982.104, respectively.

4. Add a new § 982.102 to read as follows:

§ 982.102 Allocation of budget authority for renewal of expiring CACC funding increments.

(a) *Applicability.* This section applies to the renewal of CACC funding increments in the program (as described in § 982.151(a)(2)) that expire after December 31, 1999 (including any assistance that the PHA has attached to units for project based assistance under part 983 of this title). This section implements section 8(dd) of the 1937 Act (42 U.S.C. 1437f(dd)),

(b) *Renewal Methodology.* HUD will use the following methodology to determine the amount of budget authority to be allocated to a PHA for the renewal of expiring CACC funding increments in the program, subject to the availability of appropriated funds. If the amount of appropriated funds is not sufficient to provide the full amount of renewal funding for PHAs, as calculated in accordance with this section, HUD may establish a procedure to adjust allocations for the shortfall in funding.

(c) *Determining the amount of budget authority allocated for renewal of an expiring funding increment.* Subject to availability of appropriated funds, as determined by HUD, the amount of budget authority allocated by HUD to a PHA for renewal of each program funding increment that expires during a calendar year will be equal to:

(1) *Number of renewal units.* The number of renewal units assigned to the funding increment (as determined by HUD pursuant to paragraph (d) of this section); multiplied by

(2) *Adjusted annual per unit cost.* The adjusted annual per unit cost (as determined by HUD pursuant to paragraph (e) of this section).

(d) *Determining the number of renewal units.*—(1) *Number of renewal units.* HUD will determine the total number of renewal units for a PHA's program as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated. The number of renewal units for a PHA's program will be determined as follows:

(i) *Step 1: Establishing the initial baseline.* HUD will establish a baseline number of units (''baseline'') for each PHA program. The initial baseline equals the number of units reserved by HUD for the PHA program as of December 31, 1999.

(ii) *Step 2: Establishing the adjusted baseline.* The adjusted baseline equals the initial baseline with the following adjustments from the initial baseline as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated:

(A) *Additional units.* HUD will add to the initial baseline any additional units reserved for the PHA after December 31, 1999.

(B) *Units removed.* HUD will subtract from the initial baseline any units de-reserved by HUD from the PHA program after December 31, 1999.

(iii) *Step 3: Determining the number of renewal units.* The number of renewal units equals the adjusted baseline minus the number of units supported by contract funding increments that expire after the end of the calendar year.

(2) *Funding increments.* HUD will assign all units reserved for a PHA program to one or more funding increment(s).

(3) *Correction of errors.* HUD may adjust the number of renewal units to correct errors.

(e) *Determining the adjusted per unit cost.* HUD will determine the PHA's adjusted per unit cost when HUD processes the allocation of renewal funding for an expiring contract funding increment. The adjusted per unit cost calculated will be determined as follows:

(1) *Step 1: Determining monthly program expenditure.*—(i) *Use of most recent HUD-approved year end statement.* HUD will determine the PHA's monthly per unit program expenditure for the PHA certificate and voucher programs (including project-based assistance under such programs) under the CACC with HUD using data from the PHA's most recent HUD-approved year end statement.

(ii) *Monthly program expenditure.* The monthly program expenditure equals:

(A) *Total program expenditure.* The PHA's total program expenditure (the total of housing assistance payments and administrative costs) for the PHA fiscal year covered by the approved year end statement; divided by

(B) *Total unit months leased.* The total of unit months leased for the PHA fiscal year covered by the approved year end statement.

(2) *Step 2: Determining annual per unit cost.* HUD will determine the PHA's annual per unit cost. The annual per unit cost equals the monthly program expenditures (as determined

under paragraph (e)(1)(ii) of this section) multiplied by 12.

(3) *Step 3: Determining adjusted annual per unit cost.* (i) HUD will determine the PHA's adjusted annual per unit cost. The adjusted annual per unit cost equals the annual per unit cost (as determined under paragraph (e)(2) of this section) multiplied cumulatively by the applicable published Section 8 housing assistance payments program annual adjustment factors in effect during the period from the end of the PHA fiscal year covered by the approved year end statement to the time when HUD processes the allocation of renewal funding.

(ii) *Use of annual adjustment factor applicable to PHA jurisdiction.* For this purpose, HUD will use the annual adjustment factor from the notice published annually in the **Federal Register** pursuant to part 888 that is applicable to the jurisdiction of the PHA. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(iii) *Use of annual adjustment factors in effect subsequent to most recent Year End Statement.* HUD will use the Annual Adjustment Factors in effect during the time period subsequent to the time covered by the most recent HUD approved Year End Statement and the time of the processing of the contract funding increment to be renewed.

(iii) *Special circumstances.* At its discretion, HUD may modify the adjusted annual per unit cost based on receipt of a modification request from a PHA. The modification request must demonstrate that because of special circumstances application of the annual adjustment factor will not provide an accurate adjusted annual per unit cost.

(4) *Correction of errors.* HUD may correct for errors in the adjusted per unit cost.

(f) *CACC amendment to add renewal funding.* HUD will reserve allocated renewal funding available to the PHA within a reasonable time prior to the expiration of the funding increment to be renewed and establish a new expiration date one-year from the date of such expiration.

(g) *Modification of allocation of budget authority.*—(1) *HUD authority to conform PHA program costs with PHA program finances through* ***Federal Register*** *notice.* In the event that a PHA's costs incurred threaten to exceed budget authority and allowable reserves, HUD reserves the right, through **Federal Register** notice, to bring PHA program costs and the number of families served, in line with PHA program finances.

(2) *HUD authority to limit increases of per unit cost through* ***Federal Register*** *notice.* HUD may, by **Federal Register** notice, limit the amount or percentage of increases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(3) *HUD authority to limit decreases to per unit costs through* **Federal Register** *notice.* HUD may, by **Federal Register** notice, limit the amount or percentage of decreases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(4) *Contents of* **Federal Register** *notice.* If HUD publishes a **Federal Register** notice pursuant to paragraphs (g)(1), (g)(2) or (g)(3) of this section, it will describe the rationale, circumstances and procedures under which such modifications are implemented. Such circumstances and procedures shall, be consistent with the objective of enabling PHAs and HUD to meet program goals and requirements including but not limited to:

(i) Deconcentration of poverty and expanding housing opportunities;

(ii) Reasonable rent burden;

(iii) Income targeting;

(iv) Consistency with applicable consolidated plan(s);

(v) Rent reasonableness;

(vi) Program efficiency and economy;

(vii) Service to additional households within budgetary limitations; and

(viii) Service to the adjusted baseline number of families.

(5) *Public consultation before issuance of* **Federal Register** notice. HUD will design and undertake informal public consultation prior to issuing **Federal Register** notices pursuant to paragraphs (g)(1) or (g)(2) of this section.

(h) *Ability to prorate and synchronize contract funding increments.* Notwithstanding paragraphs (c) through (g) of this section, HUD may prorate the amount of budget authority allocated for the renewal of funding increments that expire on different dates throughout the calendar year. HUD may use such proration to synchronize the expiration dates of funding increments under the PHA's CACC.

(i) *Reallocation of budget authority.* If a PHA has performance deficiencies, such as a failure to adequately lease units, HUD may reallocate some of its budget authority to other PHAs. If HUD determines to reallocate budget authority, it will reduce the number of units reserved by HUD for the PHA program of the PHA whose budget authority is being reallocated and increase the number of units reserved by HUD for the PHAs whose programs are receiving the benefit of the reallocation, so that such PHAs can issue vouchers. HUD will publish a notice in the **Federal Register** that will describe the circumstances and procedures for reallocating budget authority pursuant to this paragraph.

Dated: October 15, 1999.

Deborah Vincent,

General Deputy Assistant, Secretary for Public and Indian Housing.

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October 21, 1999

Part V

Department of Housing and Urban Development

24 CFR Part 964

Direct Funding of Public Housing Resident Management Corporations; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 964

[Docket No. FR–4501–P–01]

RIN 2577–AC12

Direct Funding of Public Housing Resident Management Corporations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises HUD's regulations regarding resident participation and resident opportunities in public housing. Specifically, the rule would make conforming amendments to the HUD regulations to reflect recent statutory changes made by the Quality Housing and Work Responsibility Act of 1998. The proposed rule provides that a resident management corporation (RMC) may receive capital and operating funds from HUD if the RMC has primary management responsibility for the public housing project and HUD determines that the RMC has the capacity to effectively discharge such responsibility.

DATES: Comments Due Date: December 20, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Paula Blunt, Director, Customer Services and Amenities Division, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 Seventh Street, SW, Room 4228, Washington, DC 20410; telephone (202) 619–8201 (this is not a toll-free telephone number). Persons with hearing or speech disabilities may access this number via TTY by calling the free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 20 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (the ''1937 Act'') encourages resident management of public housing projects as a means of improving existing living conditions in public housing. HUD has implemented section 20 of the 1937 Act in its regulations at 24 CFR part 964 (captioned ''Tenant Participation and Tenant Opportunities in Public Housing''). Under section 20, and 24 CFR part 964, an RMC must be a nonprofit corporation organized under the laws of the State in which the public housing project is located, and the tenants of the project must be the sole voting members of the RMC.

An eligible RMC enters into a management contract with the public housing agency (PHA) establishing the respective management rights and responsibilities of the RMC and the PHA. The contract must be consistent with the requirements of the 1937 Act and may provide for the RMC to perform any or all of the management functions for which the PHA is responsible to HUD. The management contract is treated as a contracting out of services and is subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the PHA is subject. To assist and encourage resident management of public housing, HUD is developing a sample management contract for use by RMCs and PHAs. Once completed, the sample contract will be included as part of a broader HUD notice, which will also discuss other issues related to public housing management.

The performance of the RMC is subject to periodic review by the PHA to ensure that the RMC complies with all applicable requirements and standards of performance.

II. Public Housing Reform

On October 21, 1998, President Clinton signed into law HUD's fiscal year 1999 Appropriations Act, which includes the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276; 112 Stat. 2461, 2522) (the ''Public Housing Reform Act'' or ''Act''). The Public Housing Reform Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The changes made by the Public Housing Reform Act are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs. These changes are also designed to provide for more resident involvement, and to increase resident participation and awareness in creating and maintaining a positive living environment.

III. This Proposed Rule

This proposed rule would amend 24 CFR part 964 to reflect recent statutory changes made to section 20 of the 1937 Act by section 532 of the Public Housing Reform Act. Section 532 of the Public Housing Reform Act provides for the direct provision of capital and operating assistance to an RMC if: (1) The RMC petitions HUD for the release of the funds; (2) the management contract between the RMC and the PHA provides for the RMC to assume the primary management responsibilities of the PHA; and (3) HUD determines that the RMC has the capability to effectively discharge such responsibilities. In all other cases, operating and capital funding will be provided to the RMC by the PHA.

The proposed rule provides that HUD will consider this third requirement to be satisfied if the RMC is designated at least a ''standard performer'' under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and the RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing, or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

The standard that HUD will use to determine RMC eligibility for direct assistance does not impose any new requirements on RMCs. The proposed rule reflects existing performance measures and program requirements that RMCs must already comply with. For example, RMCs are already subject to the PHAS performance measures described in 24 CFR part 902. Further, RMCs are currently required to comply with all applicable program, civil rights, and financial requirements as a condition of assistance under HUD's public housing programs. HUD believes that the use of existing measures will allow HUD to accurately determine RMC management capability, while minimizing the burdens imposed on RMCs.

The Annual Contributions Contract between HUD and the PHA will provide for the direct allocation of operating and capital assistance to RMCs that meet the requirements described above. Any direct capital or operating assistance provided to the RMC must be used for purposes of operating the public housing developments of the PHA and for performing other eligible activities with respect to public housing. If HUD provides direct funding to an RMC, the PHA is not responsible for the actions of the RMC.

In addition to implementing section 532 of the Public Housing Reform Act, this proposed rule would also make one clarifying change to 24 CFR part 964. Specifically, this rule would revise § 964.225 (entitled ''Resident management requirements'') to clarify that an RMC must be in compliance with any local licensing requirement, or other local requirement, governing the qualifications or operations of a property manager.

IV. Other Changes Made by the Public Housing Reform Act to Public Housing Resident Requirements

In addition to the changes described above, the Public Housing Reform Act makes various other amendments to the statutory requirements regarding resident participation and resident opportunities in public housing. For example, the Public Housing Reform Act requires the participation of residents on the governing board of a PHA (section 505 of the Act) and provides for grant funding of services for public housing residents (section 538 of the Act).

The resident board membership requirements established by section 505 of the Act are being implemented through a separate proposed rulemaking published on June 23, 1999 (64 FR 33644). The June 23, 1999 proposed rule would create a new subpart E to 24 CFR part 964 describing these requirements. The other changes made by the Public Housing Reform Act affecting the part 964 requirements will be the subject of a separate proposed rulemaking. HUD is committed to the development of this proposed rule with the active participation of public housing residents (see Section V of this preamble below).

V. HUD's Ongoing Efforts To Promote Effective Resident Participation

To further promote effective resident participation in public housing, HUD is taking various steps to promote resident involvement in creating and maintaining a positive living environment. As discussed above, HUD is developing a proposed rule that will implement the resident related amendments made by the Public Housing Reform Act. HUD is committed to developing this proposed rule with the active participation of public housing residents. HUD will solicit resident input through the scheduling of public forums, solicitations for written comments, and/or other appropriate means.

HUD's goal in undertaking this rulemaking is to develop a set of easy-to-understand regulations that reflect the meaningful contributions of public housing residents. Accordingly, the proposed rule will not only implement statutory amendments made by the Public Housing Reform Act, but will also streamline and reorganize 24 CFR part 964 to simplify and improve the clarity of HUD's resident participation requirements.

HUD is taking several other steps to increase resident participation in public housing. For example, HUD will conduct training for resident organizations and PHAs on the new Public Housing Reform Act. HUD will also clarify in the PHA Plan regulation that reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

VI. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this proposed rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The proposed rule is exclusively concerned with public housing agencies that contract with RMCs for the management and operation of specific public housing projects. Specifically, the rule would make various conforming amendments to 24 CFR part 964 (captioned ''Tenant Participation and Tenant Opportunities in Public Housing'') to reflect recent statutory changes made by the Public Housing Reform Act. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The Public Housing Reform Act improves and simplifies the way in which PHAs and RMCs are funded. Specifically, section 519 of the Public Housing Reform replaces funding under the existing Performance Funding System (PFS) with formula funding under the new Operating Fund and the Capital Improvement Assistance Program (CIAP) and the Comprehensive Grant Program with formula allocations under the new Capital Fund. The implementation of section 519 is beyond the scope of this proposed rule, and is the subject of separate negotiated rulemakings that HUD is currently undertaking. Accordingly, the economic impact of this proposed rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule would not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. This proposed rule would revise 24 CFR part 964 to reflect recent statutory changes made to section 20 of the 1937 Act by section 532 of the Public Housing Act. The proposed rule would also make several clarifying and technical changes to the part 964. No

programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned ''Regulatory Planning and Review'') and determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

List of Subjects in 24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR part 964 as follows:

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

1. The authority citation for part 964 is revised to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

2. Amend § 964.225 as follows:

a. Redesignate paragraphs (h), (i), (j), and (k) as paragraphs (i), (j), (k), and (l), respectively;

b. Add new paragraph (h); and

c. Revise newly designated paragraph (j).

The addition and revision to § 964.225 read as follows:

§ 964.225 Resident management requirements.

* * * * *

(h) *Direct provision of operating and capital assistance to RMC.*—(1) *Direct provision of assistance to RMC.* The ACC shall provide for the direct provision of operating and capital assistance by HUD to an RMC if:

(i) The RMC petitions HUD for the release of funds;

(ii) The contract provides for the RMC to assume the primary management responsibilities of the PHA;

(iii) The RMC has been designated as at least a ''standard performer'' under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and

(iv) The RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

(2) *Use of assistance.* Any direct capital or operating assistance provided to the RMC must be used for purposes of performing eligible activities with respect to public housing as may be provided under the contract.

(3) *Responsibilities of PHA.* If HUD provides direct funding to a RMC under paragraph (h)(1) of this section, the PHA is not responsible for the actions of the RMC.

* * * * *

(j) *Bonding, insurance, and licensing.* (1) *Bonding and insurance.*—Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the RMC or its employees.

(2) *Licensing and other local requirements.* An RMC must be in compliance with any local licensing, or other local requirement, governing the qualifications or operations of a property manager.

* * * * *

Dated: October 13, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–27303 Filed 10–20–99; 8:45 am]

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October 21, 1999

Part VI

Department of Housing and Urban Development

24 CFR Parts 888 and 982

Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 888 and 982

[Docket No. FR–4428–F–04]

RIN 2577–AB91

Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts as final certain provisions of the interim rule published on May 14, 1999, to implement the statutory merger of the Section 8 tenant-based certificate and voucher programs into the new Housing Choice Voucher Program, and makes amendments to other provisions of this interim rule. This final rule takes into consideration the public comments received on the interim rule, and most of the amendments made at this final rule stage are in response to public comment.

EFFECTIVE DATE: November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477. (This is not a toll-free number.) Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On May 14, 1999 (64 FR 26632), HUD published for public comment an interim rule amending the regulations for the Section 8 tenant-based program. The interim rule implemented most of the Section 8 tenant-based program provisions contained in the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Public Law 105–276, approved October 21, 1998; 112 Stat. 2461) (the ''1998 Act''). Of particular significance, the May 14, 1999 interim rule implemented section 545 of the 1998 Act. Section 545 provides for the complete merger of the Section 8 tenant-based certificate and voucher programs.

HUD had previously promulgated regulations (known as the ''conforming rule'') that combined and conformed rules for Section 8 tenant-based assistance to the extent permitted by prior law. The new tenant-based program has features of the previously authorized certificate and voucher programs, plus new features, as described in the preamble to the interim rule.

HUD provided for a 90-day delayed effective date for the interim rule (in contrast to the customary 30-day delayed effective date for most HUD rules issued for effect), in order to afford public housing agencies (PHAs) additional time to prepare for the implementation of the interim rule. On August 11, 1999, HUD published a notice changing the effective date of the interim rule to October 1, 1999. (See 64 FR 43613.)

This rule does not implement the 1998 Act revisions to the project-based certificate program, which is the subject of 24 CFR part 983. Until HUD issues revisions to part 983, PHAs may continue to provide project-based assistance in accordance with the published part 983.

II. Public Forums

In addition to the comments submitted in response to publication of the interim rule, HUD convened three public forums on the May 14, 1999 interim rule. Section 559 of the 1998 Act requires that before HUD publishes its final rule on the merger of the Section 8 certificate and voucher programs, HUD is to seek recommendations from organizations representing: (1) State or local PHAs; (2) owners and managers of tenant-based housing assistance under section 8 of the U.S. Housing Act of 1937; and (3) legal services organizations. Section 559 also requires HUD to convene not less than two public forums at which the persons or organizations making recommendations may express their views concerning the proposed disposition of their recommendations.

The three public forums convened by HUD on this rule were held in Omaha, Nebraska on May 19, 1999, in Syracuse, New York on June 28, 1999, and in Washington, DC, on July 28, 1999. At each of these forums, forum participants made helpful recommendations and suggestions, discussed issues and exchanged ideas on the merger of the section 8 certificate and voucher programs, especially the requirements established in the May 14, 1999 interim rule. Consistent with the statutory requirements, HUD advised the forum participants of its proposed disposition of the participants recommendations when HUD had formulated a proposed disposition of a specific view or recommendation offered. For certain issues, HUD was unable to offer the forum participants a proposed disposition, because the issues required further deliberation by HUD, but HUD discussed with the participants the considerations involved in HUD's decisionmaking process.

III. Significant Changes Between the May 14, 1999 Interim Rule and This Final Rule

This section highlights the significant changes made to the May 14, 1999 interim rule at this final rule stage. This final rule adopts without change the amendments made to 24 CFR parts 248, 791, and 792 in the May 14, 1999 interim rule. This rule makes a conforming amendment to 24 CFR part 888 and also makes further amendments to several sections of part 982. The major changes made by this final rule to parts 888 and 982 are summarized below. Other changes are also noted in the discussion of the public comments.

- *Amendments to 24 CFR part 888.* The final rule amends part 888, which describes the regulations governing fair market rents and contract annual adjustment factors for the Section 8 housing assistance payment program. Specifically, the final rule revises the part 888 requirements regarding fair market rents to increase the FMR for a manufactured home space rental from 30 percent to 40 percent of the FMR for a two-bedroom unit to reflect the new procedures applicable to manufactured home space rental under the Section 8 Housing Choice Voucher program.
- *Definitions.* The final rule revises § 982.4 (Definitions) to provide three new definitions applicable to the Section 8 Housing Choice Voucher program—''Family rent to owner,'' ''Utility reimbursement,'' and ''Welfare-to-work (WTW) families.'' Additionally, the final rule removes the definitions of ''extremely low income family'' and ''utility reimbursement'' from part 982 and replaces them with a cross-reference to part 5. The definitions of these terms are applicable to several HUD programs. Part 5 was established by HUD to provide the definitions and other program requirements that are generally applicable to HUD programs. Accordingly, it is unnecessary to repeat the definitions of these terms in part 982.
- *Equal opportunity requirements.* The rule revises paragraph (c) of § 982.53 to provide that the actions to affirmatively further fair housing must be in accordance with the requirements of the PHA Plan regulation in 24 CFR 903.7(o).
- *Administrative plan.* The rule revises paragraph (b) of § 982.54 to specify that the PHA's administrative plan is a supporting document to the

PHA plan and must be available for public review.

• *Income targeting.* The final rule amends the income targeting provisions at § 982.201(b)(2). Specifically, the final rule establishes the limited circumstances in which a PHA may admit a percentage of extremely low income families lower than the 75 percent required under the income targeting provisions of the 1998 Act.

• *Local admission preferences.* The final rule amends § 982.207 to provide that a PHA must not deny a local preference, nor otherwise exclude or penalize a family in admission to the programs, solely because the family resides in public housing. Further, the final rule clarifies and emphasizes certain requirements for PHA adoption of residency preferences. For example, the rule specifies that a PHA may only implement residency preferences in accordance with applicable non-discrimination and equal opportunity requirements.

The rule provides that a PHA may establish local admission preferences for: (a) Working families; (b) persons with disabilities; (c) victims of domestic violence; and (d) single persons who are elderly, displaced, homeless, or a person with disabilities.

• *PHA approval of assisted tenancy.* The final rule amends § 982.305(a), which describes the requirements that must be satisfied before a PHA may approve the assisted tenancy. Specifically, the final rule provides that at the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, the PHA must ensure that the family share may not exceed 40 percent of the family's monthly adjusted income.

• *PHA disapproval of owner.* This rule adds to § 982.306(d) a statement that the restriction against a PHA approval of a unit occupied by a family member only applies at the time a family initially receives tenant-based assistance for occupancy of a particular unit, but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.

• *Lease and tenancy.* The final rule makes various revisions to § 982.308, which sets forth the lease and tenancy requirements under the Section 8 Housing Choice Voucher program. Among other changes, the final rule provides that owners may use another form of lease (such as a PHA model lease) if the owner does not use a standard lease form for rental to unassisted families. The final rule also defines what constitutes ''legal capacity'' to enter into a lease. Further, the rule specifies the minimum information that must be contained in the lease. The final rule also establishes certain requirements regarding changes to the lease or rent. For example, the final rule specifies that all changes to the lease must be in writing. Additionally, the rule specifies that in certain situations, Section 8 assistance will not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner.

• *Owner notice of grounds for termination of lease.* This final rule amends § 982.310 (captioned ''Owner termination of tenancy'') to clarify that the owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given before the commencement of the eviction action.

• *Portability.* The final rule amends § 982.355, which establishes the portability procedures governing administration by the receiving PHA. The final rule provides that when a family has a right to lease a unit in the receiving PHA jurisdiction, the receiving PHA must provide assistance for the family. Receiving PHA procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA waiting list is not used. However, the receiving PHA may deny or terminate assistance for family action or inaction in accordance with § 982.552 (''PHA denial or termination of assistance for family'') and § 982.553 (''Crime by family members'').

• *PHA unit inspection.* The final rule removes § 982.405(f) of the interim rule. Paragraph (f) of § 982.405 required that a PHA adopt procedural guidelines and performance standards for conducting required HQS inspections.

• *Late payment penalties.* The final rule amends the late payment provisions located in § 982.451(b)(5)(ii). Specifically, the final rule provides that the HAP contract shall provide for penalties against the PHA for late housing assistance payments due to the owner only if all of the following conditions apply: (a) The penalties are in accordance with generally accepted practices and law in the local housing market; (b) it is the owner's practice to charge such penalties for assisted and unassisted tenants; and (c) the owner also charges such penalties against the tenant for late payment of family rent to the owner. The interim rule provision regarding late payment penalties only referenced the first condition identified above (*i.e.,* generally accepted local practice and law).

• *Owner breach of contract.* The final rule revises § 982.453 (captioned ''Owner breach of contract''). Specifically, the final rule expands the list of owner actions considered to be a breach of the HAP contract to include violent criminal activity.

• *Payment standard for pre-merger voucher tenancies.* The final rule revises § 982.502, which establishes the requirements governing conversion to the Section 8 Housing Choice Voucher program. The interim rule (and this final rule) provide that if the PHA entered into a HAP contract for a voucher tenancy before the merger date, the tenancy will continue to be considered and treated as a tenancy under the voucher program, and will be subject to the voucher program requirements of part 982. The final rule revises § 982.502 to remove the provision for a shopping incentive for over-FMR certificate tenancies before the effective date of the second regular reexamination of family income and composition on or after the merger date. The shopping incentive was never applicable to over-FMR certificate tenancies and will not be triggered by conversion of these families to the voucher program.

• *HUD approval of payment standard amount below the basic range.* The final rule amends § 982.503 (captioned ''Voucher tenancy: Payment standard amount and schedule'') to provide that HUD, in its sole discretion, may approve a PHA request for approval to establish a payment standard amount that is lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income.

• *How to calculate housing assistance payment.* The final rule amends § 982.505 (captioned ''Voucher tenancy: How to calculate housing assistance payment''). Specifically, the final rule provides that during the first 24 months of the HAP contract, the payment standard for a family is the higher of: (a) the initial payment standard (minus any amount by which the initial rent to owner exceeds the current rent to owner); or (b) the payment standard, as determined at the most recent regular reexamination of family income and composition after the beginning of the HAP contract term. After the first twenty four months of the HAP contract term, the payment standard is the

payment standard as determined at the most recent regular reexamination of family income and composition after the beginning of the HAP contract term.

- *PHA denial or termination of assistance for family.* The final rule revises § 982.552(c)(1)(x) to elaborate on factors that a PHA may consider in its decision to deny or terminate assistance because of action or failure to act by members of the family.
- *FMR for manufactured home space.* As explained in more detail in the comment section of this preamble, the final rule amends § 982.623 (captioned ''Manufactured home space rental: Housing assistance payment'') to provide that the FMR for a manufactured home space is generally 40 percent of the published FMR. Previously, the FMRs for manufactured home spaces were based on a 30 percent figure.

IV. Discussion of Public Comments.

The public comment period closed on July 13, 1999. During that period, HUD received written comments from PHAs; regional/State housing agencies; organizations representing PHAs; organizations representing women who are victims of domestic violence; legal services organizations; advocates for persons with disabilities; low income housing advocates; and various other organizations and individuals. At the close of the public comment period, HUD had received 97 written comments. The summary of public comments that follows presents the major issues, recommendations and questions raised by the public on the May 14, 1999 interim rule, whether made at the public forums, or provided as written comments during the 60-day comment period on the rule.

The summary is organized by regulatory section (e.g., § 982.201). The underlined headings that follow each regulatory section present the issue and are followed by a brief description of the comment. Comments that are not directed to a specific regulatory section are described under the heading ''Miscellaneous comments''.

As previously indicated, the interim rule published on May 14, 1999 (as modified by the technical corrections published on September 14, 1999) was effective on October 1, 1999 and PHAs must implement that rule beginning October 1, 1999. This final rule includes additional changes to the interim rule, which PHAs must implement beginning on the effective date of this rule.

Section 982.4 Definitions.

Comment: Definition of PHA. HUD should revise the definition of PHA to include non-profit disability organizations administering the Section 8 Mainstream Program for people with disabilities.

HUD response. The rule contains the United States Housing Act of 1937 (42 U.S.C. 1437n(d)) (1937 Act) definition of ''PHA.'' In addition to the traditional definition of a PHA as a governmental entity or public body authorized to administer a 1937 Act program, for administration of the tenant-based program only, the rule includes in the definition of ''PHA'' additional entities: a consortium of PHAs; a non-profit entity administering certificates or vouchers under a contract with HUD or a PHA on October 21, 1998; and for any area outside the jurisdiction of a PHA with a tenant-based program or where HUD determines that the PHA is not administering the tenant-based program effectively, a private non-profit or governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area. A minor correction is made to this provision in this final rule.

Comment: Definition of ''tenant rent''. Tenant rent should be defined as ''The amount payable by the tenant as rent to the unit owner. In the certificate program, it is the total tenant payment minus any utility allowance.''

Rule needs to clarify whether the method of determining total tenant payment (TTP) in the Admissions and Occupancy proposed rule (published April 30, 1999) at § 5.613 will apply to the voucher program. Section 982.505 incorporates the TTP concept, but § 5.601(a)(2)(ii) of the current rule states that the definitions of ''total rent'' and ''total tenant payment'' do not apply to the voucher program. Clarification is needed.

HUD response. The definition of TTP in part 5 will apply to the voucher program resulting from the merger of the certificate and voucher programs. However, the definitions of tenant rent and utility reimbursement in part 5 will not apply to the voucher program. Instead, in this part 982 rule, the term ''family rent to owner'' is used instead of ''tenant rent.'' Definitions of ''family rent to owner'' and ''utility reimbursement'' for the voucher program were added to § 982.4. Family rent to owner is the portion of the rent to owner paid by the family. Family rent to owner is calculated by subtracting the housing assistance payment to the owner from the rent to owner. A utility reimbursement in the voucher program is the portion of the housing assistance payment which exceeds the rent to owner. A utility reimbursement is only paid when the housing assistance payment exceeds the rent to owner.

Comment: Merger date of August 12, 1999. PHAs expressed concern about the merger date of August 12, 1999 because (1) the Admissions and Occupancy proposed rule, published April 30, 1999 (64 FR 23460), covered related topics; (2) HUD needs to revise the voucher contracts and forms; and (3) PHAs need to obtain computer software capable of implementing the changes required by part 982.

HUD response. In a **Federal Register** notice of August 11, 1999 (64 FR 43613), HUD extended the merger date defined in § 982.4 of the interim merger rule to October 1, 1999.

Section 982.53 Equal opportunity requirements.

Comment: State equal opportunity requirements. The language in § 982.53(d) needs to be expanded to include not only State laws but also local ordinances. These tools are used increasingly by local communities to promote fair housing.

HUD response. Section 982.53(d) was revised to change the ''state law'' references to ''State and local laws''.

Comment: Affirmatively furthering fair housing requirements. The language of the section is too broad, requiring PHAs to take undefined actions based on undefined criteria. HUD should require PHAs to establish mechanisms to respond to complaints of discrimination in the Section 8 program, including informing voucher holders of their rights and the remedies available to them. This provision also should require conformity with any city or county laws that prohibit discrimination.

The final rule should provide that the PHA must refrain from actions that are discriminatory or segregative, or that perpetuate the effects of past discrimination or segregation by the PHA; administer the program to remedy past discrimination and segregation in PHA programs and local government policies; administer the program to promote fair housing rights and choice; eliminate impediments to fair housing choice; and remedy the effects of discrimination and segregation in the market. HUD needs to clarify what it means by ''impediments to fair housing choice''.

HUD response. Many of the changes sought by the commenters are part of existing rules. For example, under § 982.301(b), PHAs must include information about federal, State and local equal opportunity requirements and housing discrimination complaint forms in the briefing packet given to

new families. Section 982.304 specifies that the PHA must give the family information on how to fill out and file a housing discrimination complaint if the family claims that illegal discrimination has prevented the family from finding or leasing a suitable unit. In addition, § 982.52 specifies that the voucher program requires compliance with all equal opportunity requirements imposed by contract or federal law and the PHA must submit a signed certification that it will administer the program in conformity with civil rights laws.

The PHA obligation to affirmatively further fair housing is identical to the requirement contained in the PHA plan final rule. It is important to note that in implementing program changes covered by the 1998 Act, both HUD and the PHA must ensure compliance with applicable nondiscrimination requirements and affirmatively further fair housing. The PHA obligation to affirmatively further fair housing is specifically required by both the part 982 (the housing choice voucher program) and part 903 (the PHA plan) rules.

Section 982.54 Administrative plan.

Comment: Section 8 administrative plan. HUD should eliminate a separate Section 8 administrative plan and incorporate the information required by this plan in the PHA plan. A separate Section 8 administrative plan should apply only to those PHAs that are not yet operating under an approved PHA plan.

HUD response. Notice PIH 99–33 (HA) issued on July 30, 1999, provided further PHA plan instructions, including a mandatory electronic template for submission of the PHA plan. As stated in the HUD notice, PHAs will provide statements of policy using short responses and by checking boxes in the PHA plan template. To ensure that the public has access to detailed information about all of the PHA's discretionary policies, the HUD notice calls for the administrative plan to be a supporting document to the PHA Plan and available for public review. Therefore, the PHA will not be required to repeat administrative plan information in the PHA plan.

Section 982.151 Annual Contributions Contract.

Comment: Funding. There should be no reduction in assistance amounts based upon differences between the Fair Market Rent (FMR) and payment standards in existing voucher Annual Contribution Contracts (ACCs) and merged ACCs. All funding must be transferred.

HUD response. Conversion to the merged program will not result in the loss of PHA funding for the Section 8 program. HUD is publishing a separate rule on renewal funding for the Section 8 tenant-based assistance program.

Section 982.152 Administrative fee.

Comment: Administrative fees. The final rule needs more specific guidance on when to apply for additional administrative funds, because PHAs may be reluctant to apply for such fees.

HUD response. Guidance concerning PHA administrative fees is published annually in the **Federal Register** and in HUD handbooks and notices.

Comment: Administrative fee bonuses for high performers. This section should provide for an additional administrative fee as a bonus or incentive to particularly high-performing PHAs, if HUD chooses to develop such an incentive.

HUD response. The statute does not permit HUD to provide bonus administrative fees to high performance PHAs.

Comment: Additional administrative fees for conversion to the merged program. HUD should provide additional administrative fees to facilitate conversion, and HUD should convert the certificate program quickly while ensuring rent neutrality through appropriate voucher payment standards.

HUD response. There are no funds available for this purpose; the statute does not permit HUD to provide PHAs with additional administrative fees to facilitate the merger.

Section 982.154 ACC reserve account.

Comment: ACC reserve account. A change in language (from the word ''establishes'' to ''may'') will open the door to the elimination of individual PHA reserve accounts. It is both prudent and essential for the efficient operation of the Section 8 program that PHAs have access to funds for various unexpected cost increases. HUD should change the language back to the word ''establishes''.

HUD response. The text of § 982.154(a) was changed in the May 14, 1999 interim rule to more clearly reflect the fact that HUD has discretion to determine the amount of the ACC reserve account as provided in the ACC for many years. This change in regulatory text does not signal a change in HUD authority to determine the amount of the ACC reserve account. HUD is publishing a separate rule on renewal funding, which will address the ACC reserve account.

Section 982.162 Use of HUD-required contracts and other forms.

Comment: HUD forms and contracts. HUD needs to revise its required contracts in a timely manner and have an adequate supply for PHAs.

HUD response. The merged program housing assistance payments (HAP) contract (form HUD–52641) and tenancy addendum (form HUD–52641–A) are posted on the HUD web at www.hudclips.org. Until other contracts and forms are issued, PHAs may continue to use the current voucher program forms (e.g., rental voucher and HAP contract for leasing manufactured home spaces).

Section 982.201 Eligibility and targeting.

Comment: Targeting requirements effect on welfare reform and working poor. Targeting that limits assistance to extremely low income families is contrary to welfare reform efforts and will deny assistance to the working poor. Targeting rewards welfare recipients by moving them up on PHA waiting lists. Conversely, the rule penalizes the working poor by moving those individuals further down the list.

HUD response. The targeting requirements are statutory, but the rule permits variations where needed and as authorized by the statute. Section 16(d) of the 1937 Act provides that at least 75 percent of annual admissions to the Section 8 tenant-based assistance program must be families whose incomes do not exceed 30 percent of area median income. In the final rule, such families are called ''extremely low income families'', a new term defined at § 5.603 of this title.

The statute permits HUD to exercise some discretion to modify the impact of the statutory requirement to target 75 percent of a PHA's tenant-based program admissions to extremely low income families. Section 16(b)(1) of the 1937 Act permits HUD to establish the extremely low income limit higher or lower than 30 percent of area median income where HUD determines a higher or lower limit is necessary because of unusually high or low incomes.

HUD has determined that one-person households with incomes below their State Supplemental Security Income (SSI) benefit level are of unusually low income and that a modification to the income limit for extremely low income determination standards was needed. HUD issued Notice PDR 99–04 (on July 21, 1999) to make changes in the Section 8 existing housing extremely low income limit determinations. The extremely low income limit amounts have been increased wherever necessary

so that the one-person 30 percent of median income limit is at least as high as the State SSI benefit level.

HUD will not make further adjustments to this year's 30 percent of area median income determination to accommodate minimum wage households. Such a change would go far beyond other adjustments and drastically alter the thirty percent standard.

In addition, under the authority of section 16(d) of the 1937 Act, a provision has been added to the final rule that allows a reduced targeting percentage for welfare-to-work voucher admissions, only if and to the extent the PHA has demonstrated that compliance with the targeting obligations for such welfare-to-work families would interfere with the objectives of the welfare-to-work voucher program. HUD expects this authority to be needed only in exceptional circumstances.

Comment: Lower targeting requirements for good cause. The rule must specify the standard for good cause requests made by PHAs to establish different targeting requirements, and what documentation the PHAs must provide to HUD. The rule should provide that a targeting exception will be granted only in unusual or extraordinary circumstances.

HUD should consider fair housing concerns and the consolidated plan in approving a different targeting percentage.

HUD response. HUD has authority under section 16(d) of the 1937 Act to approve for good cause PHA establishment and implementation of different targeting requirements for the PHA's Section 8 tenant-based program, in accordance with the PHA plan. HUD will carefully scrutinize all requests for targeting exceptions and will only approve exceptions on a case-by-case when fully justified by exceptional circumstances. The final rule adds provisions that specify two cases when a PHA may adopt a different targeting standard:

—When HUD has approved a lower targeting requirement for a PHA in accordance with specific good cause standards specified in the rule, which are designed to demonstrate that the PHA is not able to find a sufficient number of extremely low income families to fill available program openings despite outreach and marketing and that the vouchers will substantially address worst case housing needs.

—The targeting disregard for families that receive vouchers funded under the HUD welfare-to-work program (or a renewal of that funding) explained above.

The following is a more detailed description of the first type of targeting exception. In both cases, the use of a modified targeting standard must be consistent with the PHA plan. In addition, any HUD approval of a targeting exception must be consistent with the PHA obligation to administer the program in a manner that affirmatively furthers fair housing.

The rule provides that a PHA may admit less than seventy five percent of extremely low income families during the PHA fiscal year if HUD determines there is good cause for, and approves the use of, a lower targeting standard by the PHA. HUD may approve a lower targeting requirement if HUD determines that:

(1) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or nonmetropolitan county, both within and without the PHA jurisdiction;

(2) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to reach such families, including families on waiting lists of other PHAs in the same MSA or nonmetropolitan county.

(3) Admission of the additional very low income families other than extremely low income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.

If there are not enough extremely low income families to fill available program slots during the PHA fiscal year, even though the PHA has opened the waiting list, given public notice, and conducted outreach and marketing and the vouchers will address worst case housing needs, then HUD may approve the PHA's use of a lower targeting standard.

Comment: Higher targeting goals. The rule should permit PHAs to meet their targeting obligations by targeting at least 75 percent of newly available vouchers to households with incomes below 20 or 25 percent of area median income.

HUD response. The statute requires that at least 75 percent of new admissions be families having incomes up to 30 percent of median. At its option, a PHA may choose to limit admissions to families with incomes lower than 30 percent of area median income. The extremely low income limit is the maximum qualifying income. Any family with an annual income below the extremely low income limit counts as an extremely low income family, and the admission of such a family counts toward satisfaction of the PHA's targeting responsibilities.

Comment: Targeting requirements effect on the Section 8 homeownership program. By giving preference to welfare recipients, the targeting limits negate the impact of HUD's recently issued Section 8 homeownership proposed rule, published April 30, 1999 (64 FR 23488).

HUD response. HUD anticipates that most participants in the Section 8 homeownership program will be current program participants, not applicants. Since families continuing to receive assistance under the 1937 Act are not considered as new admissions, their income levels are not examined for compliance with income targeting requirements. Therefore, the income targeting requirements may have minimal impact on the implementation of the Section 8 homeownership program.

Comment: Targeting requirements effect on deconcentration goals and the number of families assisted. Targeting goals conflict with deconcentration goals. The targeting policy may add additional cost to the Section 8 tenant-based program, reducing the number of families assisted.

HUD response. The statutory and regulatory targeting requirement is designed to assure that available assistance funds are targeted to the families that need it most. HUD is making adjustments in the final rule to assure reasonable use of the program by eligible families by allowing targeting exceptions in accordance with the law, as described above. Although assistance is targeted to extremely low income families, such families have the right to move anywhere in the PHA jurisdiction and may also receive housing assistance outside the PHA jurisdiction under portability procedures.

Comment: Income used to determine ''extremely low income''. Adjusted income should be used to calculate targeting limits. Using adjusted income in the determination of income targeting requirements would be more appropriate, since it provides a more realistic picture of those persons in need of housing assistance.

HUD response. HUD has not made the recommended change. Annual income, not adjusted income, is compared to the income limits to determine whether the family is extremely low income. Use of annual income for this purpose is consistent with both the statute and the method used to determine whether the family is very low income, low income, or moderate income.

Comment: Income targeting implementation. Will PHAs be forced to skip very low income families on the waiting list to attain the required percentage of extremely low income families? HUD should provide directions for waiting list management. Will program slots be held open until there are enough extremely low income applicants so that the 75 percent admission requirement is satisfied, or should such slots be filled by other eligible applicants until there is an extremely low income applicant?

HUD response. HUD expects to provide further guidance on techniques for implementation of the income targeting requirements, and other questions concerning requirements under this rule. Meeting the income targeting requirements will require skipping higher income families on the waiting list as necessary to satisfy the PHA's annual targeting requirement.

Comment: Effect of portability on targeting requirements. If a family moves under portability, is the admission counted against the initial PHA or the receiving PHA? If a family exercises its right of portability, and the recipient PHA decides to absorb the family, does the admission count toward the recipient PHA's targeting goal, or does the admission always count toward the initial PHA's targeting goal? If the receiving PHA bills but does not absorb, is the family classified as a new admission? May a proposed recipient PHA refuse to accept a porting family if acceptance will cause the recipient PHA to fall below its targeting requirement? If a recipient PHA bills the initial PHA for a participating family and the recipient PHA later decides to absorb the family, does the absorption count as an admission for the purposes of income targeting?

HUD response. Admission of an applicant family that moves under portability procedures is charged against the initial PHA's targeting obligation—even if the family is initially assisted at the receiving PHA—if the receiving PHA bills the initial PHA. The admission is included in the initial PHA base of annual admissions (to which the 75 percent minimum targeting percentage is applied). If a portable family is an extremely low income family at the time of admission, the admission also counts toward satisfaction of the initial PHA's minimum targeting percentage.

As in the past, ''admission'' is the first execution of a HAP contract by a PHA on behalf of a family. For purposes of targeting, the initial PHA counts the admission of the portable family as an extremely low income admission if the family's annual income is at or below 30 percent of median income at the location of the housing where the family is initially assisted at admission to the program (in the jurisdiction of the receiving PHA—if the family is initially assisted (admitted in the receiving PHA jurisdiction).) If a portable family is not an extremely low income family when admitted to the program (in the initial PHA or receiving PHA jurisdiction), the admission does not count towards meeting the initial PHA's income targeting requirements. However, if the receiving PHA decides to absorb the portable family (at admission), the receiving PHA counts the family towards the receiving PHA's targeting requirements.

Comment: Targeting requirements for PHAs with identical jurisdictions. The rule provides that two or more PHAs with identical jurisdiction must jointly meet the targeting goals. No PHA should be responsible for the action of another PHA. This requirement unfairly penalizes a high-performing PHA that has the identical jurisdiction as a troubled PHA.

HUD needs to define the meaning of ''identical jurisdiction.'' Does ''overlapping'' mean the same as ''identical''?

HUD response. The final rule has been revised to clarify—in accordance with the law, and as intended by the interim rule—that the requirement to jointly meet income targeting requirements only applies when the geographic jurisdictions of two or more PHAs are ''identical''—not merely overlapping, as is frequently the case for county, regional and state PHAs. Thus, the obligation for PHAs to coordinate their income targeting only applies if every part of the jurisdiction of each PHA is also the jurisdiction of the other PHA. Section 982.201(b)(2)(v) was also revised in the final rule to require that coordination of income targeting only applies if the PHAs with identical jurisdictions agree to being treated as a single jurisdiction for purposes of income targeting.

Comment: Income limit for issuance of a voucher. The reference to ''family unit size'' in § 982.201(b)(4) of the interim rule should be just ''family size.''

HUD response. HUD made the recommended change in the technical corrections to the interim rule that were published in the **Federal Register** on September 14, 1999 (64 FR 49656).

Comment: Income limit for admission. Section 982.201(b)(4) of the interim rule seems to permanently limit the use of a voucher to only those areas for which the family was eligible for admission. In reality, once admitted, the family is able to move to any area. The last sentence of paragraph (b)(4) should be revised to read: ''At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.''

HUD response. HUD has adopted this recommended change.

Section 982.202 How applicants are selected: General requirements.

Comment: Local admission preferences: income skipping. The prohibition against local preferences for admission of higher income families over families of lower income (§ 982.202(b)(3)(ii)) is not required by statute and should be deleted. It is inconsistent with the intent of the targeting requirements of the 1998 Act (section 513). Unlike the express prohibition on income-skipping in the project-based component of the Section 8 program, the parallel provision concerning income targeting in the tenant-based Section 8 program says absolutely nothing about income-skipping. Silence in the statute should not be interpreted as a prohibition of income-skipping.

HUD response. HUD has decided to continue this requirement. Continuation of this requirement will help to ensure that extremely low income families are admitted to the tenant-based program.

Section 982.207 Waiting list: Local preferences in admission to program.

Comment: Local admission preferences: victims of domestic violence. PHAs should consider preferences for individuals who are victims of domestic violence, as provided in HUD's admission and occupancy proposed rule (published in the **Federal Register** on April 30, 1999, 64 FR 23460).

HUD response. The 1998 Act states that it is the ''sense of Congress'' that each PHA involved in selection of families assisted in the public housing program, or in the Section 8 tenant-based assistance program, ''should * * * consider'' preferences for individuals who are victims of domestic violence (section 514(e) of the 1998 Act). HUD has amended this rule to provide that the PHA ''should consider'' whether to adopt a local preference for admission of families that include victims of domestic violence (§ 982.207). After such consideration, the PHA may or may not choose to adopt such a preference.

Comment: Local admission preferences: preference for elderly, disabled and displaced over other singles. May a PHA continue to provide

an admission preference to elderly, disabled and displaced single persons over other single persons?

HUD response. Yes. Even though the 1998 Act repealed the requirement that PHAs must provide an admission preference to single persons who are elderly, disabled, or displaced persons before other single persons, the PHA may opt to continue this practice as part of its local admission preference policies.

Comment: Local admission preferences: equal opportunity requirements. The final rule should provide that HUD will approve an admission preference only if it is consistent with civil rights laws and affirmatively furthers fair housing.

HUD response. By law, the PHA may adopt local preferences in accordance with local housing needs and priorities as determined by the PHA. HUD does not approve the PHA's local admission preferences. HUD only conducts a limited review to determine whether the PHA's selection procedures ''are consistent with information and data available to [HUD],'' and ''are not prohibited by or inconsistent with applicable law'' (section 511 of the 1998 Act, adding section 5A(i)(1) of the 1937 Act).

The PHA's local admission preferences must be consistent with the PHA plan and the consolidated plans for local governments in the PHA jurisdiction. Of course, PHAs must administer tenant-based assistance in conformity with civil rights laws and must affirmatively further fair housing. Equal opportunity requirements are specified in § 982.53.

Comment: Local admission preferences: local housing needs. In light of the demand and need for affordable housing, HUD should require that all admission preferences used by the PHA should be based on local housing needs.

HUD response. Sections 982.207(a)(1) and (2) reflect the statutory requirements for local preferences in the merged program. The regulations require that the PHA system of local preferences be based on local housing needs and priorities, as determined by the PHA. The PHA must use generally accepted data sources in determining local housing needs and priorities, and must consider public comment on the PHA plan and the jurisdiction's consolidated plan.

Local admission preferences: waiting list. The rule should explicitly require PHAs to consider the needs of persons on their waiting list in determining local preferences.

The rule should provide that the waiting list is a ''generally accepted data source'' to be used by the PHA in determining housing needs and priorities.

HUD response. PHA waiting lists may be an excellent source of local housing needs information in some communities, and an unreliable data source in other communities. PHA practices in purging or updating their waiting lists vary widely. Some PHAs periodically close the waiting list, while other PHAs have never closed the waiting list since the program began in 1975. For these reasons, HUD is not mandating use of the waiting list as a basis for local admission preferences.

Comment: Local admission preferences: preference for workers. The rule currently provides that a PHA which grants an admission preference to a family who is employed must grant the same preference to people with disabilities and to the elderly. This requirement should be included in the final rule.

HUD response. The rule is revised to clarify that the PHA may establish a preference for admission of working families (§ 982.207(b)). An applicant family must be given the benefit of the working family preference if the head and spouse, or sole member is either age 62 or older or a person with disabilities.

Comment: Local admission preferences: public housing tenants. HUD should retain the prohibition against Section 8 preferences that discriminate against public housing tenants.

HUD response. The 1998 Act repealed the statutory requirement (the so called ''Bartlett amendment'') that a PHA must permit public housing tenants to retain their pre-public housing preference status on the PHA's Section 8 waiting list. This prior requirement has therefore been removed from the program rule.

However, the Congress has not repealed section 8(s) of the 1937 Act (42 U.S.C. 1437f(s)), which provides that a PHA must not deny a local preference, nor otherwise exclude or penalize a family in admission to the voucher program, solely because the family resides in a public housing project. HUD has, therefore, added a new provision that specifies this continuing statutory requirement (§ 982.207(a)(4)). In addition, the regulation clarifies that a PHA may establish a preference for public housing residents who are victims of a crime of violence.

Section 982.303 Term of voucher.

Comment: Voucher term extensions. HUD should grant PHAs discretion to extend voucher time limits if a discrimination complaint has been filed with a proper fair housing enforcement agency, in connection with reasonable accommodation requests, and to increase housing choice opportunities.

HUD response. The final rule is revised to allow PHA discretion to extend the cumulative voucher term beyond the prior 120 day limit, whether for reasonable accommodation or other good cause determined by the PHA and stated in the administrative plan (§ 982.303(b)). This change will permit additional local administrative flexibility consistent with the Congressional policy to grant PHAs maximum local discretion in administration of their programs.

Section 982.305 PHA approval of assisted tenancy.

Comment: 15-day initial inspection requirement for PHAs with 1250 units or less. The 15-day Housing Quality Standards (HQS) inspection requirement is not reasonable for rural areas, where rental units are scattered and often located miles away from a PHA office. The final rule should provide rural PHAs with the same flexibility the interim rule currently provides large PHAs in complying with the HQS inspection requirements.

HUD should permit all PHAs (regardless of size) to comply with HQS inspection requirements within a ''reasonable time''.

All PHAs should be required to comply with the 15-day inspection requirement. Failure to conduct a timely HQS inspection imposes a serious hardship on the family because voucher assistance cannot commence until completion of the inspection. Therefore, a family must usually pay a market rent for the unit pending completion of the HQS inspection.

PHAs faced with uncooperative tenants or owners should be exempted from the 15-day inspection requirement.

HUD response. The 15-day initial HQS inspection standard is statutory and applies to all PHAs with 1250 or fewer budgeted tenant-based Section 8 units. The law provides a different standard for PHAs with more than 1250 budgeted units. HUD does not have discretion to provide rural (or non-rural) PHAs with relief from the 15-day deadline unless a PHA has more than 1250 units.

Although HUD cannot exempt PHAs faced with uncooperative owners or tenants from the initial HQS inspection deadline, the regulation provides that the 15-day clock begins after both the family and owner request approval of the tenancy, and the 15-day clock is

suspended during any time when the unit is not available for inspection. ''Not available for inspection'' encompasses a multitude of reasons why the unit is unavailable, including lack of cooperation by tenants or owners.

HUD expects to enforce the 15-day inspection deadline by including this element in the PHA's SEMAP rating, after appropriate rulemaking.

Comment: 15-day initial inspection requirement for PHAs with more than 1250 units. HUD lacks authority to establish a presumptive standard of 15 days for inspections by large PHAs. The law only requires a maximum 15-day inspection period for PHAs with 1250 or fewer assisted units. For PHAs that provide assistance to more than 1250 families, the statute requires that pre-assistance inspections be conducted ''before the expiration of a reasonable period.'' The interim rule text requires PHAs with more than 1250 units to conduct the initial HQS inspection within a reasonable time after the family submits a request for approval of the tenancy and, to the extent practicable, within 15 days after the family and the owner submit a request for approval of the tenancy.

The rule should provide that the period for PHA inspection of the unit is tolled during any period when the unit is not available for inspection.

HUD response. The interim rule provides that PHAs with more than 1250 units must conduct the initial HQS inspection within a reasonable time after the family submits a request for approval of the tenancy. To the extent practicable, the inspection must be conducted within 15 days after the family and the owner submit a request for approval of the tenancy to the PHA. These provisions are an appropriate exercise of HUD's rulemaking authority in implementing the statutory inspection requirements for large PHAs. If it is practicable for a PHA to conduct the inspection within 15 days, then 15 days is a reasonable inspection deadline, and is consistent with the law.

The interim rule already provides for suspending the clock for all PHAs when the unit is not available for inspection.

Comment: Applicability of rent burden cap to lease renewals. The rule should require PHA approval of renewal tenancies. The rule should also provide that the PHA may not approve a renewal tenancy unless the family share (rent—including tenant-paid utilities—minus the Section 8 subsidy payment) does not exceed 40 percent of the family's adjusted income.

HUD response. The 40 percent rent burden threshold does not apply to lease renewals. The 40 percent rent burden threshold only applies when a unit is first leased by a family (on or after October 1, 1999—the effective date of the merger rule) with tenant-based assistance under the voucher program. Thus the maximum rent burden requirement applies to: (1) the initial rent for the unit rented with voucher assistance by a family when admitted to the voucher program on or after October 1, 1999 (the merger date); and (2) the initial rent for any unit a participant first rents with voucher assistance on or after October 1, 1999—*i.e.*, to all moves by program participants on or after October 1, 1999.

Section 932.306 PHA disapproval of owner.

Comment: Optional PHA disapproval of owners. HUD should provide an appeals process for owners prohibited from participating in the program. HUD should act as independent arbitrator between the PHA and the owner.

There must be clear definitions and processes for implementing this provision; otherwise, the provision may used to deny Section 8 contracts to owners where local governmental officials or ''influential'' residents simply do not want Section 8 families.

Section 982.306(c)(5) of the interim rule provides that the PHA is authorized to disapprove an owner if the owner has a history or practice of ''failing'' to terminate tenancy of the undesirable tenants described in the statute. The statutory language does not use the term ''fail'' but uses the term ''refuse.'' This minor change from the statutory language may seem innocuous, but in practice it can be significant. This section needs to conform to the statutory language.

HUD's HUB offices should consider coordinating information in multi-State metropolitan areas to minimize chances for ''bad'' landlords to become Section 8 program participants by ''PHA-shopping.''

HUD response. Owners have no statutory or regulatory right to participate in the housing choice voucher program, and consequently have no due process right to a hearing on a PHA's decision to disapprove owner participation. There is no federal mandate for PHAs or HUD to grant owners a process for appeal of a PHA decision to disapprove owner participation. The PHA has discretion whether to provide a local review or appeal process to owners disapproved by the PHA for the reasons authorized by the regulations, and the nature of any such process.

HUD has not substantively changed the statutory requirement. HUD considers the term ''fail'' more appropriate to and consistent with the statutory requirement, and clarifies that the PHA's authority to disapprove an owner does not require a specific PHA demand and refusal of the PHA demand by the owner. This implementation of the law is within HUD's rulemaking authority.

HUD will explore ways too coordinate this information as suggested by the commenters. In the meantime, PHAs may wish to establish a communication process to share information about owners denied participation in the voucher program.

Section 982.307 Tenant screening.

Comment: Optional PHA screening of applicants: General. HUD should eliminate the option for PHAs to screen family behavior or suitability for tenancy. Does the PHA now owe any obligation to the landlord and can a participant appeal this determination?

The voucher program is based on the private market principle that prospective private landlords (not PHAs or other third parties) can best determine a family's suitability for tenancy. The only purpose of PHA screening should be the provision of supplemental information for prospective private landlords.

PHAs should be encouraged to share their screening information regarding family behavior and suitability for tenancy to owners to assist owners in making the required independent determination of suitability of potential tenants.

The rule needs to clarify that the final decision on tenant acceptability rests with the owner. The PHA can choose to collect screening information and provide it to the private owner, but it is up to the private owner, based on this information, to make a decision on acceptability. However, if the final rule authorizes PHA denial of admission based on screening criteria, the rule must establish clear, objective and non-discriminatory guidelines on screening criteria.

HUD response. The 1998 Act provides that PHAs ''may elect to screen applicants for the [housing choice voucher] program in accordance with such requirements as [HUD] may establish''. This final rule permits PHA screening of program applicants, and permits the PHA to deny admission as a result of the screening. In accordance with existing program requirements, the PHA must give the opportunity for informal review of the PHA decision to deny program admission as a result of the PHA screening.

PHAs may establish local screening criteria. PHAs are encouraged to share screening information, when practicable. It is important to note, however, that regardless of whether the PHA opts to screen applicants, the owner remains responsible for screening and selection of the family to occupy the owner's unit.

Comment: Optional PHA screening of applicants: equal opportunity concerns. Screening will disproportionately exclude person with physical or psychological disabilities. The final rule should require PHAs to consider measures for reasonable accommodation of disabilities before making a final decision to reject an applicant.

HUD response. PHAs must administer tenant-based assistance in conformity with civil rights laws and affirmatively further fair housing. Equal opportunity requirements are specified in § 982.53. In addition, PHA denials of admission are subject to the program requirements concerning informal reviews.

Comment: Optional PHA screening of applicants: PHA plan. A PHA's screening criteria should be part of the PHA plan, and should be subject to public and resident scrutiny and comment.

HUD response. Any PHA screening criteria will be included in PHA administrative plan which is a supporting document to the PHA plan and available for public review.

Comment: Optional PHA screening of applicants: portability. The portability provisions must continue to allow the receiving PHA to screen participants with portable vouchers based on the receiving PHAs local policies consistent with § 982.307.

HUD response. The receiving PHA may opt to screen the portable family using the receiving PHA's screening criteria only if the family is not a current participant in the tenant-based program (i.e., the family is not receiving housing assistance pursuant to a certificate or voucher HAP contract).

Section 982.308 Lease and tenancy.

Comment: Tenant's legal capacity. Additional guidance is required regarding the tenant's legal capacity.

HUD response. The rule is revised to specify that the tenant must have legal capacity to enter a lease under State and local law, and that ''legal capacity'' means that the tenant is bound by the terms of the lease, and may enforce the terms of the lease against the owner (§ 982.308).

Comment: PHA model lease. In several jurisdictions, most landlords use no written lease at all. In some jurisdictions, some landlords do not use a written lease. If the lease term is not defined, PHAs will not be able to plan reinspections and lease renewals in advance. Many landlords rely on a PHA to provide the written lease. Further, the landlords' standard leases might contain clauses that are contradictory to Section 8 voucher program requirements.

HUD response. Section 982.308(b)(2) was revised to specify that if the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease (including the HUD-prescribed tenancy addendum). The HAP contract prescribed by HUD will contain the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form. The regulations provide that a participating owner must certify that the terms and conditions of the lease are consistent with State and local law. It will be a violation of the HAP contract if the owner certification of lease consistency with State and local law is deficient.

Comment: Prohibited lease provisions. A list of prohibited lease provisions should be required by the final rule. The ''tenancy addendum'' is a HUD form that is not subject to rulemaking procedures, and the courts may not have access to the addendum or know what weight to give the addendum.

HUD response. The recommendation is inconsistent with the statutory provision, which requires use of the lease that the owner uses in the locality. Congress revised the lease provisions to minimize differences between voucher tenancies and unassisted tenancies to facilitate expanded owner participation in the Section 8 voucher program.

Comment: Lease and Tenancy Addendum. Many property owners may refuse to sign a written lease, but they will sign the HUD lease addendum. To ensure a broad range of housing choice, the only required rental agreement should be the HUD lease addendum. The voucher recipient should be allowed the choice of a verbal agreement or any type of written rental agreement or lease sufficient for execution of a HAP contract.

The tenancy addendum should not be part of the HAP contract. There is an inherent conflict between including a legal document to be signed by the owner and tenant, as an attachment to or part of a lease, in a document (the HAP contract) to be signed by the owner and the PHA, and barring the tenant from using any legal process to involve the PHA in its enforcement.

The regulations do not provide the tenant with all enforcement tools that it may need to protect itself from a bad landlord.

HUD response. The statute now requires use in the voucher program of the lease the owner uses in the locality. The HUD-prescribed tenancy addendum states the special requirements of a voucher tenancy in accordance with federal law, but is not intended to be a substitute for a complete lease. The lease is composed of two parts: The owner's standard form lease, plus the federal tenancy addendum.

Section 982.456 clarifies that the tenant is authorized to enforce rights under the tenancy addendum, but does not have the right to enforce other provisions of the HAP contract. The statute (section 8(o)(7)) specifically authorizes HUD to specify an addendum to the HAP contract concerning the lease and the assisted tenancy. Accordingly, the tenancy addendum, dealing with requirements of tenancy, is included in the HAP contract executed between the PHA and owner. However, since the tenancy addendum also sets forth owner lease obligations, HUD has required that the tenancy addendum also be part of the lease executed by the tenant and the owner, directly enforceable by the tenant against the owner. The requirement that the tenancy addendum be part of the lease assures tenant access to a legal process to enforce the rights contained in the tenancy addendum.

HUD has reexamined its position concerning whether a minimal amount of leasing information is needed since leases vary widely, and some owners do not typically provide a written lease. Accordingly, § 982.308(d) of the final rule provides that the lease must include, in addition to the utilities and appliances to be furnished by the owner, the names of the owner and tenant, the address of the unit rented, the term of the lease, and the amount of monthly rent to owner.

Comment: PHA approval of the lease. Final rule should require that the lease be approvable by the PHA. The only practical way to make sure that an owner's lease complies with State and local law is for the PHA to review and approve the lease.

Both the tenant and PHA should have 60 days advance notice of any proposed changes to the lease so the PHA may screen leases and approve the tenancy. This is especially important for any new changes in security deposits, responsibility for utilities, and proposed rent changes that may be affected by the new lease.

If HUD no longer will require a new HAP contract for a revised lease, which in itself is a welcome reduction in work,

it should retain the PHA's authority to disapprove the continued tenancy if the revised lease violates any program requirements or State and local law. The PHA should review the terms of the new tenancy, determine whether a HAP contract should be executed for this tenancy, and review the terms and conditions of the lease.

HUD response. HUD has not revised the interim rule to require PHA approval of leases. Instead, the housing choice voucher program regulations provide that a participating owner must certify that the terms and conditions of the lease are consistent with State and local law. It will be a violation of the HAP contract if the owner certification of lease consistency with State and local law is deficient. PHAs are not required to review the lease to assure such consistency, although the rule provides in § 982.308(c) that the PHA may opt to review leases for State and local law compliance.

The PHA will only provide housing assistance for a tenancy approved by the PHA. If both parties agree to terminate the lease, the family is not considered to be moving in violation of the lease.

The final rule is revised (§ 982.308(g)) to specify that PHA approval of the tenancy, and execution of a new HAP contract, are required for the following changes in the lease: (1) Changes in tenant or owner responsibilities for utilities or appliances; (2) changes in the lease term; and (3) if the family moves to a new unit, even if the unit is in the same building or complex. PHA approval of the tenancy, and execution of a new HAP contract, are not required for other changes in the lease such as a change in family composition or a change in the amount of rent to owner.

Of course, lease changes are subject to the essential program requirements, as stated in the tenancy addendum. In addition, § 982.308(g) of the final rule specifies that the owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect. Any such changes are subject to rent reasonableness requirements that bar owner from charging more than the market rent for comparable unassisted units.

Section 982.309 Term of assisted tenancy

Comment: Lease term of less than one year. HUD appropriately allows PHAs ability to approve leases with initial terms of less than one year.

PHAs should have greater flexibility to approve lease term of less than one year.

Section 982.309(a) of the interim rule provides that a PHA may approve a lease term of less than one year if such a lease term is the prevailing local practice and the PHA determines that the shorter term will improve housing opportunities for the family. Some PHAs serve a number of communities, each with a prevailing local practice, thus making it difficult for the PHA to develop a consistent lease term policy. The final rule should provide PHAs with the latitude to allow a lease term of less than one year (whether or not it is the prevailing local practice in a particular community), as long as it appears to be the prevailing practice in the State.

Clients who reside in college communities have difficulty finding owners who are willing to sign a one-year lease. Provision for leases of less than one year will expand housing choice for these clients.

The final rule should provide that under no circumstances may a PHA allow for a lease term of less than 6 months; otherwise some PHAs may use month-to-month leases, which do not adequately protect tenants from arbitrary eviction.

A lease term of less than one year should only be granted if the landlord would reject the lease because of the one-year lease term.

Initial lease terms of less than one year seem inconsistent with the goal of family stabilization and allow a loophole for future rent increases. The term ''prevailing local market practice'' should be clarified.

Rule should make clear that approval of lease terms of less than one year must meet two tests: (1) The PHA determines that such shorter term would improve housing opportunities for the tenant; and (2) such shorter term is considered to be a prevailing local market practice. This should be a case-by-case determination.

HUD response. The statute authorizes PHA approval of initial lease terms of less than one year under certain circumstances. The conditions for approval of an initial lease term of less than one (1) year are statutory. HUD intends to permit PHAs to use local judgment to determine prevailing local practice with respect to lease terms.

The regulatory text in the interim rule (and carried forward to the final rule) is clear that approval of initial lease terms of less than one year must meet both statutory tests. PHAs may opt to determine case-by-case whether approval will improve an individual family's housing opportunities, or the PHA may make a determination based on its overall (not case-by-case) judgment of market opportunities. PHAs will determine what is prevailing local practice with respect to lease terms.

Comment: Automatic lease renewals. The final rule needs to include automatic renewal in the absence of the landlord or tenant affirmatively terminating the tenancy. The automatic renewal will protect a tenant from a landlord who decides at the last moment not to renew.

HUD response. The recommendation is inconsistent with the statutory provision, which requires use of the lease that the owner uses in the locality. Congress revised the lease provisions to minimize differences between voucher tenancies and unassisted tenancies to facilitate expanded owner participation in the Section 8 voucher program.

Comment: Mutual termination of the lease by the owner and tenant; termination of the lease by the tenant after notice. The mutual termination provision in former § 982.309(b)(3) should be retained to clarify, at a minimum, that owners and tenants are free to negotiate a mutual termination during the lease term.

Lease termination provisions should remain as in former § 982.309(d) which provided that, after the initial term of the lease, the family may terminate the lease at any time, and that the lease may not require the family to give more than 60 calendar days notice of such termination to the owner. It is desirable to not allow the family's right to terminate the lease, after the initial term, to be dependent upon the terms of the particular lease used. Families may be locked into long periods, which will restrict their mobility.

HUD response. The recommendations are inconsistent with the new statutory requirement to use the standard lease form that an owner uses for other tenancies in the locality. Congress revised the lease provisions to minimize differences between voucher tenancies and unassisted tenancies to facilitate expanded owner participation in the Section 8 voucher program.

Section 982.310 Owner termination of tenancy.

Comment: Owner lease termination notice. The law provides that any termination of a voucher tenancy by the owner ''shall be preceded by the provision of written notice by the owner to the tenant specifying the grounds for that action.'' Section 982.310(e)(1) contradicts this statutory requirement because it permits an owner to combine the notice of grounds with an initial pleading used to begin an eviction action.

The rule should specify how much notice the owner must give to end the lease without cause at the end of a lease term.

HUD response. Section 982.310(e) has been revised to specify that the tenancy does not terminate during the term of the lease before the owner has given notice to the tenant that specifies the grounds for termination. The regulations continue to require that the notice must be given at or before the beginning of any eviction action.

The termination notice must be in accordance with the lease and State and local law. HUD does not specify the length of notice periods required for eviction of the tenant.

Comment: Applicability of Part 247 to lease terminations. Paragraph (g) of this section needs to be removed. It was originally included to minimize the landlord's burden when Section 8 requirements and Part 247 requirements were roughly equivalent. Now the landlord is allowed to terminate the lease without good cause. Leaving this paragraph in the final rule would mean that Section 8 tenants in federally subsidized projects under part 247 would not be entitled to the same protections as other residents of the project.

HUD response. HUD disagrees with the commenter. The same tenancy requirements should apply to all voucher tenancies.

Comment: Lease termination for a lease with an initial term exceeding one year. Section 982.310(d)(2) needs to be revised because it requires, in the case of a lease with an initial term of two years, that the landlord cannot terminate the tenancy, except for tenant misfeasance or nonfeasance for a full two years. The opening clause for paragraph (d)(2) should read: ''During the shorter of the first year of the lease term or the initial lease term, the owner may not terminate the tenancy for 'other good cause' unless. * * *''

HUD response. The interim rule provision is not in error. The final rule continues to provide that an owner may opt to offer an initial lease term longer than one year. During the initial lease term, the owner can only terminate tenancy for cause. This is not a new requirement. Of course, the initial HAP contract term may not extend beyond the ACC expiration date for the funding source from which the HAP contact is to be funded.

Definition of ''serious lease violation''. HUD should define what constitutes a ''serious lease violation.'' This should be changed to serious or repeated violation, the standard required for evictions in the Section 8 programs.

Serious lease violations should not include late payments or ''minor violations''. The definition of ''serious lease violation'' should not include ''other amounts due under lease.'' Tenants should not be subject to eviction for failure to pay late charges or disputed damage charges when a good faith dispute exists over liability for charges.

The definition of serious lease violation should not include minor violations or repeated minor violations of the lease.

HUD response. The regulation is clear that a ''minor'' lease violation is not a ''serious'' lease violation. HUD has determined that it would be impossible to provide an exhaustive list of actions or inactions that are considered serious lease violations. The eviction determination is ultimately made on a case-by-case basis by judges in State or local landlord/tenant courts. The courts determine whether a lease violation has occurred, and whether the violation is sufficiently ''serious'' to justify eviction from the assisted unit.

Section 982.314 Move with continued tenant-based assistance.

Comment: Prohibition on family moves. Permitting a PHA to prohibit a family from moving during the first year of the assisted tenancy may result in the termination of a family's assistance without good cause. This may occur when the initial lease term is less than one year and the landlord refuses to renew the lease without good cause. The family would be prohibited from moving and, therefore, lose its assistance. HUD should revise § 982.314(c)(2) to authorize PHAs to prohibit any moves by a family during its initial lease term (instead of during its initial year of assisted occupancy); and to permit a family to move whenever the landlord refuses to renew the family's tenancy without good cause.

HUD response. Consistent with the commenter's recommendation, § 982.314(c)(2)(i) is revised to change the time frame from ''first year'' to ''initial lease term.''

Section 982.352 Eligible housing.

Comment: PHA-owned units. The rule should not require a PHA to obtain the services of an independent agency to determine rent reasonableness and conduct HQS inspections. PHAs should be trusted to offer a decent unit and reasonable rent to an otherwise eligible family. Generally accepted accounting practices permit a separation of duties and control within the same organization. The independent auditor should be required to conduct a random sampling of Section 8 files where the PHA is the owner. PHA rent reasonableness data and other periodic checks on leased units provide adequate protection for the government and the taxpayer.

HUD should permit high-performing PHAs to conduct their own inspections of PHA-owned units.

The final rule should clarify how HUD will approve an independent agency. Is it HUD's intention to permit a neighboring PHA to perform such services?

HUD response. The special requirements for independent inspections and contract rent negotiations and reviews for PHA-owned housing are statutory. These requirements reflect legitimate and substantial concern with the inherent conflict of interest when the PHA contract administrator—responsible for oversight of the Section 8 owner—is itself the Section 8 owner, or substantially controls the nominal ownership entity.

The HUD field office will review any independent agency arrangement to ensure that the independent agency has an arms-length relationship with the PHA. A neighboring PHA may act as an acceptable independent agency—so long as the neighboring PHA is authentically independent of the PHA unit owner. A unit of general local government such as the Community Development Agency may also be an acceptable independent agency, unless the PHA is itself part of the same unit of general local government or an agency of such government.

Comment: Administrative fees for PHA-owned units. The reasoning behind requiring PHAs to obtain the services of independent entity is sound, but PHAs should earn the full administrative fee for the unit.

HUD response. The statute provides for a lower administrative fee for PHA-owned units.

Section 982.353 Where family can lease a unit with tenant-based assistance.

Comment: Portable moves during first 12 months. The rule should provide that the PHA's discretion regarding whether to allow portability in the first 12 month period from a non-resident family's admission to the program must be exercised program-wide, not family-by-family.

Rule should clarify that the PHA will provide reasonable accommodation to families during the 12-month initial period that might include waiver of its policy under § 982.353(c).

HUD response. The statute permits PHAs to prohibit portability during the first 12 months from admission for families who did not live in the PHA jurisdiction when they applied for assistance. This provision maintains the local character of a PHA's voucher program, and prevents families from shopping for assistance from different PHAs, regardless of where the family intends to live with assistance under the program. The decision to allow or deny portability during the first 12 months after family admission is appropriately left to PHA discretion—to exercise on a program-wide or case-by-case basis.

Although HUD has not made the recommended change concerning reasonable accommodation, PHAs must consider reasonable accommodation in the context of all program requirements and functions in accordance with the statute and HUD equal opportunity requirements. Equal opportunity requirements are specified in § 982.53.

Comment: Income eligibility of portable family. HUD should eliminate the requirement to determine income-eligibility of a porting family admitted (initially assisted) in the jurisdiction of a receiving PHA (§ 982.353(d)(3)). If the family is found eligible by the initial PHA, there is no reason to impose the burden of a second income-eligibility determination by the receiving PHA.

HUD response. The statute requires that an applicant be income eligible before initially receiving housing assistance. If the family will first receive assistance in the receiving PHA's jurisdiction, then the family must be income eligible in the receiving PHA's jurisdiction.

Section 982.355 Portability: Administration by receiving PHA.

Comment: Effect of preferences on portability. The final rule should explicitly provide that a receiving PHA may not use a local residency preference to deny portability.

HUD response. The rule is revised to clarify that when the family has a right to lease a unit in the receiving PHA jurisdiction under portability procedures, the receiving PHA must provide assistance for the family (§ 982.355(c)(10)). Receiving PHA selection preferences (including any residency preferences) do not apply, and the receiving PHA waiting list is not used. However, the receiving PHA may deny or terminate assistance for family action or inaction in accordance with §§ 982.552 and 982.553.

Comment: Portability to areas serviced by other PHAs. Section 982.353(b) imposes restrictions on portability by requiring that the area to which the family wants to move must have a PHA administering a Section 8 Housing Choice Voucher Program. In many instances this will not allow families to leave urban areas for suburban areas or rural areas.

HUD response. The statute provides for portability to any area in the United States that is in the jurisdiction of a PHA administering a tenant-based Section 8 program. In practice, in most communities there is a PHA that operates a Section 8 program. Often, multi-jurisdictional PHAs (such as state agencies) administer the certificate and voucher programs in areas where there are no local PHAs.

Section 982.405 PHA initial and periodic unit inspection.

Comment: HQS procedural guidelines and performance standards. HUD needs to provide additional guidance regarding the procedural guidelines and performance standards that must conform to practice utilized in the private housing market.

If the Secretary exercises discretion to issue procedural guidelines and performance standards, they must be published for notice and comment.

The rule cannot directly delegate a secretarial duty to a PHA, and HUD guidelines and standards need to be published in an accessible format with no hidden criteria.

HUD response. Section 982.405(f) of the interim rule which required the PHA to adopt procedural guidelines and performance standards for conducting required HQS inspections has been deleted. HUD has determined that the pre-merger HQS inspection requirements and the SEMAP HQS-related performance standards meet the section 8(o)(8)(E) statutory requirement for the Secretary to establish inspection guidelines and performance standards.

Section 982.451 Housing assistance payments contract.

Comment: PHA penalties for late housing assistance payments to owners. The rule should exempt new or revised HAP contracts from penalties for late payment of housing assistance to owners. The paperwork and other administrative work involved in preparing a new or revised HAP contract may make it difficult for a PHA (and in particular a large PHA) to avoid a late payment. Recurring late payments should be penalized.

The rule should clarify whether a owner that normally does not charge a late fee to tenants can still charge a late fee to the PHA. If the owner can charge late fees to the PHA, does the PHA have the right to determine the maximum amount of liability it will assume? Further clarification is needed on whether late fees will be determined based on date the payment is mailed.

HUD response. The interim rule provided that the PHA may be assessed a late rental payment penalty only if it is in accordance with generally accepted practices and law in the local housing market. The interim rule also stated that a PHA is not obligated to pay any late payment penalty if HUD determines that the late payment is attributable to factors beyond the PHA's control. Section 982.451 of the final rule has been revised to add two more conditions for owner assessment of a late fee to the PHA: it must be the owner's practice to charge such penalties for assisted and unassisted tenants, and the owner must charge such penalties against the tenant for late payment of family rent to owner.

The interim rule specified that the PHA may add to the HAP contract a provision which defines when the housing assistance payment by the PHA is deemed received by the owner. There is nothing that would prohibit a PHA from defining ''receipt of the housing assistance payment by the owner'' as the date the PHA mailed the funds to the owner or the date of actual receipt by the owner.

Comment: Funding for PHA penalties for late housing assistance payments to owners. It is unfair to penalize PHAs for late payments unless HUD headquarters is willing to pay for the late payments.

HUD response. The statute provides for payment of penalties for late payments of housing assistance under certain circumstances. The statute further provides that a late payment fee may only be paid from the PHA's administrative fee income, including any amounts in the PHA administrative fee reserve. The PHA is not obligated to pay any late fee if HUD determines that the late payment is due to factors beyond the control of the PHA.

Section 982.453 Owner breach of contract.

Comment: Owner breach of HAP contract for ''drug-related criminal activity''. The change to § 982.453(a)(5) to make ''drug-related criminal activity'' (instead of only ''drug trafficking'') an owner breach of contract was a good one. Why did the change not also include violent criminal activity as a contract breach?

HUD response. Section 982.453(a) was revised to add commission of any violent criminal activity by the owner as a breach of the HAP contract.

Section 982.502 Conversion to voucher program.

Comment: Deadline for conversion to the merged program after the merger date. Conversion from pre-merger assistance should be expedited. Conversion should be effective upon the next regular reexamination on or after the merger date. The final rule should provide that a landlord and tenant may jointly (not individually) convert their regular certificate tenancy to a voucher tenancy at any time after the merger date. Reducing the number of certificate conversions during the second year after the merger date will reduce PHA administrative burdens that may delay one or more assistance payments to a family.

Conversion from pre-merger assistance should be delayed. Requiring that conversion take place at the second regular reexamination is too restrictive. HUD should permit an extension in situations where the tenant and owner cannot agree to convert.

PHAs should be permitted to delay the transition of certificate families leased units with exception rents as a reasonable accommodation until the family leaves the Section 8 program or moves to another unit.

HUD response. The interim rule provided for the complete conversion of all pre-merger tenant-based assistance to the merged program no later than the effective date of the second regular reexamination on or after the merger date (October 1, 1999). HUD considers this time frame reasonable and has not adopted the recommendations to shorten or lengthen the time. It is noted, however, if both a participant and the owner want to convert to the merged program sooner than required, they may do so by executing a new lease and HAP contract. In addition, the technical correction to the interim rule published on September 14, 1999, addresses approval of higher payment standards and approval of exception payment standards as a reasonable accommodation for a tenant with disabilities.

Comment: Continuing current benefits after conversion. HUD should not terminate program assistance upon conversion. HUD should allow ''grandfathering'' of pre-existing benefits. Terminating program assistance will create undue hardship on the family and create an impact on PHA staff.

HUD response. The conversion time frame is reasonable and the rule provides for a uniform delay in increases in the family share of rent that may result from implementation of the housing choice voucher program.

Comment: Delayed reductions in subsidy for over-FMR tenancies based on payment standard revisions. To protect families with over-FMR tenancies, the final rule could simply require that over-FMR tenancies be treated no differently than other certificate tenancies. Alternately the final rule could require that the subsidy for over-FMR tenancies be calculated based on the higher of the FMR or payment standard for the transition period before the second annual reexamination after October 1, 1999.

HUD response. The regulation has been revised to require that any reduction in subsidy attributable to the decrease in the payment standard will be delayed until the effective date of the family's second regular reexamination on or after the payment standard decrease. This is a change in practice for the voucher program. Before this final rule, a voucher participant's subsidy was based on the higher of the current payment standard or the payment standard in effect when the participant initially leased a specific unit under the voucher program.

Comment: New certificate HAP contracts after the merger date. The final rule should permit execution of a new certificate HAP contract until the family's second annual reexamination after August 12, 1999 under certain circumstances.

HUD response. HUD has not made the recommended change to permit execution of new certificate program HAP contracts after the October 1, 1999 merger date. The requirement that only voucher HAP contracts may be executed on or after October 1, 1999, will facilitate conversion to the housing choice voucher program.

Comment: Timing of HQS inspections and income reexaminations during conversion period. HUD should clarify whether the regularly scheduled annual HQS inspection and the family income determination for a continually assisted tenant will suffice for the purpose of the conversion. Unless the property is due for an annual HQS inspection, the PHA should not be required to conduct an HQS inspection upon conversion.

HUD response. The regularly scheduled annual HQS inspection and family income reexamination will suffice for purposes of the conversion to the merged program. A new HQS inspection or income reexamination is not automatically triggered because a certificate program unit is being converted to the merged program and a voucher HAP contract will be executed. A new HQS inspection and a new income reexamination for the family is not required until 12 months lapse from the date of the last HQS inspection and income reexamination under the certificate program.

Comment: Currency of income verifications during conversion period. HUD should clarify whether the period of time for which verifications are valid may be extended for more than 120 days to allow the PHA to determine income and the family share well in advance (more than 120 days) of the conversion date. At the mandatory 120 day notification period, the PHA will not have income verifications for the current year, and the PHA should probably be collecting such information with the 120 day notice.

HUD response. HUD recognizes that the PHA may not be able to meet the normal time frames for the currency of the family's income verification data during the transition period to the housing choice voucher program. Chapter 10 of Handbook 7420.7, PHA Administrative Practices Handbook, provides guidance (not requirements) with respect to income reexaminations. That handbook states that income verification data should not be older than 120 days. It is acceptable to HUD if the income verification data is older than the 120 day norm in order to facilitate the conversion to the housing choice voucher program and to provide needed information to participant families.

Comment: Reporting of conversions on Form HUD–50058. HUD should confirm that the correct update type to be used is ''reexamination'' for all Form HUD–50058 reporting of conversions of certificate to voucher tenancies.

HUD response. Termination of the certificate HAP contract and execution of a voucher HAP contract does not constitute an admission. The family is a current participant in the tenant-based Section 8 program and, therefore, ''reexamination'' is the correct term to describe the process of updating the information concerning the family's income and composition.

Comment: Grandfathering of pre-merger units rented from relatives. The final rule should clarify how current tenancies involving a landlord who is leasing to a relative are to be treated when the current certificate assistance is converted to a voucher HAP contract.

HUD response. Section 982.306(d) was revised to clarify that the prohibition on renting a unit from a relative does not apply for continued assistance in the same unit. Therefore, the prohibition on renting a unit from a relative is not triggered by the conversion to the housing choice

voucher program if the Section 8 participant does not move from the unit assisted under the certificate program.

Comment: Owner damage claims during the conversion period. HUD should clarify that all legitimate damage claims can be processed for payment at the conversion of the family's assistance regardless of whether the family moves or remains in place.

HUD response. PHA reimbursement for damage claims was eliminated beginning on October 2, 1995. However, HAP contracts executed before that date permit owners to submit a damage claim to the PHA if the family moves in violation of the lease. If a participant remains in the same unit after conversion to the housing choice voucher program, there is no ''move in violation of the lease'' to trigger eligibility for a damage claim (for a unit under a HAP contract executed before October 2, 1995). If a certificate participant moves to another unit as a result of the conversion to the voucher program (e.g., the owner does not wish to participate in the voucher program), the PHA may process any damage claim.

Comment: Renewal of certificate tenancies during the conversion period. Section 982.502(d) should emphasize conversion of certificate assistance, not termination of assistance. The regulation should refer to the renewal of the certificate tenancies under the voucher program.

HUD response. HUD has not made the recommended change to § 982.502(d).

The conversion process from the certificate program to the voucher program cannot be characterized as a ''renewal.'' Any remaining certificate HAP contracts must be terminated on the effective date of the family's second regular reexamination after the October 1, 1999 merger date. Termination of the certificate HAP contract and the certificate program tenancy and lease permits the PHA to execute a new HAP contract under the housing choice voucher program on behalf of the family.

Comment: Unit rent increases after conversion. Clarification is requested regarding whether owners will be able to raise rents they were receiving under the regular certificate program to market level (reasonable rent) at the time of conversion to a voucher tenancy. The result may be in excess of the voucher payment standard and require tenants to move.

HUD response. Yes, if an owner were charging an artificially low rent under the certificate program, it is possible that the owner would be able to raise the rent after the certificate program HAP contract is canceled. The PHA must ensure that any increases in the rent to owner meet the program's rent reasonableness requirements.

Comment: Rent burden caps during the conversion period. Clarification is requested concerning whether there are any restrictions on how great the family share can be if the family remains in the same unit. Many families will prefer to remain in place even though their family share will increase.

HUD response. The initial rent burden cap does not apply to participants who remain in the same unit.

Section 982.503 Voucher tenancy: payment standard amount and schedule.

Comment: Payment standards. The final rule should include guidance on the legal standards applicable to PHA determination of the payment standard schedule. Further, HUD should clarify a PHA's discretion to vary the payment standard by unit size within designated parts of an FMR area, and the final rule should specify requirements for HUD approval of a payment standard below 90 percent of FMR. If justified by rent burden and other data, HUD should be able to require a PHA to use a payment standard above 110 percent of FMR.

PHAs should not be permitted to lower payment standards for existing certificate holders who will be converted, nor for current voucher holders, without prior HUD approval.

HUD response. HUD will provide further guidance on implementation of the Housing Choice Voucher Program, including PHA establishment of the payment standard. The statute provides that PHAs may set the payment standard anywhere between 90 and 110 percent of the FMR. The statute does not authorize HUD to require a PHA to use a payment standard above 110 percent of FMR. The PHA may not set a lower standard applicable only to prior certificate program participants. One payment standard schedule will apply to participants in the pre-merger certificate and voucher programs.

PHAs may opt to set different payment standards by unit size within the 90 to 110 percent FMR range. PHAs may opt to set different payment standards within the 90 to 110 percent of FMR range for different market areas of the PHA jurisdiction (*e.g.*, a low poverty neighborhood). If more than one PHA operates in a jurisdiction, each PHA has discretion in deciding whether the PHA will use a uniform (or a different) payment standard within the 90 to 110 percent of FMR range for each unit size and geographic area.

A new paragraph (d) was added to § 982.503 to specify that HUD will not approve a payment standard below 90 percent of FMR if the family share for more than 40% of the current participants for the applicable unit sizes exceeds TTP. Such funding may be based on the most recent income examinations.

Comment: Exception payment standards: HUD approval requirements. The final rule should not limit the total population of an exception area (*i.e.*, an area where HUD has approved a payment standard higher than the applicable FMR) to 50% of the population of the FMR area. In FMR areas containing a large city, the granting of an exception rent for the city may preclude other portions of the FMR area from obtaining an exception rent. HUD should provide all PHAs with equal opportunity to represent their case for an exception rent.

HUD should make clear that every PHA that administers a voucher program within an area for which HUD has approved an exception payment standard must use the approved exception standard.

HUD should (1) permit PHAs seeking an exception payment standard above 120 percent of FMR to use the ''median rent method'' justification, (2) permit PHAs to use a recent HUD/RDD survey to justify an exception payment standard, and (3) in particularly tight markets, permit PHAs to justify a payment standard exception by a method that is not based on rent data.

The rent for most decent, safe, and sanitary units in certain areas is often greater than 10 percent more than the FMR. This may result in tenants with more expensive special housing needs (such as persons with disabilities) paying greater than 40 percent of their incomes in rent.

PHAs need increased flexibility in establishing exception rents based on local housing needs and demands.

HUD response. The FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing of a modest nature. FMRs are set at the 40th percentile rent—the dollar amount below which 40 percent of standard quality rental housing units rent in the FMR geographic area. Consistent with the statute, the regulation provides for HUD approval of PHA requests for payment standards higher than 110 percent of the FMR.

The rationale for limiting exception payment standards to 50 percent of the population in the FMR area is that to do otherwise would result in approvals of exceptions being the norm, not an exception. If an exception payment standard is necessary for more than 50

percent of the population in an FMR area, then the FMR is inappropriate and should be revised. It is noted that the merger regulation permits additional flexibility in this area than did the previous regulations for the certificate and voucher program. The previous regulations for the certificate and voucher program restricted the number of exceptions over 100 percent of FMR, while the merger regulations restrict the number of exceptions over 110 percent of FMR.

Section 982.503(b)(3) provides that exception rents above 120 percent of the FMR will only be approved for the total area of a county, PHA jurisdiction, or a U.S. census ''place'' (*e.g.*, city, borough, town, or village). Accordingly, the ''median rent method'' which provides census tract data is not appropriate justification for an exception rent applicable to areas larger than census tracts. Likewise, the random digit dialing survey which provides MSA wide data is not appropriate for an exception rent applicable to an area smaller than a MSA.

If more than one PHA operates in a jurisdiction, each PHA has discretion in deciding whether they will use a uniform (or a different) exception payment standard for each unit size and geographic area. The final rule has not modified the interim rule requirement in Section 982.503 that any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount.

Comment: Exception payment standards: Persons with disabilities. PHAs should be required to use 120% of FMR as the payment standard for persons with disabilities who have already been granted an individual exception rent. HUD also should require PHAs to use up to 120 percent FMR as the payment standard when needed as a reasonable accommodation for a tenant with disabilities.

The rule needs to permit PHAs to approve exceptions to the established payment standard to provide for reasonable accommodations for persons with disabilities.

HUD should inform PHAs to consider the high rental costs of providing accessible units for people with disabilities. HUD should issue guidance on exception rents and have an expedited and simple process to grant such exceptions.

HUD response. The technical correction to the interim rule published on September 14, 1999 authorizes approval of exception payment standards as a reasonable accommodation for a tenant with disabilities. Section 982.503 was corrected to specify that a PHA may establish a higher payment standard between 90 percent and 110 percent of the FMR when required as a reasonable accommodation for a family that includes a person with disabilities. In addition, HUD field offices may approve a payment standard over 110 percent and up to 120 percent of the FMR for this purpose.

Comment: Exception payment standards: equal opportunity concerns. Section 982.503(c)(4) describes the condition that will permit HUD to approve an exception rent. Among other factors, HUD will consider the ability of families to find housing outside areas of high poverty. The final rule should explicitly provide that PHAs have an obligation to affirmatively further fair housing.

The rule fails to make clear that the payment standard must comply with the fair housing and civil rights laws, affirmatively further fair housing, and be consistent with the applicable Consolidated Plan. The rule should require PHAs to articulate the fair housing considerations that went into setting the payment standard.

HUD response. The statute specifically delegates to the PHA the establishment of a payment standard between 90 to 110 percent of the FMR. The PHA rationale for establishing the payment standard is addressed in the PHA plan.

HUD has retained the previous regulatory requirement that mandatory justifications for approval of an exception payment standard include that the higher amount is needed either (1) to help families find housing outside of areas of high poverty, or (2) because families have trouble finding housing for lease within the term of the voucher.

Administration of all aspects of the merged program is subject to civil rights laws and fair housing laws. Equal opportunity requirements (including affirmatively furthering fair housing requirements) are specified in § 982.53.

Comment: HUD review of PHA payment standard schedules. The final rule should provide that HUD will initially monitor rent burdens of PHAs utilizing payment standards at 90 percent of FMR and that a review of payment standards should be triggered by a voucher failure rate above 30 percent.

The final rule should specify that the scope of HUD's payment standard review includes mobility (*i.e.*, the ability of families to find housing outside of high poverty areas) and fair housing choice (*i.e.*, the ability of families to find housing outside areas of minority concentration).

The trigger for HUD review of the adequacy of the payment standard should be when 30 (not 40) percent of the participants have high rent burdens.

HUD response. The statute provides that HUD shall monitor rent burdens and review any payment standard that results in a significant percentage of the families occupying units of any size paying more than 30 percent of adjusted income for rent. HUD intends to monitor rent burdens on a case-by-case basis, PHA-by-PHA, in consideration of the unique circumstances of different housing markets and PHA administrative policies. As required by the statute, HUD's review of the payment standard will be based on the rent burden of participants, not the success rates of applicants.

HUD has not revised the regulatory standard specified in the interim rule for HUD review of the adequacy of the PHA payment standard. However, HUD will reexamine the appropriateness of the trigger for a HUD payment standard review after there is experience with implementation of the housing choice voucher program.

Section 982.504 Voucher tenancy: Payment standard for family in restructured subsidized multifamily project.

Comment: Future funding for restructured subsidized projects. Funding for families converted from project-based assistance must be at an adequate level in the future, using the same comparability method as is used when the initial tenant-based contract is calculated.

HUD response. HUD's policies for providing renewal funding for expiring ACCs have been developed pursuant to negotiated rulemaking. Actual costs are a factor in providing renewal funding.

Comment: Payment standard for restructured subsidized projects. This regulatory section is more appropriately part of HUD's regulations in 24 CFR part 401. This section lacks clarity and consistency with the rules on HUD's Mark-to-Market program.

HUD response. The regulatory provision is consistent with HUD's mark-to-market program. The regulations for the mark-to-market program specifically provide that the amount of the voucher program rental assistance will be as provided for in the voucher regulation.

Section 982.508 Rent to owner: maximum rent at initial occupancy.

Comment: Initial rent burden cap. The 40 percent maximum initial rent burden requirement contradicts the intent of the Section 8 voucher program,

which was designed to give families the freedom to find housing outside of low income areas and to move closer to employment or educational opportunities. It is not unusual for families to choose to pay more than 40% of income in order to obtain good housing in non-impacted areas. As an example, seniors often spend a higher percentage of their income on housing in order to ensure their safety and security.

The 40 percent maximum rent burden requirement might adversely impact certain families, such as large families, seniors and persons with disabilities requiring special amenities or services.

In high-rent areas, such as New York, the 40 percent maximum rent burden is unrealistic and will make it more difficult for families to find safe and sanitary housing. A family may actually be prevented from reducing its rent burden (for example from 55% of income to 45% of income).

The 40 percent rent burden limit should apply throughout the life of the tenancy.

HUD response. The maximum initial rent burden requirement is statutory and cannot be waived by HUD. The 40 percent maximum rent burden requirement applies when an applicant receives Section 8 tenant-based voucher assistance for the first time on or after October 1, 1999, and every time a participant (in the certificate or voucher program) moves to different unit on or after October 1, 1999.

After admission, the 40 percent maximum initial rent burden cap does not apply to future changes of tenant income or changes in the rent to owner amount if the participant stays in the same tenant-based assistance unit. Further, the 40 percent initial rent burden cap does not apply to families who will participate in the Section 8 tenant-based homeownership program (for which a proposed rule was published on April 30, 1999, 64 FR 23488) since homeownership families do not pay rent, or any of the project-based Section 8 programs.

Comment: Effect of the minimum rent on the initial rent burden cap. The part 5 regulation permits a PHA to set a minimum rent of up to $50. The merger rule requires an initial rent burden cap of 40 percent of the family's monthly adjusted income. These two regulations clash for families who have very little or no income at the time of admission (or at the time of a move while they are participants).

HUD response. It is true that the initial 40 percent rent burden cap will limit admission of any family whose total tenant payment is based on a calculation other than 30 percent of adjusted income. For example, elderly and disabled families with large medical expenses, families with little or no income, welfare families in ''as paid'' States, and families with undocumented alien family members most likely will not be eligible to participate in the program because of this 40 percent rent burden cap. HUD is seeking a technical correction to the 40 percent rent burden legislative requirement to exempt families whose total tenant payment is based on a minimum rent, welfare rent or 10 percent of gross income. In the meantime, a PHA should allow such families that cannot find housing below the 40 percent rent burden cap to retain their current position on the waiting list, in anticipation of the requested legislation being enacted into law.

Section 982.509 Rent to owner in subsidized projects

Comment: Rent to owner in subsidized projects. The rule should retain the provisions of former § 982.512. This section has been removed and should be retained.

HUD response. The basic content of former § 982.512 is now found in § 982.521, but with respect to certificates only.

Section 982.521 Regular tenancy: Rent to owner in a subsidized project.

Comment: HOME program rents. The HOME rent provisions should apply equally to the certificate and the housing choice voucher program. The previous clarifications with regard to rents in the HOME program have been lost in this new rule.

HUD response. The HOME program regulations specify how rents are determined for HOME program units. Section 8 requirements do not over-ride the HOME rental limitations. It is not necessary to repeat HOME rental requirements in the Section 8 rule.

Section 982.552 PHA denial or termination of assistance for family.

Comment: Mandatory termination of assistance for a tenant-based program participant evicted for serious lease violations. A lease violation should not be grounds for terminating assistance to a family. There may be certain circumstances that merit leniency; for example, if an abusive spouse abandons the family resulting in the family's eviction for nonpayment of rent. The automatic termination provision unfairly favors landlords, because it effectively deprives tenants from the opportunity to contest a landlord's allegation of a serious lease violation.

Termination of assistance due to lease violations should remain a discretionary ground for termination. This discretion is necessary to avoid unjust and inappropriate terminations.

HUD response. HUD has determined that the mandatory nature of this provision is necessary in order to foster responsibility in the Section 8 program. Section 8 assistance is a scarce benefit. This provision indicates that HUD will not reward serious lease violations, such as behavior that threatens other residents or the safety or maintenance of the premises, by providing continued Section 8 assistance in a different unit. Furthermore, this policy will address the complaint that some assisted families have kept their Section 8 benefits even after they have caused extensive damage or incurred a large unpaid rent debt. Additional efforts to hold families accountable for actions by family members should increase owner participation and provide expanded housing opportunities for low income families in nontraditional neighborhoods. It is noted that termination of assistance is only required for an eviction resulting from a serious lease violation (not repeated lease violations). Therefore, the family will be protected by the due process they receive through the judicial eviction process and, additionally, the PHA must give the family the opportunity for an informal hearing before assistance termination.

Comment: Mandatory denial of admission if applicant is evicted from federally assisted housing for serious lease violations. The provision in § 982.552(b) specifying denial of admission if the applicant is evicted from federally assisted housing for serious lease violations should be stated as a requirement and not a discretionary matter.

HUD response. Section 982.552.(b)(1) is reserved and a new paragraph (c)(1)(ii) is added to permit PHAs to deny admission or terminate assistance if any member of the family has been evicted from Federally assisted housing in the last five years. This is a change from the interim rule, which prohibited admissions of families evicted from Federally assisted housing for serious lease violations. HUD may review this matter again as it finalizes the pending ''One Strike'' regulation.

Comment: Termination of assistance if participant fails to meet welfare-to-work program obligations. HUD should remove § 982.552(c)(1)(x), which authorizes PHAs to terminate section 8 assistance if the family fails to fulfill its obligations under the section 8 welfare-to-work voucher program. If HUD

decides to keep the provision, HUD should, at a minimum, modify the rule to require a much higher threshold of improper behavior on the part of the family before the family puts its housing assistance in jeopardy.

HUD response. The rule is revised to add requirements to the PHA briefing of the family participating in the welfare-to-work voucher program, and to the material provided in the family's information packet (§ 982.301(a) and (b)). Specifically, the PHA must advise (both verbally and in writing) the family of the local welfare-to-work voucher program family obligations and that failure to meet these obligations is grounds for PHA denial of admission or termination of assistance.

HUD is not mandating federal standards for family obligations under the welfare-to-work voucher program, since there is local flexibility in designing such obligations. The option for PHA termination of assistance or denial of admission will permit PHAs to prevent program abuse by families that willfully and persistently violate work-related obligations under the welfare-to-work voucher program. Of course, the PHA must give the family the opportunity for an informal review or informal hearing before the PHA denies admission or terminates assistance.

Comment: HUD authority to regulate terminations of assistance. HUD has exceeded Congressional authorization in mandating certain required grounds for termination. Any required grounds for termination should be limited to those which are mandated by Congress.

HUD response. HUD has authority to define grounds for termination of assistance and has done so in a comprehensive manner since 1984.

Section 982.623 Manufactured home space rental: Housing assistance payment, Section 888.111 Fair market rents for existing housing: Applicability, and Section 888.113 Fair market rents for existing housing: Methodology.

Comment: Housing assistance payment calculation and FMR for manufactured home space rentals. HUD should clarify that tenant-paid utilities referenced in the regulations are directly related to the space (such as water or sewer charges) and not utilities related to the unit such as electricity or fuel.

HUD response. The part 982 regulation refers to the utility allowance for tenant-paid utilities. The PHA utility allowance for manufactured home space rentals is not limited to the tenant-paid utilities directly related to the space rental, such as water and sewer expenses. Instead, the utility allowance covers all tenant-paid utilities including electricity and gas for the manufactured home.

Section 888.111 is revised primarily to delete references to the certificate program and update the applicability language. Since the maximum subsidy now includes utilities for the manufactured home and the 1998 Act revised the subsidy formula, § 888.113(e) is revised to increase the FMR for a manufactured home space rental from 30 percent to 40 percent of the FMR for a two-bedroom unit.

Miscellaneous Comments

Comment: Applicability of rule to the Shelter Plus Care and Housing Opportunities for People with AIDS (HOPWA) programs. Clarification is requested concerning whether the requirements of new Housing Choice Voucher Program applicable to the tenant-based components of the Shelter Plus Care and HOPWA regulations.

HUD response. Although the regulations for the tenant-based components of the Shelter Plus Care and HOPWA Programs are similar to the Section 8 tenant-based regulations, a change to part 982 will not automatically revise the Shelter Plus Care or HOPWA regulations unless the part 982 regulations are incorporated by reference.

III. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and have been assigned OMB Control Number 2577–0226. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made on the May 14, 1999 interim rule in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, Regulatory Planning and Review. OMB determined that this final rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this final rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The final rule is exclusively concerned with public housing agencies that administer tenant-based housing assistance under Section 8 of the United States Housing Act of 1937. Specifically, the final rule would establish requirements governing tenant-based assistance for an eligible family. The final regulatory amendments would not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. No programmatic or policy change under this rule will affect the relationship between the Federal government and State and local governments.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the programs affected by this final rule are 14.146, 14.147, 14.850, 14.851, 14.852, 14.855, 14.857, and 15.141.

List of Subjects

24 CFR Part 888

Grant programs—housing and community development, Rent subsidies.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies.

For the reasons discussed in the preamble, HUD adopts the amendments made to 24 CFR parts 248, 791, and 792 in the interim rule published on May 14, 1999 at 64 FR 26632 without change, and HUD amends 24 CFR parts 888 and 982 as follows:

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENT PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

1. Revise the authority citation for part 888 to read as follows:

Authority: 42 U.S.C. 1437f and 3535d.

2. Revise § 888.111 to read as follows:

§ 888.111 Fair market rents for existing housing: Applicability.

(a) The fair market rents (FMRs) for existing housing are determined by HUD and are used in the Section 8 Housing Choice Voucher Program (''voucher program'') (part 982 of this title), Section 8 project-based assistance programs and other programs requiring their use. In the voucher program, the FMRs are used to determine payment standard schedules. In the Section 8 project-based assistance programs, the FMRs are used to determine the maximum initial rent (at the beginning of the term of a housing assistance payments contract).

(b) Fair market rent means the rent, including the cost of utilities (except telephone), as established by HUD, pursuant to this subpart, for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

3. In § 888.113, revise paragraph (e) to read as follows:

§ 888.113 Fair market rents for existing housing: Methodology.

* * * * *

(e) *Manufactured home space rental.* The FMR for a manufactured home space rental (for the voucher program under part 982 of this title) is:

(1) 40 percent of the FMR for a two bedroom unit, or

(2) When approved by HUD on the basis of survey data submitted in public comments, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home spaces FMRs for areas where space rentals are thought to differ from 40 percent of the FMR for a two-bedroom unit. To be considered for approval, the comments must contain statistically valid survey data that show the 40th percentile manufactured home space rent (including the cost of utilities for the manufactured home) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the FMRs.

4. Amend § 982.4 as follows:

a. In paragraph (b), add, in alphabetical order, definitions of the terms ''family rent to owner'', ''utility reimbursement'', and ''welfare-to-work (WTW) families'';

b. In paragraph (b), in the definition of ''public housing agency'' remove from the end of paragraph (1) of this definition the word ''or'' and add in its place the word ''and'', and remove from paragraph (2)(i) of this definition the word ''consortia'' and add in its place the word ''consortium''; and

c. Revise paragraph (a)(4) of § 982.4 to read as follows:

§ 982.4 Definitions.

(a) * * *

(4) *Definitions concerning family income and rent.* The terms ''adjusted income,'' ''annual income,'' ''extremely low income family,'' ''tenant rent,'' ''total tenant payment,'' ''utility allowance,'' and ''utility reimbursement'' are defined in part 5, subpart F of this title. The definitions of ''tenant rent'' and ''utility reimbursement'' in part 5, subpart F of this title, apply to the certificate program, but do not apply to the tenant-based voucher program under part 982.

(b) * * *

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see § 982.515(b).

* * * * *

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner. (See § 982.514(b)). (For the certificate program, ''utility reimbursement'' is defined in part 5, subpart F of this title.)

* * * * *

Welfare-to-work (WTW) families. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

5. Amend § 982.53 as follows:

a. Revise paragraph (c) as set forth below;

b. Amend paragraph (d) by revising the reference to ''State law'' in the title to read ''State and local law''; and by revising both references to ''State laws'' in the rule text to read ''State and local laws''.

§ 982.53 Equal opportunity requirements.

* * * * *

(c) *Obligation to affirmatively further fair housing.* The PHA shall affirmatively further fair housing as required by § 903.7(o) of this title.

* * * * *

6. In § 982.54, revise paragraph (b) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(b) The administrative plan must be in accordance with HUD regulations and requirements. The administrative plan is a supporting document to the PHA plan (part 903 of this title) and must be available for public review. The PHA must revise the administrative plan if needed to comply with HUD requirements.

* * * * *

7. Amend § 982.201 as follows:

a. Revise the section heading and paragraph (b)(2)(i) as set forth below;

b. Redesignate paragraphs (b)(2)(ii) through (iv) as paragraphs (b)(2)(iv) through (vi) respectively.

c. Add new paragraphs (b)(2)(ii) and (iii) as set forth below.

d. Revise the first sentence of paragraph (b)(2)(vi), as redesignated, to read as set forth below:

e. Add new paragraph (b)(2)(vii) as set forth below.

f. Revise the last sentence of paragraph (b)(4) to read as set forth below:

§ 982.201 Eligibility and targeting.

* * * * *

(b) * * *

(2) * * *

(i) Not less than 75 percent of the families admitted to a PHA's tenant-

based voucher program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in paragraph (e) of this section.

(ii) A PHA may admit a lower percent of extremely low income families during a PHA fiscal year (than otherwise required under paragraph (b)(2)(i) of this section) if HUD approves the use of such lower percent by the PHA, in accordance with the PHA plan, based on HUD's determination that the following circumstances necessitate use of such lower percent by the PHA:

(A) The PHA has opened its waiting list for a reasonable time for admission of extremely low income families residing in the same metropolitan statistical area (MSA) or non-metropolitan county, both inside and outside the PHA jurisdiction;

(B) The PHA has provided full public notice of such opening to such families, and has conducted outreach and marketing to such families, including outreach and marketing to extremely low income families on the Section 8 and public housing waiting lists of other PHAs with jurisdiction in the same MSA or non-metropolitan county;

(C) Notwithstanding such actions by the PHA (in accordance with paragraphs (b)(2)(ii)(A) and (B) of this section), there are not enough extremely low income families on the PHA's waiting list to fill available slots in the program during any fiscal year for which use of a lower percent is approved by HUD; and

(D) Admission of the additional very low income families other than extremely low income families to the PHA's tenant-based voucher program will substantially address worst case housing needs as determined by HUD.

(iii) If approved by HUD, the admission of a portion of very low income welfare-to-work (WTW) families that are not extremely low income families may be disregarded in determining compliance with the PHA's income-targeting obligations under paragraph (b)(2)(i) of this section. HUD will grant such approval only if and to the extent that the PHA has demonstrated to HUD's satisfaction that compliance with such targeting obligations with respect to such portion of WTW families would interfere with the objectives of the welfare-to-work voucher program. If HUD grants such approval, admission of that portion of WTW families is not counted in the base number of families admitted to a PHA's tenant-based voucher program during the fiscal year for purposes of income targeting.

* * * * *

(vi) If the jurisdictions of two or more PHAs that administer the tenant-based voucher program cover an identical geographic area, such PHAs may elect to be treated as a single PHA for purposes of targeting under paragraph (b)(2)(i) of this section. * * *

(vii) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the voucher program on or after the merger date, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA voucher program from the point of admission).

* * * * *

(4) * * * At admission, the family may only use the voucher to rent a unit in an area where the family is income eligible.

* * * * *

8. Amend § 982.207 as follows:

a. Add paragraph (a)(4) to read as set forth below;

b. Revise paragraphs (b) and (d) to read as set forth below:

§ 982.207 Waiting list: Local preferences in admission to program.

(a) * * *

(4) The PHA shall not deny a local preference, nor otherwise exclude or penalize a family in admission to the program, solely because the family resides in a public housing project. The PHA may establish a preference for families residing in public housing who are victims of a crime of violence (as defined in 18 U.S.C. 16).

(b) *Particular local preferences.* (1) *Residency requirements or preferences.* (i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area (''residency preference area''). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this title. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* The PHA may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) *Preference for person with disabilities.* The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for admission of persons with a specific disability.

(4) *Preference for victims of domestic violence.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or a person with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or a person with disabilities.

* * * * *

(d) *Preference for higher-income families.* The PHA must not select families for admission to the program in an order different from the order on the waiting list for the purpose of selecting higher income families for admission to the program.

* * * * *

9. In § 982.301, add new paragraph (a)(5) and revise paragraph (b)(14) to read as follows:

§ 982.301 Information when family is selected.

(a) * * *

(5) In briefing a welfare-to-work family, the PHA must include specification of any local obligations of a welfare-to-work family and an explanation that failure to meet these obligations is grounds for PHA denial of admission or termination of assistance.

* * * * *

(b) * * *

(14) Family obligations under the program, including any obligations of a welfare-to-work family.

* * * * *

10. In § 982.303, revise paragraph (b) to read as follows:

§ 982.303 Term of voucher.

* * * * *

(b) *Extensions of term.* (1) At its discretion, the PHA may grant a family one or more extensions of the initial voucher term in accordance with PHA policy as described in the PHA administrative plan. Any extension of the term is granted by PHA notice to the family.

(2) If the family needs and requests an extension of the initial voucher term as a reasonable accommodation, in accordance with part 8 of this title, to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher term up to the term reasonably required for that purpose.

* * * * *

11. Amend § 982.305 as follows:

a. In paragraph (a)(3), remove the word ''and''.

b. In paragraph (a)(4), remove the period at the end and insert in its place ''; and''.

c. Add new paragraph (a)(5) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

(a) * * *

(5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, the family share does not exceed 40 percent of the family's monthly adjusted income.

* * * * *

12. In § 982.306, revise the section heading, amend the introductory paragraph (c)(5) to add the words ''engaged in'' after the words ''for activity'' and amend paragraph (d) to add a new final sentence to that paragraph to read as follows:

§ 982.306 PHA disapproval of owner.

* * * * *

(d) * * * This restriction against PHA approval of a unit only applies at the time a family initially receives tenant-based assistance for occupancy of a particular unit, but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.

* * * * *

13. In § 982.308, revise paragraphs (a), (b), (d), and (f), and add new paragraph (g), to read as follows:

§ 982.308 Lease and tenancy.

(a) *Tenant's legal capacity.* The tenant must have legal capacity to enter a lease under State and local law. ''Legal capacity'' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form (plus the HUD-prescribed tenancy addendum). If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease (including the HUD-prescribed tenancy addendum). The HAP contract prescribed by HUD will contain the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

* * * * *

(d) *Required information.* The lease must specify all of the following:

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, and any other information needed to identify the contract unit);

(3) The term of the lease (initial term and any provisions for renewal);

(4) The amount of the monthly rent to owner; and

(5) A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family.

* * * * *

(f) *Tenancy addendum.* (1) The HAP contract form required by HUD shall include an addendum (the ''tenancy addendum''), that sets forth:

(i) The tenancy requirements for the program (in accordance with this section and §§ 982.309 and 982.310); and

(ii) The composition of the household as approved by the PHA (family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be added word-for-word to the owner's standard form lease that is used by the owner for unassisted tenants. The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease.

(g) *Changes in lease or rent.* (1) If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the PHA a copy of such changes. The lease, including any changes, must be in accordance with the requirements of this section.

(2) In the following cases, tenant-based assistance shall not be continued unless the PHA has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner:

(i) If there are any changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;

(ii) If there are any changes in lease provisions governing the term of the lease;

(iii) If the family moves to a new unit, even if the unit is in the same building or complex.

(3) PHA approval of the tenancy, and execution of a new HAP contract, are not required for changes in the lease other than as specified in paragraph (g)(2) of this section.

(4) The owner must notify the PHA of any changes in the amount of the rent to owner at least sixty days before any such changes go into effect, and any such changes shall be subject to rent reasonableness requirements (see § 982.503).

14. In § 982.310, paragraph (e)(1)(i) is revised to read as follows:

§ 982.310 Owner termination of tenancy.

* * * * *

(e) * * *

(1) * * *

(i) The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

* * * * *

15. In § 982.314, paragraph (c)(2)(i) is revised to read as follows:

§ 982.314 Move with continued tenant-based assistance.

* * * * *

(c) * * *

(2) * * *

(i) Policies that prohibit any move by the family during the initial lease term; and * * * * *

16. Amend § 982.355 as follows:

a. Revise the section heading;

b. In paragraph (c)(9), remove the phrase ''with § 982.552'', insert in its place the phrase ''with §§ 982.552 and § 982.553''; and

c. Add new paragraph (c)(10), to read as follows:

§ 982.355 Portability: Administration by receiving PHA.

* * * * *

(c) * * *

(10) When the family has a right to lease a unit in the receiving PHA jurisdiction under portability procedures in accordance with § 982.353(b), the receiving PHA must provide assistance for the family. Receiving PHA procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA waiting list is not used. However, the receiving PHA may deny or terminate assistance for family action or inaction in accordance with §§ 982.552 and 982.553.

* * * * *

§ 982.405 [Amended]

17. Amend § 982.405 by removing paragraph (f).

18. In § 982. 451, revise paragraph (b)(5)(ii) to read as follows:

§ 982.451 Housing assistance payments contract.

* * * * *

(b) * * *

(5) * * *

(ii)(A) The HAP contract shall provide for penalties against the PHA for late payment of housing assistance payments due to the owner if all the following circumstances apply:

(*1*) Such penalties are in accordance with generally accepted practices and law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;

(*2*) It is the owner's practice to charge such penalties for assisted and unassisted tenants; and

(*3*) The owner also charges such penalties against the tenant for late payment of family rent to owner.

(B) The PHA is not obligated to pay any late payment penalty if HUD determines that late payment by the PHA is due to factors beyond the PHA's control. The PHA may add HAP contract provisions which define when the housing assistance payment by the PHA is deemed received by the owner (*e.g.*, upon mailing by the PHA or actual receipt by the owner).

* * * * *

19. Amend § 982.453, by adding new paragraph (a)(6) to read as follows:

§ 982.453 Owner breach of contract.

(a) * * *

(6) If the owner has committed any violent criminal activity.

* * * * *

20. Amend § 982.502 by revising the last sentence of paragraph

(c) and adding paragraphs (c)(1) and (2) to read as follows:

§ 982.502 Conversion to voucher program.

* * * * *

(c) * * * However, before the effective date of the second regular reexamination of family income and composition on or after the merger date, the payment standard for the family shall be the higher of:

(1) The initial payment standard for the family at the beginning of the HAP contract term; or

(2) The payment standard for the family as calculated in accordance with § 982.505, except that § 982.505(b)(2) shall not be applicable.

* * * * *

21. Amend § 982.503 by revising paragraph (d) and adding a new paragraph (e) to read as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(d) *HUD approval of payment standard amount below the basic range.* HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) *HUD review of PHA payment standard schedules.* (1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

22. Amend § 982.505 as follows:

a. Amend paragraph (b)(1) by removing the phrase ''payment standard'' and inserting instead the phrase ''payment standard for the family'';

b. Revise paragraph (c)(1) introductory text;

c. Amend paragraph (c)(3) by inserting ''first 24 months of the'' after the words ''During the'';

d. Redesignate paragraph (c)(4) as paragraph (c)(5); and

e. Add new paragraph (c)(4) to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * * (1) The payment standard for the family is the lower of:

* * * * *

(4) After the first 24 months of the HAP contract term, the payment standard for a family is the payment standard as determined in accordance with paragraphs (c)(1) and (c)(2) of this section, as determined at the effective date of the most recent regular reexamination of family income and composition after the beginning of the HAP contract term.

* * * * *

23. Revise § 982.508 to read as follows:

§ 982.508 Maximum family share at initial occupancy.

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-based assistance under the program, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the PHA issues a voucher to the family.

§ 982.514 [Amended]

24. In § 982.514, amend paragraph (b) by inserting the parenthetical ''(''utility reimbursement'')'' after the phrase ''the balance of the housing assistance payment''.

25. Amend § 982.515 by revising paragraph (b) and adding a new paragraph (c) to read as follows:

§ 982.515 Family share: Family responsibility.

* * * * *

(b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

26. Amend § 982.516 by revising paragraph (a)(1) and by adding new paragraph (g) to read as follows:

§ 982.516 Family income and composition: Regular and interim examinations.

(a) * * *

(1) *PHA responsibility for reexamination and verification.* The PHA must conduct a reexamination of family income and composition at least annually.

* * * * *

(g) *Execution of release and consent.* (1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a HUD-approved release and consent form (including any release and consent as required under part 760 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The PHA and HUD must limit the use or disclosure of information obtained from a family or from another source pursuant to this release and consent to purposes directly in connection with administration of the program.

27. Amend § 982.552 as follows:

a. Revise the section heading and remove and reserve paragraph (b)(1);

b. Revise paragraphs (c)(1)(ii) and (c)(1)(x) to read as set forth below;

c. Remove paragraph (c)(3), and revise paragraph (c)(2) to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(c) * * *

(1) * * *

(ii) If any member of the family has been evicted from federally assisted housing in the last five years;

* * * * *

(x) If a welfare-to-work (WTW) family fails to fulfill its obligations under the welfare-to-work voucher program.

(2) *PHA discretion to consider circumstances.* In determining whether to deny admission or terminate assistance because of action or failure to act by members of the family:

(i) The PHA has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

* * * * *

28. Amend § 982.623 by revising paragraph (b)(1) to read as follows:

§ 982.623 Manufactured home space rental: Housing assistance payment.

* * * * *

(b) * * *

(1) There is a separate fair market rent for a manufactured home space. The FMR for a manufactured home space is determined in accordance with § 888.113(e) of this title. The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit.

* * * * *

Dated: October 14, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–27519 Filed 10–20–99; 8:45 am]

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Federal Register

Thursday
October 21, 1999

Part VII

Environmental Protection Agency

40 CFR Part 165

Standards for Pesticide Containers and Containment; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 165

[OPP–190001A; FRL–5776–3]

RIN 2070–AB95

Standards for Pesticide Containers and Containment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; partial reopening of the comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** proposing container design and residue removal requirements for refillable and nonrefillable pesticide containers and standards for pesticide containment structures. (59 FR 6712, Feb. 11, 1994). EPA is today reopening the comment period to obtain public comment on three issues brought out in the comments on the proposed rule or by recently enacted legislation and on one other issue. EPA is considering changes that would reduce the scope of the container standards, add an exemption for certain antimicrobial pesticides, and adopt some of the Department of Transportation (DOT) hazardous materials regulations. EPA is also seeking comment on the definition for small business used to identify small pesticide formulators, agrichemical dealers and commercial pesticide applicators in the small entity impact analysis. These potential changes, if adopted in the final rule, would support EPA's goal of pollution prevention by promoting the use of refillable containers and would harmonize and promote consistency within the Federal packaging standards by adopting the DOT standards. In addition, the changes would decrease the estimated economic impact by reducing the number of pesticide products subject to the container requirements compared to the original proposal.

DATES: Comments, identified by the docket number OPP–190001A, must be received on or before December 20, 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. of the ''SUPPLEMENTARY INFORMATION'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Nancy Fitz, Office of Pesticide Programs (7506C), 401 M St., SW, Washington, DC 20460; telephone number (703) 305–7385; and e-mail address: fitz.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide formulator, agrichemical dealer, or an independent commercial applicator. However, the issues addressed in this action apply mainly to pesticide formulators. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	SIC	Examples of Potentially Affected Entities
Pesticide formulators	32532	2879	Establishments that formulate and prepare insecticides, fungicides, herbicides, or other pesticides from technical chemicals or concentrates produced by pesticide manufacturing establishments. Some formulating establishments are owned by the large basic pesticide producers and others are independent.
Agrichemical dealers	44422	5191	Retail dealers that distribute or sell pesticides to agricultural users.
Independent commercial applicators	115112	0721	Businesses that apply pesticides for compensation (by aerial and/or ground application) and that are not affiliated with agrichemical dealers.

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 above could also be affected. The Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in Unit VII of this document and in §§ 165.100, 165.120, 165.122, 165.140, 165.141, and 165.142 of the original proposed rule (59 FR 6712, February 11, 1994). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

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 various support documents from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** - Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand.* You may request to receive a faxed copy of this document, as well as some supporting information, if available, by using a faxphone to call (202) 401–0527 and selecting item 6077. You may also follow the automated menu.

3. *In person.* The EPA has established an official record for this action under docket control number OPP–190001A. 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. A public version of this record, including printed, paper versions of any electronic comments submitted during the 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 OPP–190001A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs, 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 the docket control number OPP–190001A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the person identified in the ''FOR FURTHER INFORMATION CONTACT'' section.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we discuss in this document, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you use.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrive at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule.
- Make sure to submit your comments by the deadline in this notice.
- 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. Background

A. Statutory Background

Sections 19(e) and (f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for ''the design of pesticide containers that will promote the safe storage and disposal of pesticides.'' The regulations must ensure, to the fullest extent practicable, that the containers:

(1) Accommodate procedures used for removal of pesticides from the containers and rinsing of the containers.

(2) Facilitate safe use of the containers, including elimination of splash and leakage.

(3) Facilitate safe disposal of the containers.

(4) Facilitate safe refill and reuse of the containers.

FIFRA section 19(f) requires EPA to promulgate regulations ''prescribing procedures and standards for the removal of pesticides from containers prior to disposal.'' The regulations may:

(1) Specify, for each major type of pesticide container, procedures and standards for, at a minimum, triple rinsing or the equivalent degree of pesticide removal.

(2) Specify procedures that can be implemented promptly and easily in various circumstances and conditions.

(3) Provide for reusing, whenever practicable, or disposing of rinse water and residue.

(4) Coordinate with requirements imposed under the Resource Conservation and Recovery Act (RCRA) for rinsing containers.

Section 19(f) provides that EPA, in its discretion, may exempt products intended solely for household use.

In addition, section 19(h), titled ''Relationship to Solid Waste Disposal Act,'' specifies that nothing in section 19 shall diminish the authorities or requirements of RCRA.

The Food Quality Protection Act (FQPA) of 1996 amended section 19(h) of FIFRA to add an exemption for certain antimicrobial pesticides. Since this new statutory language was not in existence at the time of the original proposed rule, EPA seeks comment on EPA's interpretation of how this statutory exemption applies to the proposed container regulations.

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) requires an agency to prepare a regulatory flexibility analysis for any rule for which the agency is required to issue a notice of proposed rulemaking under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the purpose of analyzing potential impacts on small entities, section 601(6) of the RFA defines small entities to include small governments, small non-profit organizations, and small businesses, which are also further defined in section 601. The definition of small business provided in section 601(3) uses the definition of small business in section 3 of the Small Business Act, 15 U.S.C. 632, under which the Small Business Administration (SBA) establishes small business size standards. 13 CFR 121.201.

In analyzing potential impacts, the RFA recognizes that it may be appropriate at times to use an alternate definition of small business. As such, section 601(3) of the RFA provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. In this document, EPA seeks comments on the ''small business'' definitions used to identify potentially affected small entities in the initial regulatory

flexibility analysis that was prepared for the 1994 proposed rule, i.e., for identifying small pesticide formulators, small agrichemical dealers, and small commercial pesticide applicators.

B. Regulatory Background

In a Notice of Proposed Rulemaking issued on February 11, 1994 (59 FR 6712) (Ref. 1), EPA proposed standards for pesticide containers and containment structures. This proposal included requirements for nonrefillable and refillable containers that would ensure the safe use and disposal of the containers. The proposal also included standards for containment structures, which would promote safe storage by facilitating the safe use, refill, and reuse of refillable containers. Additionally, the proposed rule contained amendments to the labeling regulations in 40 CFR part 156 to ensure adequate levels of residue removal from containers.

The public comment period for the proposed rule closed on July 11, 1994. EPA received about 1,900 pages of comments from over 200 commenters, including many trade associations and individual companies from the pesticide manufacturing, pesticide retail, and container manufacturing industries as well as many State regulatory agencies. A summary of these comments is available in the docket. (Ref. 2)

EPA received many comments during the public comment period on two of the issues being re-opened for comment in this document; specifically, the scope of the container standards and the relationship between the 1994 proposed rule and the Department of Transportation (DOT) standards for hazardous materials packaging. For each of these issues, a brief summary of the comments and a description of a modified regulatory option being considered are provided.

III. Scope of the Container Standards

A. Background on 1994 Proposal

In the February 1994 Notice of Proposed Rule Making (NPRM), EPA proposed that the container standards would generally apply to all pesticides and all containers, regardless of the pesticide market sector (e.g., agricultural, industrial, institutional, household, etc.), the type of pesticide (e.g., insecticide, herbicide, sanitizer, disinfectant, etc.), or the type of container (e.g., plastic jug, steel drum, paper bag, minibulk tank, etc.). Where appropriate, EPA proposed a limited applicability for specific requirements. For example, the proposed nonrefillable container dispensing capability standards would only apply to containers holding liquid pesticides, i.e., those containers that have the potential to drip or ''glug'' (the common industry term for not pouring in a continuous, coherent stream) during pouring.

During the public comment period, many commenters opposed the broad scope of the proposed container standards and requested EPA to exempt a specific subset of pesticides from the scope of the container requirements. The categories of pesticides that were suggested for exemption from the rule include: (1) Lower-risk pesticides; (2) nonagricultural pesticides in general; (3) antimicrobial pesticides; (4) swimming pool chemicals; (5) industrial biocides; and (6) disinfectants and/or sanitizers. To support the exemption requests, commenters generally argued that the pesticides suggested for exemption pose lower risk than agricultural pesticides (e.g., active ingredients that are less toxic, less persistent, more biodegradable, and/or at a lower concentration, and the pesticides are in smaller containers, etc.); that the containers suggested for exemption are handled differently than containers for agricultural pesticides; and/or it would be more burdensome for these pesticides/containers to come into compliance than for agricultural pesticides/containers. See the comment summary document (Ref. 2) for more information.

B. Regulatory Option Under Consideration

EPA is considering exempting some pesticides and containers from the final container rule. However, rather than exempting products based on the pesticide market sector or the type of pesticide, EPA believes it is more appropriate to exempt pesticides based on the relative risk they pose.

Under the regulatory option being considered for defining the general scope of the rule (i.e., for pesticides other than antimicrobial products that are eligible for exemption), a pesticide product would be subject to the container standards if the product met at least one of the criteria being considered: (1) The product is classified in Toxicity Category I or II; (2) the container capacity is greater than or equal to the container size criterion of 5 liters (1.3 gallons) or 5 kilograms (11 pounds); or (3) the product is intended for outdoor use and the label includes at least one of the specified environmental hazard statements. If the product does not meet any of these criteria, it would not be subject to the container standards. (See Unit IV of this document for a discussion of which antimicrobial pesticides would be subject to the container standards.)

C. Discussion

1. *General principle of risk.* When considering which pesticides should be subject to the pesticide container regulations, it is worth reviewing the goals of the proposed container standards, which include:

- Ensuring that pesticide containers are strong and durable to minimize container failures and the subsequent releases of pesticide to the environment
- Minimizing human exposure during container handling, e.g., loading and unloading the container, container cleaning, and management before disposal
- Facilitating container disposal and recycling
- Minimizing cross-contamination in refillable containers
- Codifying safe refilling management practices

Failure to attain any of these goals could lead to unreasonable adverse effects on the environment. For example, the first item relates to an event that can easily be visualized as causing people or the environment to be directly exposed to pesticides -- a container fails and releases the pesticide. Regarding the second item, a pesticide user could be exposed if pesticide splashes or drips from a container while the user is handling the container. Under exposure scenarios such as these (or under pesticide exposures during container disposal or recycling, from cross-contamination or from unsafe refilling practices), unreasonable adverse effects would be more likely to occur with pesticides that are higher-risk than with pesticides that are lower-risk. Therefore, EPA has considered several characteristics of pesticides and containers to distinguish between those that are higher-risk and those that are lower-risk in such situations.

2. *Toxicity criteria.* One factor in distinguishing higher-risk pesticides is the toxicity of the pesticide. EPA is considering the following criteria to identify the higher-toxicity, higher-risk pesticides for general inclusion in the container rule:

i. Toxicity Category I classification

ii. Toxicity Category II classification

iii. One of several environmental hazard statements (e.g. ''This pesticide is toxic to wildlife.'') on their labels.

The regulations in 40 CFR 156.10(h) define four categories that account for human toxicity, with Toxicity Category I including the most toxic pesticides and Toxicity Category IV the least toxic.

These categories are based on hazard information, including the oral LD_{50}, inhalation LC_{50}, dermal LD_{50}, eye effects, and skin effects of the pesticide. The following table 1 describes the hazard indicators defining each toxicity category as set out in § 156.10(h)(1), the human hazard signal word for each as required by § 156.10(h)(1)(i), and the precautionary statements regarding hazard to humans and domestic animals set forth in § 156.10(h)(2)(i)(B).

TABLE 1.—INFORMATION ON TOXICITY CATEGORIES AS SET OUT IN 40 CFR 156.10(h)

	Toxicity Categories			
	I	II	III	IV
Hazard Indicators.				
Oral LD_{50}	Up to and including 50 mg/kg.	From 50 thru 500 mg/kg	From 500 thru 5,000 mg/kg.	Greater than 5,000 mg/kg
Inhalation LC_{50}	Up to and including 0.2 mg/kg.	From 0.2 thru 2 mg/kg	From 2 thru 20 mg/kg	Greater than 20 mg/kg
Dermal LD_{50}	Up to and including 200 mg/kg.	From 200 thru 2,000 mg/kg	From 2,000 thru 20,000 mg/kg.	Greater than 20,000 mg/kg
Eye effects	Corrosive; corneal opacity not reversible within 7 days.	Corneal opacity reversible within 7 days; irritation persisting for 7 days.	No corneal opacity; irritation reversible within 7 days.	No irritation.
Skin effects	Corrosive	Severe irritation at 72 hours.	Moderate irritation at 72 hours.	Mild or slight irritation at 72 hours.
Required Label Language.				
Human hazard signal word	''Danger''; and in some cases: ''Poison'' and the skull and crossbones.	''Warning''	''Caution''	''Caution''
Precautionary statements regarding hazard to humans and domestic animals: oral, inhalation, or dermal toxicity.	Fatal (poisonous) if swallowed [inhaled or absorbed through skin]. Do not breathe vapor [dust or spray mist]. Do not get in eyes, on skin, or on clothing. [Front panel statement of practical treatment required.].	May be fatal if swallowed [inhaled or absorbed through skin]. Do not breathe vapor [dust or spray mist]. Do not get in eyes, on skin, or on clothing [Appropriate first aid statement required.].	Harmful if swallowed [inhaled or absorbed through skin]. Avoid breathing vapors [dust or spray mist]. Avoid contact with skin [eyes or clothing]. [Appropriate first aid statement required.].	[No precautionary statements required.]
Precautionary statements regarding hazard to humans and domestic animals: skin and eye local effects.	Corrosive, causes eye and skin damage [or skin irritation]. Do not get in eyes, on skin, or on clothing. Wear goggles or face shield and rubber gloves when handling. Harmful or fatal if swallowed. [Appropriate first aid statement required.].	Causes eye [and skin] irritation. Do not get in eyes, on skin, or on clothing. Harmful if swallowed. [Appropriate first aid statement required.].	Avoid contact with skin, eyes or clothing. In case of contact immediately flush eyes or skin with plenty of water. Get medical attention if irritation persists.	[No precautionary statements required.]

Because these categories cover the full range of toxicities in a continuum, it is difficult to make a clear-cut distinction among them. However, EPA is considering an option that would specify the two most hazardous groups -- Toxicity Categories I and II -- as criteria for pesticides that would be subject to the container standards. EPA believes it is appropriate to use classification in Toxicity Categories I and II as criteria for inclusion in the container standards, because it would include, by the definitions given in table 1, the most toxic pesticides. In addition, the specified label language seems to indicate a notable difference in the hazard posed by pesticides in Toxicity Category II and those in Toxicity Category III.

The United States is participating in a global effort to harmonize the classification and labeling of chemicals for human and environmental hazards, which is being lead by international agencies such as the Organization for Economic Cooperation and Development (OECD), World Health Organization, International Labor Organization and the United Nations Committee of Experts on the Transport of Dangerous Goods. OECD is the focal point for the harmonization of classification for health and environmental hazards, including toxicity endpoints for acute toxicity, reproductive toxicity, carcinogenicity, mutagenicity, sensitization, irritation and corrosion, and target organ effects and environmental endpoints for aquatic and terrestrial effects. The harmonized system is to be based on the intrinsic nature of all chemicals and mixtures regardless of their intended use (certain chemicals have both pesticide and non-pesticidal uses).

The global harmonization effort is still under negotiation. A basic principle of the effort is that the level of protection should not be reduced. Hazard categories will be defined, but countries will select elements deemed appropriate for regulating transport, worker and environmental protection. However, there may be new definitions of each toxicity category, particularly with regard to inhalation toxicity, and the number of products captured by each may expand or contract. Since in this notice EPA is considering an approach of exempting certain pesticide products from the container standards based on

their toxicity category, any change in the toxicity classification may change the universe of products subject to the container rule. If the final criteria for toxicity categories differ significantly from those currently used by EPA, a clarification of the products subject to the container standards can be included in the final rule.

EPA believes it is important and necessary to also account for environmental factors when evaluating the risk posed by pesticide containers. The approach EPA is currently considering is to rely on whether or not at least one of the environmental hazard statements is included on the label. Some environmental hazard statements are required by 40 CFR 156.10(h)(2)(ii). For the purposes of the regulatory option being considered here, EPA is looking at the following environmental hazard statements (label statements) or similar warnings or precautionary statements pertaining to wildlife, fish, birds, or groundwater:

- This pesticide is toxic (or extremely toxic) to wildlife.
- This pesticide is toxic (or extremely toxic) to fish.
- This pesticide is toxic (or extremely toxic) to birds.
- This chemical is known to leach through soil into ground water under certain conditions as a result of agricultural use. Use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in ground-water contamination.
- This chemical demonstrates the properties and characteristics associated with chemicals detected in ground water. Use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in ground-water contamination.

EPA believes it is appropriate to consider only realistic environmental exposure scenarios. For example, it is possible that the label of a pesticide product for indoor use could have one of the environmental hazard statements, such as ''This pesticide is toxic to fish.'' In this case, the chance of fish in the environment being exposed if the container fails is very small, since the container would most likely be stored and the pesticide used inside. Therefore, in the regulatory option being considered, the environmental hazard criterion would apply only to pesticides intended for outdoor use.

EPA is considering specifying several environmental hazard criteria in addition to the label statements listed earlier. Some pesticides are classified as restricted use for environmental or ecological reasons. EPA is considering adding this criterion (classification as restricted use for environmental or ecological reasons) to help distinguish the higher-risk pesticides in terms of environmental risk. However, EPA believes that pesticides that meet this criterion would most likely have at least one of the specified environmental hazard statements on their labels. EPA is also considering adding a criterion for ''biological activity'' or phytotoxicity to include pesticides that are applied at low application rates. Low application rate pesticides may not trigger the container size criterion since only small volumes are used. However, a small release of a low application rate herbicide may still pose significant risks in the environment, because such pesticides are designed and intended to be effective in low doses. These potential criteria are not included in the draft regulatory language in this document, although EPA may decide to include one or both of them in the final rule.

3. *Container size criterion*. In addition, EPA is concerned that even products that don't meet any of the higher-toxicity criteria may pose a significant risk if they are present in large enough quantities. Therefore, EPA is also considering container size as a criterion for defining the scope of the container standards. EPA is currently considering a size criterion of 5.0 liters (1.3 gallons) for containers holding liquid formulations and 5.0 kilograms (11.0 pounds) for containers holding solid formulations. These sizes were selected to be consistent with the limited quantity exceptions in the DOT Hazardous Materials Regulations (HMR) in 49 CFR parts 171–180. As described in Unit V of this document, many commenters strongly urged EPA to be consistent with the DOT HMR which would include adopting the DOT limited quantity exceptions. Therefore, EPA believes it is appropriate to base a container size criterion on the package sizes delineated in the DOT limited quantity exceptions.

4. *General discussion*. The flow chart below depicts the changes being considered for the scope of the container standards for pesticides other than antimicrobial pesticides that are eligible for exemption. The changes to the scope and applicability provisions would be the same for nonrefillable containers (in proposed subpart F) and refillable containers (in proposed subpart G). Under the approach being considered for the general scope (and as shown in the flow chart), the container standards would not apply to manufacturing use products, as proposed in 1994. Regarding products other than manufacturing use products, if the pesticide product meets at least one of the criteria being considered (i.e., Toxicity Category I, Toxicity Category II, greater than (or equal to) the minimum container size, or outdoor use products with one of the label environmental hazard statements) then the product would be subject to the container standards. If the product did not meet any one of these criteria, it would not be subject to the container standards. Potential alternative regulatory text that is being considered for the final rule is provided in Unit VII of this document.

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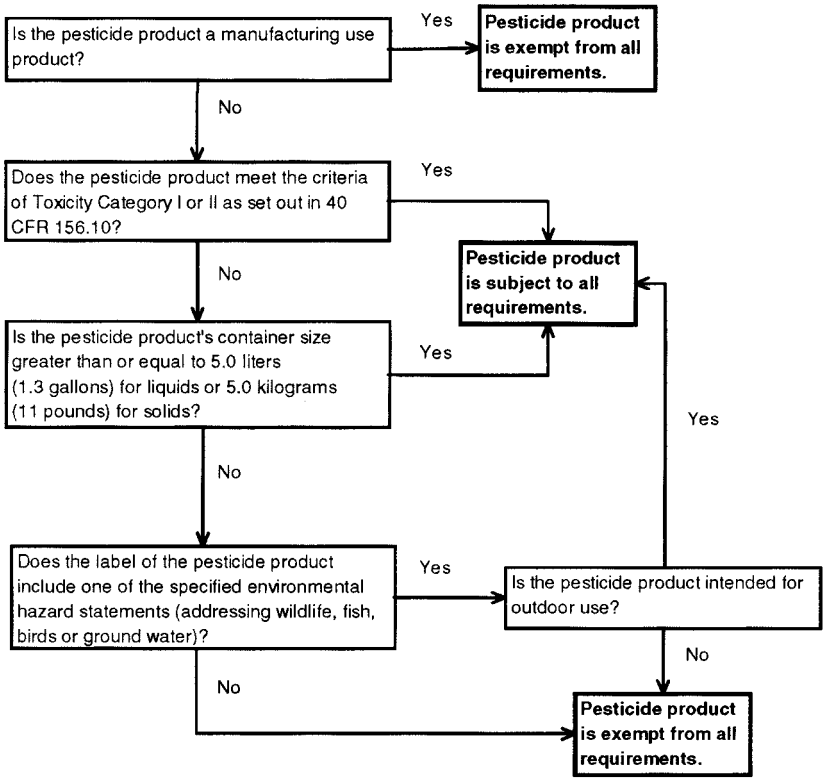

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EPA believes that it has authority to reduce the scope of these regulations. FIFRA section 19(e) requires EPA to promulgate regulations that promote the safe storage and disposal of pesticides. FIFRA section 19(f) requires EPA to promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal, but provides the EPA with much discretion in accomplishing this goal. In addition, FIFRA section 25(b) allows EPA to exempt (by regulation) any pesticide from the requirements of FIFRA if EPA determines that pesticide to be of a character which is unnecessary to be subject to FIFRA in order to carry out the purposes of FIFRA.

Under the changes being considered to the scope of the container rule, the standards would not apply to small containers holding pesticides in Toxicity Category III or IV that don't have any of the environmental hazard statements on their labels or that have at least one of the environmental hazard statements but are not intended for outdoor use. EPA believes it is appropriate to exclude these groups of pesticides and containers from regulation because the relatively small risk to humans and the environment if the container fails, due to their low toxicity, small quantity and/or limited exposure to the environment, is not commensurate with the costs of imposing the standards on these pesticides and containers.

These potential changes to the scope of the proposed rule are being considered only for the container design and residue removal standards in subparts F and G -- not for the proposed modifications to the 40 CFR part 156 label provisions. EPA believes that it is appropriate to have container cleaning and disposal instructions on the labels of all pesticides because of safety and environmental protection considerations for recycling operations. It is necessary for pesticide containers to be properly emptied and cleaned prior to being recycled to protect workers who handle the recyclable material and to prevent releases of pesticides to the environment. Because pesticide containers from all segments of the pesticide industry are currently being recycled, container cleaning and disposal instructions are needed on the labels of all pesticides. EPA believes that FIFRA sections 19(e) and (f) provide the Agency with the authority to make this determination.

D. Request for Comments

EPA solicits comments on the potential modifications to the scope and applicability of the container standards. In addition to any general comments on the approach being considered, EPA requests comments on the following specific issues. (1) Is it appropriate to apply the container standards only to the higher-risk pesticides? (2) Are the criteria being considered by EPA to distinguish between higher-risk and lower-risk pesticides appropriate? (3) In particular, is container size a reasonable factor to consider and, if so, is the suggested size criterion appropriate or should EPA adopt a different size limit? (4) Should alternative or additional environmental hazard criteria, such as those described in Unit III.C.2 of this document be considered? (5) Are there certain container types (e.g., glass containers) that are sufficiently unsafe that such container types should be regulated for all pesticides? (6) Should the potential modifications to the scope be made to the container-related provisions only or should the changes also be made to the proposed label standards?

IV. Antimicrobial Exemption

A. Statutory Background

The Food Quality Protection Act (FQPA) of 1996, Public Law No. 104–170, amended section 19 of FIFRA to exempt certain types of antimicrobial pesticides from the pesticide container provisions under certain circumstances. Specifically, FQPA added the following to FIFRA section 19(h):

A household, industrial, or institutional antimicrobial product that is not subject to regulation under the Solid Waste Disposal

Act (42 U.S.C. 6901 et seq.) shall not be subject to the provisions of subsections (a), (e), and (f), unless the Administrator determines that such product must be subject to such provisions to prevent an unreasonable adverse effect on the environment.

Since this language was added after the pesticide container and containment rule was proposed, EPA believes it is appropriate to solicit public comment on the applicability of this provision to the proposed container regulations. In addition, EPA must interpret the antimicrobial exemption provision to answer two broad questions. First, what is the scope of ''household, industrial, or institutional antimicrobial product[s] that [are] not subject to regulation under the Solid Waste Disposal Act''? Second, which ''product[s] must be subject to [the container] provisions to prevent an unreasonable adverse effect on the environment''?

B. Scope of the Antimicrobial Exemption

1. *Regulatory option under consideration.* EPA believes that a ''household, industrial, or institutional antimicrobial product that is not subject to regulation under the Solid Waste Disposal Act'' is a pesticide product that meets all of the following criteria. (i) The product meets the definition of ''antimicrobial pesticide'' in section 2(mm) of FIFRA; (ii) the product is classified in at least one of the following antimicrobial product use categories: (a) food handling/storage establishments premises and equipment; (b) commercial, institutional, and industrial premises and equipment; (c) residential and public access premises; (d) medical premises and equipment; (e) materials preservatives; (f) industrial processes and water systems; (g) antifouling coatings; (h) wood preservatives; or (i) swimming pools; and (iii) the product is not subject to regulation under the Resource Conservation and Recovery Act as a hazardous waste when it becomes a waste.

2. *Discussion.* The first criterion above requires an ''antimicrobial product'' to be an ''antimicrobial pesticide,'' as defined in FIFRA. Section 2(mm) of FIFRA provides the following definition for an antimicrobial pesticide.

(1) IN GENERAL.--The term 'antimicrobial pesticide' means a pesticide that--

(A) is intended to-- (i) disinfect, sanitize, reduce, or mitigate growth or development of microbiological organisms; or

(ii) protect inanimate objects, industrial processes or systems, surfaces, water, or other chemical substances from contamination, fouling, or deterioration caused by bacteria, viruses, fungi, protozoa, algae, or slime; and

(B) in the intended use is exempt from, or otherwise not subject to, a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a and 348) or a food additive regulation under section 409 of such Act.

(2) EXCLUDED PRODUCTS.--The term 'antimicrobial pesticide' does not include --

(A) a wood preservative or antifouling paint product for which a claim of pesticidal activity other than or in addition to an activity described in paragraph (1) is made;

(B) an agricultural fungicide product; or

(C) an aquatic herbicide product.

(3) INCLUDED PRODUCTS.--The term 'antimicrobial pesticide' does include any other chemical sterilant product (other than liquid chemical sterilant products exempt under subsection (u)), any other disinfectant product, any other industrial microbiocide product, and any other preservative product that is not excluded by paragraph (2).

Because this is a very complex definition, EPA considered using a more straightforward definition for ''antimicrobial product.'' Specifically, EPA considered defining ''antimicrobial product'' to be any product covered under section (1)(A) of the definition of ''antimicrobial pesticide'' in FIFRA section 2(mm), without taking the remainder of that definition into account. However, EPA rejected this approach because the Agency is unaware of evidence that indicates Congress intended ''antimicrobial products'' to be different than ''antimicrobial pesticides.'' Additionally, EPA believes that distinguishing between ''antimicrobial products'' and ''antimicrobial pesticides'' could be confusing to regulators and the regulated industry and could pose enforcement problems. If a pesticide product is not included in the definition of antimicrobial pesticide (e.g., if it is excluded by paragraph (2) of the definition), it is not eligible for the antimicrobial product exemption from the container standards and, thus, is subject to the general scope criteria as discussed in Unit III of this document.

The second criterion for defining the scope of the antimicrobial exemption states that a pesticide product is a ''household, industrial, or institutional'' product if it is classified in at least one of nine specified antimicrobial product use categories.

In response to other FQPA provisions pertaining to antimicrobial pesticides, EPA is developing regulations on the registration of antimicrobial pesticides and the associated data requirements. In its proposal on data requirements (that would amend 40 CFR part 158), EPA intends to categorize all antimicrobial uses into one of the following 12 use categories. All currently registered antimicrobial use patterns are included in one of these larger use classifications for data requirement purposes, but EPA has not to date classified the existing use patterns in this organized fashion.

- Agricultural premises and equipment
- Food handling/storage establishments premises and equipment
- Commercial, institutional, and industrial premises and equipment
- Residential and public access premises
- Medical premises and equipment
- Human drinking water systems
- Materials preservatives
- Industrial processes and water systems
- Antifouling coatings
- Wood preservatives
- Swimming pools
- Aquatic areas

The list of the 12 use categories with all of the appropriately classified use sites is included in the docket (Ref. 3).

In today's document, EPA is considering the approach of identifying nine of these use categories to identify ''household, industrial, or institutional'' antimicrobial products. Specifically, EPA believes that the following nine use categories generally fit within the common understanding of household, industrial and institutional uses:

- Food handling/storage establishments premises and equipment
- Commercial, institutional, and industrial premises and equipment
- Residential and public access premises
- Medical premises and equipment
- Materials preservatives
- Industrial processes and water systems
- Antifouling coatings
- Wood preservatives
- Swimming pools

The other three categories, which are listed below, would not be considered household, industrial, or institutional uses because they fall outside the common understanding of these uses:

- Agricultural premises and equipment
- Human drinking water systems
- Aquatic areas

EPA considered developing definitions for household, industrial, and institutional use, but rejected this approach because of the difficulty in distinguishing among these pesticide market sectors. EPA believes that relying on the antimicrobial product use categories in the antimicrobial registration data requirements rule to distinguish between ''household, industrial, and institutional antimicrobial products'' and all others

for the purposes of the container rule will offer a consistent approach to the definitional issues involved with this criterion. There may be implementation issues with this approach since it is unlikely that the pesticide container and containment rule and the rule on antimicrobial pesticide registration data requirements will be finalized at the same time. However, EPA will coordinate between these rules to ensure consistency and proper notice to the public on the issue of antimicrobial product use categories.

The third criterion for defining the scope of the antimicrobial exemption establishes that a pesticide product ''is not subject to regulation under the Solid Waste Disposal Act'' if it is not subject to regulation under the Resource Conservation and Recovery Act as a hazardous waste when it becomes a waste. The Solid Waste Disposal Act (SWDA) is the Federal waste management statute, which is commonly referred to as the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6992k. (Technically, RCRA was the name of the law that extensively amended the SWDA in 1976.) The terms ''RCRA'' and ''SWDA'' are used synonymously in this document.

EPA believes that the intent of the statutory language in question -- ''that is not subject to regulation under the SWDA'' -- is to include in the antimicrobial exemption household, industrial, or institutional antimicrobial products that are not subject to regulation under RCRA as hazardous wastes when they become wastes. If a household, industrial, or institutional antimicrobial product would be classified as a hazardous waste when it becomes a waste (either by being on one of the RCRA hazardous waste lists or by meeting one of the hazardous waste characteristics), then the product would not be eligible for the FIFRA section 19(h) exemption. An initial review showed that none of the ''listed hazardous waste pesticides'' are antimicrobial pesticides. EPA believes that most household, industrial, and institutional antimicrobial products would not be subject to regulation under RCRA as hazardous wastes when they become wastes and, therefore, would be eligible for the FIFRA section 19(h) exemption.

EPA considered several other interpretations of the SWDA reference, but rejected them because the group of pesticides that would be exempt did not appear to be an accurate or realistic representation of Congress's intent. One alternative interpretation is based on the fact that household, industrial, or institutional antimicrobial products are products and not wastes. Pesticide products are regulated by FIFRA; pesticide wastes are regulated by RCRA. Under this interpretation, no household, industrial, or institutional antimicrobial products would or could ever be subject to regulation under the Solid Waste Disposal Act, and, therefore, they all would be eligible for the FIFRA section 19(h) exemption. However, EPA believes that the scope of the exemption under this interpretation is too broad to realistically represent the Congressional intent.

Another alternative would be to include in the exemption only household, industrial, or institutional antimicrobial products that are not subject to any regulation under RCRA (i.e., as solid waste or hazardous waste) when they become wastes. However, this interpretation would appear to eliminate the exemption altogether, because all antimicrobial product waste (including liquids) would fit into the RCRA regulatory definition of ''solid waste.'' Therefore, all of the household, industrial, or institutional antimicrobial products would be subject to regulation under the Solid Waste Disposal Act. Under this interpretation, none of these products would be eligible for the FIFRA section 19(h) exemption. It seems reasonable to presume that Congress did not intend this result, as it would clearly nullify the exception that Congress had crafted for antimicrobial pesticides. It would seem to be an absurd interpretation that Congress intended this section to have no effect. Further, it is reasonable to presume, given the structure and regulatory history of SWDA, that Congress intended its reference to regulation under SWDA to mean regulation as a hazardous waste under SWDA. Though SWDA does provide for regulation of solid waste (in particular, restrictions on ''open dumping''), hazardous waste has been subject to much more extensive regulation and has been to a significant degree the focus of Federal regulation under SWDA. (Ref. 4) It is therefore likely that the most reasonable interpretation of this provision is to interpret ''subject to regulation under the Solid Waste Disposal Act'' to mean ''subject to regulation as a hazardous waste under the Solid Waste Disposal Act.''

In summary, EPA believes that the scope of ''household, industrial, or institutional antimicrobial products that are not subject to regulation under the Solid Waste Disposal Act'' includes pesticide products that: (1) Meet the definition of antimicrobial pesticide in FIFRA section 2(mm); (2) fall within one of the specified antimicrobial product use categories; and (3) are not subject to regulation under RCRA as hazardous wastes when they become wastes. Throughout the remainder of this document, these pesticides are referred to as ''eligible antimicrobial pesticides,'' i.e., those pesticides that are eligible for the antimicrobial exemption.

3. *Request for comments.* EPA requests comments on this interpretation of the statutory antimicrobial exemption. In addition to general comments, EPA solicits comments on the following specific questions.

i. Is it appropriate to adopt the statutory definition for ''antimicrobial pesticide'' to define ''antimicrobial product'' for the purposes of the pesticide container and containment rule? If an alternative definition of antimicrobial product should be adopted, please explain why and provide an alternative definition.

ii. Is it appropriate to rely on antimicrobial product use categories developed for data requirement purposes to distinguish among household, industrial, and institutional antimicrobials and all others for container regulatory purposes or should EPA adopt another approach such as defining each of these pesticide use sectors?

iii. Is EPA's interpretation of the statutory reference to the SWDA appropriate or should EPA adopt an alternative interpretation?

In addition, EPA requests information about which antimicrobial pesticides, if any, are subject to regulation as hazardous wastes under RCRA when they become wastes.

C. Preventing Unreasonable Adverse Effects on the Environment

1. *Regulatory option under consideration.* Under the regulatory option being considered, EPA has determined that eligible antimicrobial products classified in Toxicity Category I must be subject to a substantial majority of the container provisions to prevent an unreasonable adverse effect on the environment. As discussed in greater detail below, eligible Toxicity Category I antimicrobial products would be subject to all of the nonrefillable and refillable container standards with two exceptions. First, eligible Toxicity Category I antimicrobial products would be exempt from the nonrefillable residue removal standard. Second, eligible Toxicity Category I antimicrobial products that are used in swimming pools would be exempt from certain refillable container standards (including, but not limited to serial

number markings, one-way valves or tamper-evident devices, and some recordkeeping) that would greatly interfere with the current wide use of refillable containers in that industry segment.

2. *Description of options.* EPA considered a wide range of options for determining which eligible antimicrobial products must be subject to the container provisions to prevent an unreasonable adverse effect on the environment. The four options that EPA preliminarily believes to be the most appropriate are described in Units IV.C.2.i - iv of this document. The options are listed in the order of how many eligible antimicrobial products would be exempt, where option 1 would exempt the most and option 4 would exempt the least. Options 2 and 3 would exempt the same number of products, but would apply different sets of standards to the products that would be included.

This section of the document is intended to provide a brief summary of the options. The following unit provides a comparison, analysis, and more detailed explanation of the options and explains why option 3 is put forth as EPA's preferred option.

i. *Option 1. Exempt all eligible antimicrobials, but include a provision to require a specific product or group of products to comply with the container regulations if a problem becomes evident.* Eligible antimicrobials (i.e., household, industrial, or institutional antimicrobial products that are not subject to regulation under the Solid Waste Disposal Act) would be exempt from the pesticide container regulations, unless EPA specifically includes the antimicrobial product or products. EPA could make a case-by-case determination that a specific product or group of products must be subject to the container standards to prevent an unreasonable adverse effect on the environment. The regulations could include a provision such as the following to allow such case-by-case decisions to be made: ''EPA may determine that an antimicrobial product or products must comply with the container standards. EPA may consider evidence such as field studies, use history, accident data, monitoring data, or other pertinent evidence in deciding whether the product must comply with the container standards to prevent an unreasonable adverse effect on the environment.''

The overall criterion that would be used to make product-specific inclusion decisions is that the antimicrobial product would cause an unreasonable adverse effect on the environment unless it complied with the container standards. EPA would consider requiring a specific antimicrobial product to comply with the container standards in situations where EPA became aware of situations such as, but not limited to: (1) An antimicrobial product with a non-negligible number of containers that leaked or otherwise accidentally released pesticide to the environment; (2) an antimicrobial product with a non-negligible number of container-related documentable exposures to persons using the product, particularly if there are significant health effects to the pesticide users; or (3) the use of refillable containers to distribute antimicrobial products has expanded into new market segments and use sites, where the safeguards of the proposed regulations are necessary to prevent exposure and unreasonable risks to pesticide users and human health and the environment in general. In situations such as these, EPA could decide to require just the specific product in question to comply with the container regulations. However, EPA could also require similar products distributed in similar containers to comply with the container standards if the Agency could reasonably expect the same problems from these other antimicrobial products.

A provision such as this could be added to any of the other options to account for new information about problems with specific products that might not be included by the general criteria. In order to simplify this discussion, EPA chose not to add such a provision to create a ''suboption'' for each of the following options. In the final rule, however, EPA may decide to add a ''case-by-case provision'' to one of the following options.

ii. *Option 2. Subject eligible antimicrobials classified in Toxicity Category I to all of the container regulations.* Eligible antimicrobials classified in Toxicity Category I would be included in the pesticide container regulations. Other eligible antimicrobials (i.e., those in Toxicity Categories II, III, and IV) would be exempt from the container regulations. Under this option, EPA would make a determination that eligible antimicrobials classified in Toxicity Category I must be subject to all of the container regulations to prevent an unreasonable adverse effect on the environment.

iii. *Option 3. Subject eligible antimicrobials classified in Toxicity Category I to a subset of the container regulations.* This option is similar to option 2 in that eligible antimicrobials classified in Toxicity Category I would be included in the pesticide container regulations and other eligible antimicrobials (i.e., those in Toxicity Categories II, III, and IV) would be exempt from the container standards. EPA would make an unreasonable adverse effects determination similar to that in option 2. Under this option, however, only a subset of the container standards would apply to eligible antimicrobial pesticides in Toxicity Category I.

Specifically, eligible Toxicity Category I antimicrobial products would be subject to all of the nonrefillable container standards except for the residue removal standard (which was proposed as § 165.104). Also, eligible Toxicity Category I antimicrobial products that are used in swimming pools would be exempt from certain refillable container standards (including, but not limited to serial number markings, one-way valves or tamper-evident devices, and some recordkeeping). All other eligible Toxicity Category I antimicrobial products would have to comply with all of the refillable container standards. The full list of requirements that would apply under this approach is provided in the potential alternative regulatory text in Unit VII of this document. The exemptions from specific requirements are discussed in more detail in Unit IV.C.3 of this document.

iv. *Option 4. Apply the scope criteria being considered for other pesticides (as discussed in Unit III of this document) to eligible antimicrobials.* Eligible antimicrobials would be subject to the same exclusion/inclusion criteria as other pesticides, according to the modifications being considered for the scope of the container regulations. As discussed in Unit III of this document, EPA is considering criteria based on: (a) Classification in Toxicity Categories I or II; (b) container size; and (c) environmental hazard statements on the labels of outdoor pesticides to distinguish between higher-risk and lower-risk pesticides. Under this approach, EPA would make a determination that eligible antimicrobials that meet any of the criteria must be subject to the container regulations to prevent an unreasonable adverse effect on the environment.

3. *Discussion.* One issue regarding these options is whether EPA can set general criteria for making an unreasonable adverse effect determination or if such a determination must be made on a case-by-case basis. EPA believes that the statutory language ''unless the Administrator determines that [an eligible antimicrobial] product must be subject to [the container]

provisions to prevent an unreasonable adverse effect on the environment'' does not preclude the adoption of either approach (general criteria or a case-by-case decision). Section 19(h) provides the Agency with considerable flexibility to make a reasonable interpretation of the statutory language. EPA believes that the Agency can set general criteria and/or make case-by-case decisions in making unreasonable adverse effect determinations.

Another issue regarding these options is estimating how many products would be included in the regulations by each of the options. (Ref. 5) EPA estimates that there are about 5,000 registered antimicrobial end-use products being marketed in the United States. While not all of these products would be household, industrial, or institutional antimicrobial products that are not subject to regulation under the SWDA, this analysis will use 5,000 products as a reasonable upper limit. To estimate the percentage of eligible antimicrobial pesticides classified in Toxicity Categories I and II, EPA analyzed information in an Office of Pesticide Programs data base. Based on this analysis, EPA estimates that about 70% of eligible antimicrobial products are classified in Toxicity Category I and an additional 15% are classified in Toxicity Category II. The number and percent of eligible antimicrobial products that would have to comply with the container standards under the four options is summarized in the following table 2.

TABLE 2.— SUMMARY OF OPTIONS FOR EXEMPTING CERTAIN ANTIMICROBIAL PRODUCTS

Option Number	Description	Products Included		Products Exempted	
		Number	Percent	Number	Percent
Option 1	Exempt all except case-by-case	some	> 0	most (< 5,000)	< 100
Option 2	Include Toxicity Category I	3,500	70	1,500	30
Option 3	Include Toxicity Category I	3,500	70	1,500	30
Option 4	Include Toxicity Category I & II, container size, environmental criteria.	4,250 – 4,500	85 – 90	500 – 750	10 – 15

Under option 1, eligible antimicrobials would be exempt from the pesticide container regulations, unless EPA made a case-by-case determination that a specific product or group of products must be subject to the container standards to prevent an unreasonable adverse effect on the environment. This option would exempt nearly all eligible antimicrobials from the container rule. Therefore, this option would have the lowest economic costs since the economic costs of the rule are directly related to the number of products that would be regulated.

EPA rejected option 1 because the Agency believes that the risk of exempting nearly all eligible antimicrobial products is too high. Under this approach, few, if any, antimicrobial pesticides would initially be subject to these regulations, even those antimicrobial pesticides that are in Toxicity Category I. A high percentage, about 70%, of eligible antimicrobials are classified in Toxicity Category I (mostly because they meet the criteria for eye and/or skin effects). This is a significantly larger percentage than for other segments of the pesticide industry. Based on an analysis of information in an Office of Pesticide Programs data base (Ref. 5), EPA estimates that about 20% of agricultural pesticides are classified in Toxicity Category I (with an additional 15% in Toxicity Category II) and about 10% of pesticides for forestry and ornamental turf and plants are classified in Toxicity Category I (with an additional 15% in Toxicity Category II). This information is summarized in the following table 3.

TABLE 3.— COMPARISON OF HIGHLY TOXIC PRODUCTS IN DIFFERENT PESTICIDE MARKET SEGMENTS

Pesticide Industry Segment	Percentage of Products		
	Toxicity Category I	Toxicity Category II	Toxicity Category I or II
Forestry and ornamental turf and plants	10	15	25
Agricultural crops	20	15	35
Eligible antimicrobials	70	15	85

In addition, the large quantity of antimicrobial products used each year supports including some of these products within the scope of the container requirements. The following table 4 summarizes the U.S. usage of different types of pesticides in 1995. (Ref. 6) According to this information, eligible antimicrobial pesticides account for over 40% of all pesticides used in 1995 (on a weight basis).

TABLE 4.— PESTICIDE USAGE IN THE UNITED STATES IN 1995

Type of Pesticide	Quantity of Pesticide Used	
	Millions of pounds active ingredient	Percent
Non-antimicrobial pesticides		
Conventional pesticides	973	21

TABLE 4.— PESTICIDE USAGE IN THE UNITED STATES IN 1995—Continued

Type of Pesticide	Quantity of Pesticide Used	
	Millions of pounds active ingredient	Percent
Sulfur, petroleum (oil, distillates, etc.), sulfuric acid and other miscellaneous chemicals used as pesticides	249	6
Subtotal	**1222**	**27**
Eligible antimicrobial pesticides		
Wood preservatives [1]	718	16
Specialty biocides by end use.		
Swimming pools, spas, individual water treatment [2]	175	4
Disinfectants and sanitizers [3]	32	1
Other [4]	50	1
Chlorine/hypochlorites.		
Bleaching disinfectant and pools	925	20
Subtotal	**1,900**	**42**
Non-eligible antimicrobial pesticides [5]		
Chlorine/hypochlorites.		
Disinfection of potable and waste water	1,390	31
Subtotal	**1,390**	**31**
TOTAL [6]	**4,512**	**100**

[1] Includes water and air borne preservatives and creosote/coal tar/petroleum preservatives. The original report (Ref. 6) also included 7 million pounds of fire retardants in the category of wood preservatives. The 7 million pounds of fire retardants are not included as wood preservatives in this table.

[2] Specialty biocides only. Does not include hypochlorite or chlorine consumption, which is reported separately.

[3] Includes industrial/institutional applications and household cleaning products. Specialty biocides only. Does not include hypochlorite or chlorine consumption, which is reported separately.

[4] Includes biocides for adhesives and sealants, leather, synthetic latex polymers, metalworking fluids, paints and coatings, petroleum products, plastics, and textiles. Does not include: hospital and medical antiseptics, food and feed preservatives, and cosmetics/toiletries. These latter types of usage are not included (in Ref. 6), as they are regulated largely by the Food and Drug Administration (FDA) under the Food, Drug, and Cosmetic Act rather than FIFRA. The FDA and EPA share regulatory responsibilities over some of the specialty biocide usage reported in the table.

[5] This category of chlorine/hypochlorites usage is not considered a ''household, industrial, or institutional use.'' See the discussion of antimicrobial use product use categories in Unit IV.B.2 of this document.

[6] The total is 7 millions pounds less than in Ref. 6 because 7 million pounds of fire retardants were removed from the original estimate of wood preservatives. See footnote 1.

Because most eligible antimicrobial products pose a high (Toxicity Category I) or relatively high (Toxicity Category II) hazard to humans and the large quantity of eligible antimicrobials used annually (over 40% of pesticides used in 1995, based on pounds of active ingredient), EPA believes that it is appropriate and necessary to require certain eligible antimicrobial products to comply with the container standards to prevent unreasonable adverse effects on the environment.

In option 2, EPA would require eligible antimicrobial products in Toxicity Category I to comply with the container standards. EPA believes it is appropriate to include these products because they present the highest hazards to humans. Subjecting these highest-risk pesticides to the container standards that are intended to ensure the safe storage, use, refill/reuse and disposal of pesticides would provide benefits, by lowering the overall risk to man and the environment, that would not be obtained by option 1.

However, EPA prefers option 3, a variation of option 2, because it offers some cost and environmental benefits over option 2. Option 3 would exempt eligible antimicrobial products in Toxicity Category I from certain container requirements.

To ease the economic impact on registrants of antimicrobial pesticides, option 3 would exempt eligible antimicrobial products from the nonrefillable residue removal standard, which was proposed as § 165.104. While representatives from all sectors of the pesticide industry commented that the proposed nonrefillable residue removal standard would be a burdensome and costly requirement, the antimicrobial industry pointed out some characteristics of their containers and products that pose particular difficulties with respect to residue removal. Commenters stated that antimicrobial products tend to have extremely low active ingredient concentrations, which makes it difficult to make the measurements needed to determine compliance with the proposed standard. In addition, commenters said that antimicrobial formulations often contain ingredients that create foam when containers are shaken during the triple rinsing procedure, making it more difficult to comply with the proposed residue removal standard. (Ref. 2) Based on the comments, EPA believes these problems are more prevalent with antimicrobials than with other pesticides. EPA also believes that the ''unreasonable adverse effect'' language of section 19(h), which requires review of costs and benefits, allows EPA more flexibility to exempt antimicrobial pesticides from these requirements than does the language in section 19(e) and (f) which is more directed at risk. Therefore, under the regulatory approach under consideration, eligible antimicrobial products would not have to comply with the nonrefillable residue removal standard. Please note that EPA is considering a range of modifications to the residue removal standard in the final rule that take into account all of the comments on the proposed standard. This document is not soliciting additional comments on the proposed nonrefillable residue removal standard.

Another significant concern with the proposed rule that was raised in the public comments was that the refillable container standards posed many impediments to the extensive and successful use of refillable containers that are currently used to distribute swimming pool chemicals. The swimming pool chemical industry commented that the following proposed requirements would require significant and costly changes to the many refillable containers currently used: the serial number marking; one-way valves or tamper-evident devices; relabeling the container; and recordkeeping. (Ref. 2) EPA agrees that applying these requirements to swimming pool pesticides would disrupt the current refillable container system for swimming pool chemicals and would probably cause the refillables to be replaced by millions of single-use, nonrefillable containers. EPA believes that adding millions of pounds of these nonrefillable containers to the waste stream is inconsistent with the goals of section 19(e) of FIFRA, particularly that the regulations facilitate the safe refill and reuse of containers.

In addition, many of the proposed refillable container standards in question are intended to minimize the possibility of cross-contamination in refillable containers. Cross-contamination is less of a concern for swimming pool pesticides than for agricultural pesticides for several reasons. First, several commenters indicated that the refillable containers in the swimming pool market are only used to distribute sodium hypochlorite and not other kinds of antimicrobial pesticides. (Ref. 2) Second, these antimicrobial pesticides are used on the same site, i.e., swimming pools. EPA evaluates the risks posed by swimming pool pesticides at the concentrations at which they are used. Therefore, low levels of contamination from other swimming pool chemicals would pose little additional risk to humans or the environment because of the low concentrations and because the contaminant is intended to be used in swimming pools. In other words, the contaminant would not be applied to a site, pest, or crop for which it wasn't intended, which could easily happen in an agricultural setting. [Note: this does not exempt swimming pool chemicals from complying with the product chemistry registration requirements and related policies, including PR Notice 96–8 ''Toxicologically Significant Levels of Pesticide Active Ingredients'' (Ref. 7)].

Therefore, this option would exempt swimming pool antimicrobial pesticides from certain refillable container standards.

As described above in the discussion of options 2 and 3, EPA believes it is appropriate to require eligible antimicrobial products that are in Toxicity Category I to comply with most of the container standards. About 70% of eligible antimicrobials would therefore have to comply with most of the container standards. This might be considered too large a percentage of antimicrobial products to be subject to the regulation. Therefore, EPA is requesting comments on possible ways to divide the eligible antimicrobial products in Toxicity Category I into subcategories, for the purposes of regulating the products that pose the highest risk and exempting the others. For example, the formulation of the product may be related to the exposure of the handler when dispensing a product from a container. For example, liquid formulations may cause higher exposures than solid formulations due to dripping, glugging, and leaking. In this example, EPA could choose to require only liquid eligible antimicrobial products in Toxicity Category I to comply with most of the container standards. EPA requests comments on whether it is appropriate to divide eligible antimicrobial products in Toxicity Category I into subcategories and, if so, EPA requests suggestions on reasonable criteria for making such a distinction.

Option 4 would apply the same exclusion/inclusion criteria being considered for other pesticides to eligible antimicrobials. As discussed in Unit III of this document, EPA is considering criteria based on (1) classification in Toxicity Categories I or II; (2) container size; and (3) environmental hazards to distinguish between higher-risk and lower-risk pesticides. Subjecting a larger group of higher-risk pesticides to the container standards would provide more benefits -- by further lowering the overall risk to man and the environment -- than for options 2 and 3. However, EPA rejected option 4 mainly because the Agency believes that the FQPA amendment to FIFRA section 19(h) indicates a Congressional intent for EPA to regulate eligible antimicrobial products differently than all other pesticide products. In particular, the standard set for subjecting antimicrobial products to the container standards by FIFRA section 19(h) is ''to prevent an unreasonable adverse effect on the environment.'' On the other hand, the mandates in FIFRA sections 19(e) and (f) establish a level of ''safety,'' e.g., ''safe storage and disposal'' and ''safe use.'' In addition, Congress's revision to section 19(h) indicates that Congress was particularly concerned about the economic impacts of section 19(e) and (f) on the manufacture and use of antimicrobial pesticides. Therefore, EPA believes that Congress intended that eligible antimicrobial products should not be regulated unless there is an extremely serious risk to humans or the environment if exposed during a container incident, as there would be for Toxicity Category I products. EPA believes a Toxicity Category I product would pose a serious risk in such a situation regardless of whether it is classified in Toxicity Category I because of its systemic toxicity, e.g., oral or dermal LD_{50} or inhalation LC_{50}, or because of its eye and/or skin effects.

Because of the many questions raised by the statutory antimicrobial exemption, it is instructive to review the approach EPA is considering to implement this exemption. The following flow chart depicts EPA's potential approach for implementing the antimicrobial exemption as discussed above.

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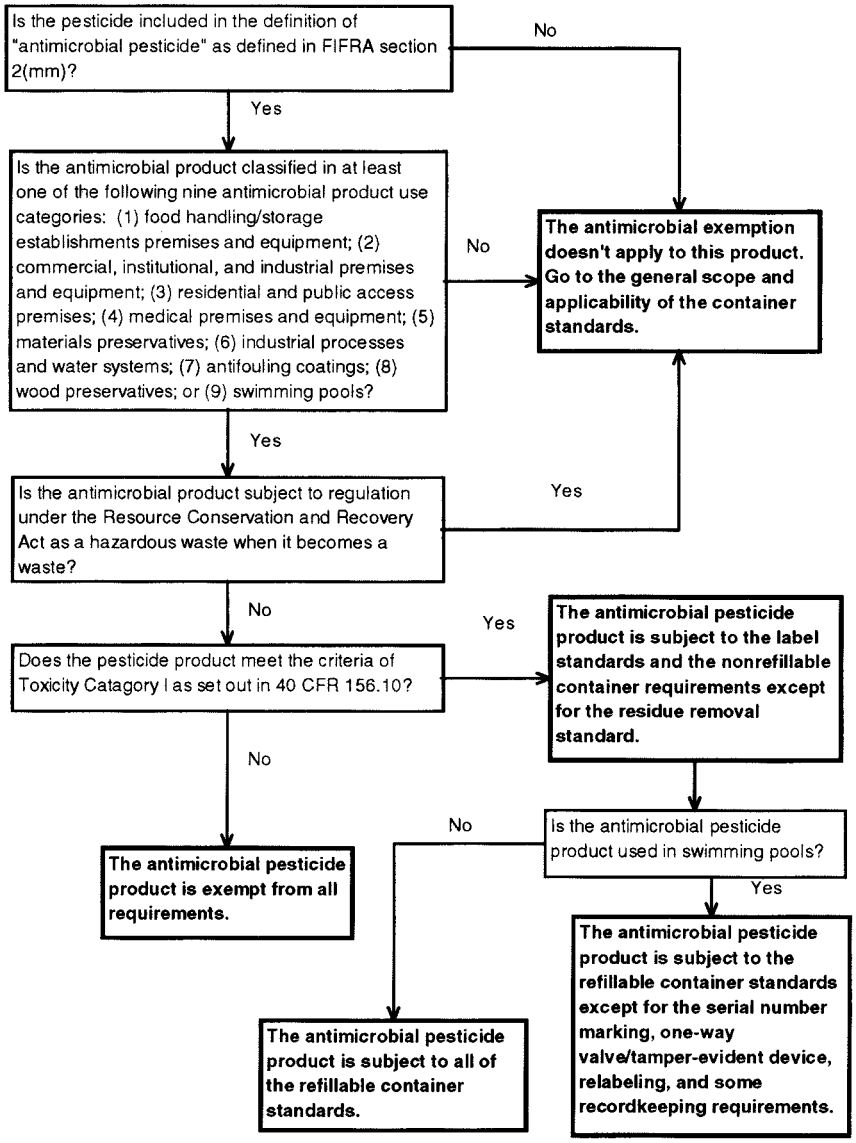

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EPA is interpreting the antimicrobial pesticide exemption to be an exemption from the container design and residue removal standards in proposed subpart F for nonrefillable containers and proposed subpart G for refillable containers. On the other hand, EPA does not intend to exempt eligible antimicrobials from the proposed container-related labeling requirements. EPA believes that container cleaning and disposal instructions should be included on the labels of all pesticides. As described in Unit III.C.4 of this document, it is necessary for pesticide containers to be properly emptied and cleaned prior to being recycled to protect workers who handle the recyclable material and to prevent releases of pesticides to the environment. Because containers from all segments of the pesticide industry, including eligible antimicrobial products, are currently being recycled, container cleaning and disposal instructions are needed on the labels of all pesticides. EPA believes that section 3 of FIFRA provides the Agency with the authority to require cleaning and disposal instructions on the labels of eligible antimicrobial pesticides. Cleaning and disposal instructions were required on the labels of eligible antimicrobial products as part of the directions for use before FIFRA section 19(a) was added in 1988.

Decisions on the label requirements to be included in the final rule will be made separately from the issues discussed in this document. When making these decisions, EPA will consider all the comments received during the initial public comment period, including suggestions for alternative label instructions for household and institutional pesticides. EPA is not soliciting further comments on the specific label statements and standards proposed in 1994.

4. *Request for comments.* EPA requests comments on the approach under consideration for determining that an eligible antimicrobial product must be subject to the container standards to prevent an unreasonable adverse effect on the environment, specifically, setting classification in Toxicity Category 1 as a general criterion and requiring these eligible antimicrobial pesticides to comply with a subset of the container standards, as well as the other possible approaches. EPA also solicits comments on the following specific questions.

i. Should EPA establish general criteria for making this determination (such as classification in Toxicity Category I) or should such a

determination be made only on a case-by-case basis?

ii. If general criteria should be included, is the criterion being considered appropriate or should EPA establish alternative or additional general criteria, such as classification in Toxicity Category II, a provision that accounts for environmental risk, and/or a container size limit?

iii. Should EPA establish a detailed procedure for making a case-by-case determination if there is a serious hazard problem related to the containers of a specific antimicrobial product or group of products? Are the examples of situations where EPA might make such a determination, as discussed in Unit IV.C.2.i of this document, reasonable? What other situations or criteria should EPA use in making a decision to require a specific product to comply with the container regulations?

iv. Is it appropriate to subject eligible antimicrobial products to only a subset of the container requirements as set out in option 3?

v. Is it appropriate for EPA to divide eligible antimicrobial products in Toxicity Category I into subcategories? If so, what would be reasonable criteria for making such a distinction?

vi. Should eligible antimicrobial pesticides in Toxicity Categories II, III, and IV be exempt from the container-related standards only, i.e., should they be required to comply with the label standards? If eligible antimicrobial pesticides in Toxicity Categories II, III, and IV should be exempt from the label standards, please explain why these containers do not need to be properly cleaned prior to being disposed of or recycled.

D. Summary of Scope Modifications and the Antimicrobial Exemption

As described in Unit IV.C.3 of this document, EPA is considering different criteria for antimicrobial pesticides than for all other pesticides in terms of determining whether they would be subject to the container standards. For antimicrobials that are ''eligible'' for exemption, i.e., household, industrial, and institutional antimicrobial pesticides that are not subject to RCRA, EPA is considering requiring those that are classified in Toxicity Category I to comply with most of the container standards. EPA has determined that eligible antimicrobial pesticides that are classified in Toxicity Category I must be subject to the container standards (other than the nonrefillable residue removal standard and, for antimicrobial products used in swimming pools, some of the refillable container standards) to prevent an unreasonable adverse effect on the environment.

For all pesticides other than eligible antimicrobials, EPA is considering applying the full set of container standards to those that meet at least one of the following criteria: Toxicity Category I classification, Toxicity Category II classification, container size greater than or equal to 5.0 liters for liquids or 5.0 kilograms for solids, or outdoor use pesticides that have one of the specified environmental hazard statements on their label. EPA has determined that pesticides that meet one of these criteria are higher-risk from a container-release point of view and should be subject to the container standards.

Because of the overlap in criteria being considered to delineate the antimicrobial exemption and to define the general scope of the container standards, it is useful to consider how these approaches would mesh in the final rule. The following table 5 sets out which pesticides would be included in the container regulations (for both nonrefillable and refillable containers) and which would be exempt, considering both the possible modifications to the scope and the exemption for certain antimicrobial pesticides. Potential alternative regulatory text that is being considered for the final rule is provided in Unit VII of this document.

TABLE 5.—SUMMARY OF THE SCOPE MODIFICATIONS AND THE ANTIMICROBIAL EXEMPTION

General Category	Conditions for Inclusion or Exemption [1]	Included or Exempt? [2]
Manufacturing use products	Any manufacturing use product is exempt from the regulations.	Exempt
Antimicrobial products that are eligible for exemption and that are end use products.	A product is included in the regulations if it satisfies all of the following conditions: • It is an end use product. • It is a household, industrial, or institutional antimicrobial product that is not a hazardous waste when disposed.. • It is in Toxicity Category I. [Note: Although these products are included in the regulations, they are exempt from certain specific requirements, such as the residue removal standard for nonrefillable containers. Also, swimming pool pesticides in this category are exempt from some of the refillable container standards.].	Included
	A product is exempt from the regulations if it satisfies all of the following conditions: • It is an end use product. • It is a household, industrial, or institutional antimicrobial product that is not a hazardous waste when disposed.. • It is in Toxicity Category II, III, or IV.	Exempt
All other end use products, which includes the following three categories: (1) products that are not antimicrobial products; (2) antimicrobial products that are not eligible for exemption because they are hazardous wastes when disposed; and (3) antimicrobial products that are not eligible for exemption because they are not household, industrial, or institutional antimicrobial products.	A product is included in the regulations if it satisfies both of the following conditions: • It is in the ''all other end use products'' general category. • It is in Toxicity Category I or II.	Included

TABLE 5.—SUMMARY OF THE SCOPE MODIFICATIONS AND THE ANTIMICROBIAL EXEMPTION—Continued

General Category	Conditions for Inclusion or Exemption [1]	Included or Exempt? [2]
	A product is included in the regulations if it satisfies all of the following conditions: • It is in the ''all other end use products'' general category. ..... • It is in Toxicity Category III or IV. ..... • It is in a container whose capacity is equal to or greater than 5 liters (1.3 gallons) or 5 kilograms (11 pounds)..	Included
	A product is included in the regulations if it satisfies all of the following conditions: • It is in the ''all other end use products'' general category. ..... • It is in Toxicity Category III or IV. ..... • It is in a container whose capacity is less than 5 liters or 5 kilograms. • It has a label with at least one of the environmental hazard statements.. • It has a label that permits outdoor use.	Included
	A product is exempt from the regulations if it satisfies all of the following conditions: • It is in the ''all other end use products'' general category. ..... • It is in Toxicity Category III or IV. ..... • It is in a container whose capacity is less than 5 liters or 5 kilograms. • It has a label with at least one of the environmental hazard statements.. • It has a label that does not permit outdoor use.	Exempt
	A product is exempt from the regulations if it satisfies all of the following conditions: • It is in the ''all other end use products'' general category. ..... • It is in Toxicity Category III or IV. ..... • It is in a container whose capacity is less than 5 liters or 5 kilograms. • It has a label without any of the environmental hazard statements.	Exempt

[1] This column lists the conditions that determine whether a product is included in the regulations or is exempt from the regulations.
[2] This column provides a quick indication of whether the products described in the previous column are included in the regulations or are exempt from the regulations.

E. Request for Comments

EPA requests comments on the overall approach being considered for implementing the antimicrobial exemption and for modifying the scope of the container standards. EPA solicits comments on the complexity, clarity, and appropriateness of the approach and on potential alternatives. Also, EPA requests input on the potential impacts of the approach being considered, i.e., how many pesticides would be excluded and how many would be included.

V. Department of Transportation (DOT) Packaging Standards

A. Background on 1994 Proposal

The third issue being opened for comment in this document is a regulatory approach being considered by EPA to adopt and refer to the relevant portions of the DOT Hazardous Materials Regulations (HMR).

During the public comment period, EPA received many comments that urged EPA to be consistent with the DOT regulations. Over 20 respondents, including individual companies and trade groups from the pesticide registrant and container manufacturing industries, provided commentary on the DOT HMR and the United Nations (U.N.) Recommendations on the Transport of Dangerous Goods. All of the commenters agreed that EPA should be consistent with the DOT HMR and the U.N. standards in terms of definitions, requirements, and testing. Respondents argued that such consistency would: (1) Facilitate compliance because the industry is already familiar with the DOT and U.N. standards; (2) eliminate the potential burden of complying with two different, overlapping regulatory schemes; and (3) not establish additional trade barriers. Most of the commenters on the DOT issue specifically favored the use of DOT's packing group III criteria as the minimum standard for pesticide products not regulated by DOT as hazardous materials. (Ref. 2)

EPA is considering incorporating this suggestion to change the container regulations by adopting and referring to the DOT packing group III criteria. While EPA discussed the DOT standards in some detail in the preamble of the 1994 proposal, EPA did not specifically discuss the approach of adopting and referring to the DOT HMR in the final rule. Therefore, EPA is describing the approach under consideration and soliciting comments in this document.

B. Regulatory Option Under Consideration

Pesticides that are classified as DOT hazardous materials would continue to be packaged in accordance with the DOT HMR. Under the regulatory approach being considered for the final rule, EPA would cross-reference the HMR, so EPA could enforce these standards. Pesticides that are not classified as DOT hazardous materials would be required to be packaged in accordance with the specified packaging design, construction, and marking standards that would apply to a DOT packing group III material. All pesticides, regardless of DOT hazardous material classification, would have to comply with additional requirements for pesticides (''pesticide-specific requirements'') that have no equivalents in the DOT HMR, e.g., a standard for minimizing dripping. In addition, EPA

is considering incorporating a provision to provide exceptions for pesticides not classified as DOT hazardous materials that would be similar to the limited quantity exceptions in the DOT HMR.

Potential regulatory language that is being considered for the approach of referring to and adopting the DOT standards is provided in Unit VII of this document.

C. Discussion

1. *Adoption of the DOT standards.* The HMR are based on the authority in the Federal hazardous materials transportation law, the Hazardous Materials Transportation Act, and are found in 49 CFR Parts 171 through 180. The HMR establish standards governing a wide range of the safety aspects of transportation, including requirements for classification of materials, packaging (including manufacture, continuing qualification, and maintenance), hazard communication (i.e., package marking, labeling, placarding, and shipping documentation), transportation and handling, and incident reporting. For the purposes of applying DOT standards to pesticides that are not classified as DOT hazardous materials, EPA has focused on the DOT requirements for package design (and manufacture, continuing qualification, and maintenance) and package marking, because these are the areas that overlap with the proposed pesticide container standards. EPA is not considering incorporating the HMR standards for labeling, placarding, shipping documentation, transportation and handling, and incident reporting for pesticides that are not classified as DOT hazardous materials. In general, these standards are outside the scope of the original proposed rule for pesticide containers and containment. In other words, EPA is considering referring to and adopting only a subset of the DOT HMR for pesticides that are not classified as DOT hazardous materials.

The DOT HMR include general packaging requirements that address areas such as compatibility, closures, venting, and filling limits. The HMR also set out performance standards for packaging, including drop, leakproofness, hydrostatic pressure, stacking, and vibration tests. The stringency of these tests varies according to the packing group (PG) of the material being transported. The packing group represents a measure of the relative hazards, where PG I includes materials that pose a relatively great hazard and PG III includes materials that pose a relatively minor hazard.

Under the revisions to the pesticide container rule being considered, pesticides that are classified as DOT hazardous materials would continue to be packaged in accordance with the DOT HMR. Most pesticides that are classified as DOT hazardous materials are in Packing Group III, although some are in PG II and a few are in Packing Group I. (Ref. 8) Nothing in the pesticide container rule would change any of the incorporated DOT requirements -- if a pesticide is categorized as a PG II material, it would continue to have to meet the PG II standards and likewise for pesticides in PG I or PG III.

Under the regulatory approach being considered, pesticides that are not classified as DOT hazardous materials would be required to be packaged in accordance with the specified packaging design, construction, and marking standards that would apply to a DOT PG III material. Such pesticides would not have to meet the DOT standards for labeling, placarding, or shipping papers which, as discussed above, are outside the scope of the original proposed container regulations. Specifically, pesticides that are not classified as DOT hazardous materials would have to comply with the packaging standards in 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.203, 173.213, 173.240, and 173.241, the packaging standards and testing requirements in 49 CFR part 178; and the continuing qualification and maintenance requirements in 49 CFR part 180. EPA would retain its independent authority to enforce compliance with these regulations as with any other regulations promulgated under FIFRA.

2. *Include pesticide-specific standards.* One issue involved with the regulatory approach under consideration is whether the DOT package design and marking standards should be the only requirements for pesticide containers or whether EPA should promulgate additional standards that apply only to pesticide containers. Some of the commenters on the proposed rule implied that the only standards necessary are the DOT standards and that EPA should not add any additional requirements. EPA disagrees with this assessment and believes that it is appropriate to promulgate additional pesticide-specific requirements because the purposes of the two sets of regulations are different.

The Hazardous Materials Transportation Act provides DOT with the authority to ''issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce ... [that] shall govern any aspect of hazardous materials transportation safety which the Secretary of Transportation deems necessary or appropriate.'' An overall goal of this law is ''to improve the regulatory and enforcement authority of the Secretary of transportation to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce.''

Section 19 of FIFRA gives EPA a much broader mandate for addressing pesticide containers. Section 19(e) requires EPA to promulgate ''regulations for the design of pesticide containers that will promote the safe storage and disposal of pesticides.'' This section further specifies that the regulations ensure that containers accommodate procedures used for the removal of pesticides and facilitate the safe use, safe disposal, safe refill, and safe reuse of the containers. In addition, section 19(f) requires EPA to ''promulgate regulations prescribing procedures and standards for the removal of pesticides from containers prior to disposal.''

EPA believes the broader mandate in FIFRA justifies the approach of requiring that pesticides meet certain pesticide-specific requirements in addition to the DOT standards. In the regulatory option under consideration, EPA would not include in the final regulations a proposed FIFRA-specific container standard if there was an equivalent DOT standard (e.g., the drop test for minibulks). EPA would merely incorporate the equivalent DOT standard. However, EPA would retain other proposed standards (e.g., the container dispensing standards to minimize dripping and to require pouring in a continuous, coherent stream) that did not have equivalent DOT standards.

Therefore, all pesticides that would be subject to the pesticide container regulations -- regardless of whether or not they are classified as DOT hazardous materials -- would have to comply with both the DOT HMR requirements incorporated into EPA's regulations and the pesticide-specific requirements in the final pesticide container rule.

Table 6 categorizes the proposed pesticide container ''design'' and marking requirements according to whether or not the DOT HMR have an equivalent standard. The table is included only to provide a general idea of the proposed requirements that EPA may replace in the final rule with DOT standards and those proposed standards that EPA would retain as pesticide-specific requirements. EPA is not soliciting further comments on the

proposed pesticide container standards listed in the table, except regarding the extent to which DOT standards are appropriate equivalents to such standards. EPA has considered the comments previously submitted on these proposed requirements and will continue to do so as the final rule is developed.

TABLE 6.— COMPARISON OF THE PROPOSED CONTAINER STANDARDS WITH THE DOT REQUIREMENTS

Proposed Pesticide Container Requirement	Proposed 40 CFR Cite	Equivalent 49 CFR Cite
Proposed Pesticide Container Standards with DOT Equivalents		
Nonrefillables: Container integrity/compatibility	165.102(b)	173.24(b) 173.24(e)
Nonrefillables: Marking - container material	165.102(c)(2)	178.3(a) 178.503(a)
Nonrefillables: Dispensing - reclose securely	165.102(d)(3)	173.24(f)
Nonrefillables: Certification[1]	165.111	178.2(a)(2)
Nonrefillables: Recordkeeping[1]	165.114	178.601(l)
Refillables: Marking other than serial number and EPA statement	165.124(b)	178.3(a) 178.503(a) 178.703
Refillables: Minibulk container integrity	165.124(c)	173.24(b) 173.24(e) 178.704
Refillables: Drop test for minibulk containers	165.124(d)	178.603 178.803 178.810
Refillables: Drop test methodology	165.125	178.602 178.603
Refillables: Certification[1]	165.126	178.2(a)(2)
Refillables: Recordkeeping[1]	165.128	178.601(l) 178.801(l)
Refillables: Inspection prior to refill	165.134(e)	173.28 180.352
Refillables: Age of plastic liquid minibulk	165.134(f)	no time limit
Proposed Pesticide Container Standards without DOT Equivalents		
Nonrefillables: Marking - EPA registration no.	165.102(c)(1)	none
Nonrefillables: Dispensing - minimize glugging	165.102(d)(1)	none
Nonrefillables: Dispensing - no dripping	165.102(d)(2)	none
Nonrefillables: Standardized closures	165.102(e)	none
Nonrefillables: Residue removal standard	165.104	none
Refillables: Marking - serial number and EPA statement	165.124(b)	none
Refillables: Apertures	165.125(e)	none
Refillables: Bulk container standards	165.124(f)	none

[1] The DOT HMR include provisions for certification and recordkeeping for the standards in the HMR. However, EPA may choose to retain the proposed certification and recordkeeping requirements for the pesticide-specific requirements.

The proposed ''procedural'' requirements for registrants and refillers in proposed 40 CFR 165.130, 165.132, 165.134, and 165.136 are not included in the table because they are not container design or marking requirements. These four sections would establish requirements for registrants to develop and provide certain documents to refillers, for refillers to obtain these documents and follow specified container handling procedures, and for both registrants and refillers to maintain records. Under the approach being considered for the final rule, EPA would generally retain these procedural standards in the final rule. However, some of the requirements, such as the registrants providing refillers a list of acceptable containers which would be identified by the container manufacturer and model number, may need to be modified to mesh with the revisions.

3. *Limited quantity exception.* The HMR include exceptions from portions of the overall regulatory scheme in certain situations, e.g., for damaged packages placed in salvage drums (49 CFR 173.3), for small quantities of hazardous materials (49 CFR 173.4), and for the shipment of waste materials (49 CFR 173.12). Also, the regulations in 49 CFR 173.150 – 173.156 set out limited quantity and consumer commodity exceptions for different hazard classes and divisions. The limited quantity exceptions provide relief from some of the HMR requirements, specifically the labeling requirements (unless the package is transported by aircraft), the packaging standards and testing requirements in 49 CFR part 178, and the placarding provisions. Also, if a limited quantity meets the definition of ''consumer commodity,'' relief from the shipping paper requirements is provided in many cases.

In the HMR, the size of packages that are eligible for limited quantity exceptions varies according to the

hazard class (e.g., Class 8), hazard division (e.g., Division 6.1), and, in some cases, the packing group of the material. The DOT limited quantity exceptions generally provide regulatory relief from the HMR, although they do add some requirements. First, the exceptions only apply to combination packaging (e.g., four plastic jugs in a cardboard box). Second, the packaging must comply with the general packaging standards in 49 CFR 173.24. Third, the package cannot exceed 30 kilograms (66 pounds) gross weight.

Pesticides already regulated under DOT's hazardous materials regulations as Packing Group I, II or III materials shall be subject, under EPA's FIFRA regulations, to the same limited quantity exception to which they are subject under DOT's regulations. For pesticides not already regulated under DOT's regulations, EPA is considering incorporating the relevant parts of the limited quantity exception in 49 CFR 173.155 for Class 9 hazardous materials (miscellaneous hazardous materials) into the final pesticide container rule. Based on amendments made by DOT in 1996, the package sizes eligible for the Class 9 limited quantity exceptions are those that are less than 5.0 liters (1.3 gallons) for liquids and less than 5.0 kilograms (11 pounds) for solids. The purposes of incorporating a DOT limited quantity exception are to maintain consistency with the HMR and to provide regulatory relief for relatively small quantities of pesticides.

EPA is considering using the Class 9 limited quantity exception for pesticides not previously covered by DOT regulations for several reasons. First, Class 9 includes miscellaneous hazardous materials, which are defined in 49 CFR 173.140 to be materials that pose a hazard during transportation but don't meet the definition of any other hazard class. Pesticides that have not previously been covered by DOT's hazardous materials regulations (i.e., that are not classified as DOT hazardous materials) logically fit into such a grouping. Second, DOT has generally placed hazardous materials that are defined as DOT hazardous materials as a result of EPA regulation (e.g. hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act and hazardous wastes under RCRA) into Class 9. Therefore, EPA would be following DOT precedent by regulating these pesticides consistently with many other Class 9 hazardous materials.

Under the regulatory approach being considered, EPA would be applying only the DOT packaging and marking standards to pesticide containers -- not the DOT labeling, placarding, and shipping paper requirements. Therefore, only the ''relevant parts'' of the limited quantity exception would need to be incorporated -- not the provisions that relate to DOT labeling, placarding, and shipping paper standards. Also, EPA believes it is unnecessary to incorporate the consumer commodity exception (as opposed to the limited quantity exception) because the only additional relief provided by a consumer commodity exception is from the shipping paper requirements.

4. *EPA modification*. The regulatory text under consideration (in Unit VII of this document) includes a provision that would allow EPA to modify or waive the requirements of the regulatory section that refers to and adopts the DOT requirements if a person provides an application for exemption to the Director of the Office Pesticide Programs that contains data showing that the alternative, i.e., the partial or modified, set of standards achieves a level of safety that is at least equal to that specified in the requirements of this section. This provision is included to provide flexibility in cases where, for some reason, a container could not meet all of the DOT packing group III standards, but would still function safely and adequately during the use, handling, cleaning, and disposal of the pesticide container.

The DOT standards provide the regulated industry with a similar opportunity to obtain administrative relief from the Hazardous Materials Regulations through an exemption process described in 49 CFR part 107. DOT receives applications for exemptions and grants exceptions if the situations meet the criterion of equivalent levels of safety or levels of safety consistent with the public interest and the policy of the Hazardous Materials Transportation Act. For example, in a **Federal Register** notice (Ref. 9), DOT announced the actions taken on exemptions from July 1997 through December 1997, which included granting 32 modification exemptions, 48 new exemptions and 39 emergency exemptions, denying seven exemption applications, and having seven exemption applications withdrawn.

It is essential for EPA to incorporate a modification process into its regulations to prevent EPA regulations from being less flexible than the DOT requirements, which would happen if DOT granted an exemption for a pesticide and EPA did not have a mechanism to provide the same relief. EPA anticipates that the modification process would be used predominantly to maintain consistency with exemptions granted by DOT that affect pesticides, although EPA would maintain its authority to deny an exemption, even where DOT has granted an exemption, if EPA could not find that an exemption was appropriate under FIFRA and its regulations. On the other hand, EPA could choose to implement the modification provision for technical reasons, if a registrant can show that the modified or more limited set of standards achieves a level of safety that is at least equal to the full set of incorporated DOT requirements.

EPA believes the draft modification provision is sufficient because of the interaction between the Agency and pesticide registrants, despite the fact it is significantly less detailed than the DOT exemption process. However, EPA is considering the option of adopting a more detailed exclusion process in the final rule if the Agency concludes that a general provision would not be adequate, based on comments or information received during the comment period.

5. *Providing notice to the public*. The regulatory text under consideration (in Unit VII of this document) also includes a provision that says EPA will provide notice to the public in the **Federal Register** if DOT proposes to change any of the regulations that are incorporated in EPA's pesticide container regulations. The intent of this provision is to ensure that the pesticide-related regulated community is notified of regulatory modifications being considered by DOT, since the pesticide industry may not regularly monitor DOT's regulatory activity.

6. *Alternative approach*. Under the regulatory approach being considered for the final rule, EPA would refer to and adopt the full HMR for pesticides that are classified as DOT hazardous materials. Specifically, § 165.102(b)(1) of the potential alternative regulatory language includes the following statement: ''Pesticide products that meet the definition of a hazardous material in 49 CFR 171.8 shall be packaged as required by 49 CFR parts 171-180.'' EPA believes this approach is advantageous because EPA could enforce the DOT standards for pesticides that are DOT hazardous materials.

However, EPA is considering not explicitly stating in its regulations that pesticides that are DOT hazardous materials must comply with the DOT HMR. EPA requests comments on whether the Agency should simply include a reference to the DOT HMR, such as ''Pesticide products that meet the definition of a hazardous material in 49 CFR 171.8 are subject to the

requirements of 49 CFR parts 171–180.'' Another alternative would be to cite only the portions of the HMR that pesticides that are not classified as DOT hazardous materials would have to comply with.

Under the regulatory approach being considered for the final rule, pesticides that are not classified as DOT hazardous materials would be required to be packaged in accordance with the specified packaging design, construction, and marking standards that would apply to a DOT packing group III material. EPA believes this approach would be the most straightforward in terms of compliance by the regulated industry and enforcement by the appropriate governmental agencies. The pesticide registrants and enforcement officials could rely on the marking indicating compliance with the packing group III standards.

EPA considered but rejected an alternative approach specifying that pesticides that are not classified as DOT hazardous materials would be required to be packaged in containers that are capable of meeting the specified packaging design, construction, and some of the marking standards that would apply to a DOT packing group III material. Under this approach, the containers would not actually have to be marked to indicate compliance with the PG III standards. This would eliminate the need to comply with some of the continued maintenance and production testing. However, to make this approach work logistically, EPA would have to specify some recordkeeping so the Agency could determine that the containers were capable of meeting the PG III standards and require some marking, such as ''Meets EPA standards for refillable containers'' to provide an indicator of compliance to enforcement officials. Standards similar to these two provisions were included in the proposal and were strongly criticized by commenters, who opposed standards that would create a different framework and set of packaging standards for accomplishing the same goals as the existing DOT standards.

D. Request for Comments

EPA requests comments on the regulatory approach discussed above for revising the pesticide container regulations to refer to and adopt the DOT HMR packaging and marking standards. In addition to general comments, EPA solicits comments on the following questions and issues:

(1) Is it clear which portions of the DOT HMR would be referred to and adopted?

(2) Does the sample regulatory text in Unit VII of this document accomplish EPA's intent?

(3) Is the approach of incorporating the Class 9 limited quantity exception appropriate?

(4) The regulatory option under consideration would expand the number of tests containers are required to meet. Under the original 1994 proposal, nonrefillable containers weren't subject to any of the DOT performance tests and minibulks were subject to a drop test only. Despite the large increase in potentially applicable testing requirements, EPA believes referring to and adopting the DOT HMR PG III standards would not greatly increase the economic burden of the regulations because: (i) Many pesticide products, including an estimated one-third of all agricultural products, are classified as DOT hazardous materials (Ref. 8); (ii) many other pesticides are packaged in containers that meet the DOT PG III standards, even though it isn't required; and (iii) the container and pesticide manufacturing industries are familiar with the DOT regulations. Is EPA's assessment that there would only be a relatively minor cost increase attributed to the regulatory approach being considered accurate? EPA also requests specific information about the potential economic impacts of referring to and adopting the DOT PG III standards, such as the costs of conducting the leakproofness, hydrostatic pressure, stacking, and drop testing.

(5) In general, the proposed regulations would apply to all types of packaging, including but not limited to rigid (plastic and steel) containers, paper and plastic bags, and water-soluble packaging, although specific requirements would apply to appropriate subsets of these container types. Under the regulatory approach discussed in this document, EPA would require all types of pesticide containers to meet the DOT PG III standards. EPA believes that it may be easier for some kinds of packaging, e.g., rigid plastic or steel containers, to comply with the DOT PG III standards than for other types of containers, e.g., bags or water-soluble film. EPA requests comments about whether the ease of complying with the DOT PG III standards varies according to the container type and whether certain kinds of packaging may be disproportionately impacted.

(6) Is the provision that would allow EPA to modify or waive the requirements referring to and adopting the DOT requirements sufficient or should EPA include a more detailed exemption provision?

(7) Should EPA adopt any of the alternative approaches discussed in Unit V.C.6 of this document instead of the preferred approach discussed in Units V.B and V.C.1 - V.C.5 of this document?

VI. Proposed Definition of Small Business Used in Impact Analysis

As discussed in Unit II.A. of this document, section 601(3) of the RFA establishes as the default definition of small business the SBA size standards, which are primarily intended to define whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101). Section 601(3) of the RFA also allows an agency to establish an alternate definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment.

In the regulatory impact analyses (RIA) and the initial regulatory flexibility analyses for the 1994 proposed rule (Ref. 10 and 11), EPA used alternate definitions of small business for identifying the potentially affected small entities. The alternate definitions were presented in these analyses, but EPA did not specifically solicit comment on these alternate definitions in conjunction with the 1994 proposed rule. EPA is, therefore, specifically seeking comment on the establishment of these alternate definitions for use in identifying small pesticide formulators, small agrichemical dealers, and small independent custom (aerial and ground) applicators for analytical purposes related to this rulemaking. These alternate definitions are only used for analytical purposes and do not in any way affect the scope or any other provision of the proposed rule.

The following discussion provides additional information about the alternate definitions that EPA used in the regulatory flexibility analysis for the 1994 proposed rule.

A. Overview of the Alternate Definitions for Use in the Analysis

As described in Unit I.A. of this document, the three major industry sectors that would be affected by the pesticide container and containment rule are pesticide formulators, agrichemical dealers, and independent custom (aerial and ground) applicators. The SBA, at 13 CFR part 121, defines a small business as having:

- 500 or fewer employees for pesticide formulators (SIC 2879)
- 100 or fewer employees for agrichemical dealers (SIC 5191)

• Maximum revenues of $5.0 million for independent applicators (SIC 0721)

In analyzing the potential impacts of the 1994 proposed rule, EPA determined that it was appropriate to use alternate definitions to assess the potential impacts on small pesticide formulators, small agrichemical dealers, and small independent custom (aerial and ground) applicators. EPA's alternative definitions of small businesses for pesticide formulators, agrichemical dealers, and independent commercial pesticide applicators are given in the following table 7. SBA's definitions are also provided in the table for the purposes of comparison.

TABLE 7.—COMPARISON OF THE DEFINITIONS OF SMALL BUSINESSES TO USE IN ANALYZING IMPACTS

Industry Sector	Definition of Small Business	
	SBA definition (13 CFR part 121)	Proposed EPA definition
Pesticide formulators.	500 or fewer employees.	1 to 19 employees
Agrichemical dealers.	100 or fewer employees.	1 to 9 employees
Independent commercial applicators[1].	Maximum revenues of $5.0 million.	One plane and $93,750 in sales

[1] Profiles of small, medium, and large facilities were developed for aerial applicators but not for ground applicators, because not enough information was available to profile ground applicators.

B. Discussion

After careful consideration of the SBA small business definitions for the three industry sectors, EPA determined that it was appropriate to use alternate definitions of small business. As indicated previously, the SBA size standards are primarily intended to define whether a business entity is eligible for government programs and preferences reserved for small businesses (13 CFR 121.101), with the objective ''to ensure that a concern that meets a specific size standard is not dominant in its field of operation.'' (13 CFR 121.102(b)). See section 632(a)(1) of the Small Business Act. Under SBA's definitions, all agrichemical dealers, all independent commercial applicators, and *nearly all* pesticide formulators would be considered small businesses. When assessing the potential impacts on small entities, however, EPA believes that it is important to ensure that the definition of small business is not as broad. EPA is concerned that using an overly broad definition of small business in the analysis may cause potentially significant economic impacts on smaller facilities to be camouflaged when combined with information about potential impacts on those facilities that meet the SBA size standard for small business, but which are not typical of a small business in that industrial sector. For example, a small pesticide formulator with 1 to 19 employees is going to have significantly different sales and profits than a formulating facility with over 100 employees. To account for such differences, facilities in the pesticide formulating, agrichemical dealer, and independent applicator industries were profiled as small, medium or large, as summarized in the following table 8.

TABLE 8.— PROFILE OF SMALL, MEDIUM, AND LARGE BUSINESS CATEGORIES USED IN THE IMPACT ANALYSIS

Industry sector/size	Definition of category	Number of facilities	Percent of facilities
Pesticide formulators			
Small	1 to 19 employees	172	62
Medium	20 to 99 employees	81	29
Large	100 to 2,499 employees	24	9
Agrichemical dealers			
Small	1 to 9 employees	12,991	77
Medium	10 to 49 employees	3,623	22
Large	50 to 99 employees	181	1
Independent applicators[1]			
Small	1 plane and $93,750 in sales	780	39
Medium	2 to 4 planes and $375,000 in sales	1,120	56
Large	5 or more planes and $750,000 in sales	100	5

[1] Profiles of small, medium, and large facilities were developed for aerial applicators but not for ground applicators, because not enough information was available to profile ground applicators.

In considering the analysis of the 1994 proposed rule on pesticide formulators, the RIA defined a number of ''representative'' facilities, with different financial characteristics (e.g., sales, net profit before tax, and tax rate) and varying operating characteristics (number of employees, filling lines, and formulations). The RIA then evaluated the impacts of three different regulatory options on a small and medium-sized representative facility in each of the four different pesticide markets (agricultural, industrial, institutional, and household) and on four different kinds of large representative facilities in the agricultural market. For each regulatory option, the RIA also considered two different implementation scenarios for the nonrefilable residue removal standard. Based on the regulatory flexibility analysis prepared for the 1994 proposed rule, Table 9 provides a summary illustration of the representative facilities that might be significantly impacted under the different regulatory options and implementation scenarios presented in the 1994 proposed rule.

Table 9 below shows that, for the options/scenarios identified in the analysis with a potential for significant impacts, the small representative facilities are more likely to have these

impacts than the medium or large facilities. If EPA had evaluated the impact of the proposed regulations on only medium or large facilities (based on an ''average'' small business under SBA's definition), the potential impacts on these small companies might not have been identified as clearly in the analysis.

The initial regulatory flexibility analysis identified residue removal testing as the most critical variable affecting EPA's small formulators. The proposed regulations addressed this issue in several ways. First, the proposal made allowances for using residue removal test data from similar products and containers as documentation that another container/formulation combination meets the residue removal standard (i.e., implementation scenario 1). Second, the regulations include a provision for obtaining a waiver from the residue removal standard. The regulatory flexibility analysis also describes an alternative to increase the compliance period for residue removal testing, although this alternative was not included in the proposed rule.

TABLE 9.—REPRESENTATIVE FACILITIES THAT WOULD BE SIGNIFICANTLY IMPACTED BY THE PROPOSED PESTICIDE CONTAINER REGULATIONS[1]

Representative Facility by Market and Size	[2] Option 1		[2] Option 2		[2] Option 3	
	[3] Scenario 1	[3] Scenario 2	[3] Scenario 1	[3] Scenario 2	[3] Scenario 1	[3] Scenario 2
Small agricultural facility				x	x	x
Small industrial facility				x	x	x
Small institutional facility				x	x	x
Small household facility				x		x
Medium agricultural facility						x
Medium industrial facility				x	x	x
Medium institutional facility					x	x
Medium household facility						
Large agricultural facility 1						
Large agricultural facility 2						
Large agricultural facility 3				x		x
Large agricultural facility 4						

[1] In the analysis, a representative facility was determined to be significantly impacted if the ratio of its annualized cost of compliance (ARR) over its sales was greater than one percent and the ratio of its ARR over its profits before tax was greater than 20%.
[2] EPA considered three regulatory options. Option 1 included the least stringent standards, option 2 was the EPA proposed rule, and option 3 included the most stringent requirements.
[3] For each regulatory option, EPA considered two implementation scenarios for the nonrefillable residue removal requirement. Under scenario 1, 50% of container/formulation combinations would have to be tested to determine compliance with the residue removal standard. Under scenario 2, all container/formulation combinations would have to be tested.

This example of the economic impact analysis and regulatory flexibility analysis for pesticide formulators supports the use of EPA's alternative definitions for small businesses, by showing that EPA's alternative definitions:

- Are more reflective of the small facilities in the relevant industry sectors
- Provide a more meaningful analysis of the facilities likely to have the most significant economic impact
- Distinguish facilities that have the stronger technical expertise and larger revenue sources (and, therefore, can more easily comply with the regulations) from those that do not.

C. Consultation with the SBA Office of Advocacy

EPA recently contacted the SBA Office of Advocacy for the purpose of consulting on the use and establishment of the alternate definitions of small business for analytical purposes related to this rulemaking. (Ref. 12) After a discussion of the potential changes presented in this action, the regulatory flexibility analysis prepared for the 1994 proposed rule, and the alternate definitions EPA used in that analysis, the SBA suggested that EPA consider combining the small and medium categories for the purpose of analyzing the potential impacts on small entities. SBA indicated that it generally

recommends using a broader definition of small business to ensure a broader assessment of the potential impacts on small entities. Additional information is available in the public version of the official record described in Unit I.B.3 of this document.

D. Request for Comments

EPA solicits comments on the alternate definitions used in the impact analyses to identify small pesticide formulators, small agrichemical dealers, and small independent commercial applicators. EPA will consider SBA's recommendations, along with any public comments received, when preparing the final rule. Comments regarding the alternate definitions should be submitted to EPA according to the process established in Unit I.C. of this document.

VII. Potential Alternative Regulatory Text

If the changes discussed in this document are adopted, the potential alternative regulatory text in this section, or a variation of it, may be incorporated into the final rule. However, EPA may choose to retain the regulatory text from the original 1994 proposal or incorporate language implementing one of the alternative approaches discussed in this section.

EPA is considering the following two modifications to the regulatory text for the final rule for Subpart F ''Nonrefillable Container Standards: Container Design and Residue Removal.'' First, EPA is considering replacing the proposed regulatory text for 40 CFR 165.100 with the following.

§ 165.100 *Applicability and scope.*

(a) *Scope.* This subpart establishes design and construction standards and requirements for nonrefillable containers used for the sale or distribution of pesticide products. This subpart applies to pesticide registrants.

(b) *Manufacturing use products.* This subpart does not apply to containers that contain manufacturing use products, as defined in § 158.153(h) of this chapter.

(c) *Antimicrobial pesticide products.* (1) Except as provided in paragraph (c)(2) of this section, this subpart does not apply to containers that contain a pesticide product that meets all of the following criteria:

(i) The pesticide product meets the definition of ''antimicrobial pesticide'' in FIFRA section 2(mm).

(ii) The label of the pesticide product includes directions for use on sites in at least one of the following antimicrobial product use categories:

(A) Food handling/storage establishments premises and equipment.

(B) Commercial, institutional, and industrial premises and equipment.

(C) Residential and public access premises.

(D) Medical premises and equipment.

(E) Materials preservatives.

(F) Industrial processes and water systems.

(G) Antifouling coatings.

(H) Wood preservatives.

(I) Swimming pools.

(iii) The pesticide product does not meet the criteria for hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(2) A pesticide product that meets the criteria in paragraphs (c)(1)(i) through (1)(iii) of this section is subject to the following requirements if the pesticide meets the criteria of Toxicity Category I as set out in § 156.10(h)(1) of this chapter:

(i) 40 CFR 165.102(b) regarding DOT standards for nonrefillable containers.

(ii) 40 CFR 165.102(c) regarding permanent marking for nonrefillable containers.

(iii) 40 CFR 165.102(d) regarding container dispensing for nonrefillable containers.

(iv) 40 CFR 165.111 regarding certification for nonrefillable containers.

(v) 40 CFR 165.114 regarding recordkeeping and inspections for nonrefillable containers.

(vi) 40 CFR 165.117 regarding compliance dates for nonrefillable containers.

(d) *General applicability.* Except for pesticide products that are excluded by paragraph (b) of this section or addressed by paragraph (c) of this section, a pesticide product distributed or sold in a nonrefillable container shall meet all of the standards of this subpart if at least one of the conditions in paragraphs (d)(1) through (4) of this section is met:

(1) The product meets the criteria of Toxicity Category I as set out in § 156.10(h)(1) of this chapter.

(2) The product meets the criteria of Toxicity Category II as set out in § 156.10(h)(1) of this chapter.

(3) The container size is equal to or larger than 5.0 liters (1.3 gallons) for liquid formulations or 5.0 kilograms (11.0 pounds) for solid formulations.

(4) The product label meets the standards in paragraphs (d)(4)(i) and (ii) of this section.

(i) The product label includes at least one of the following environmental hazard statements:

(A) This pesticide is toxic (or extremely toxic) to wildlife.

(B) This pesticide is toxic (or extremely toxic) to fish.

(C) This pesticide is toxic (or extremely toxic) to birds.

(D) This chemical is known to leach through soil into ground water under certain conditions as a result of agricultural use. Use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in ground-water contamination.

(E) This chemical demonstrates the properties and characteristics associated with chemicals detected in ground water. Use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in ground-water contamination.

(F) Any environmental hazard statement pertaining to wildlife, fish, birds, or groundwater.

(ii) The product label permits outdoor use.

Second, EPA is considering deleting proposed §§ 165.102(a)(3) and 165.102(b) and incorporating the following regulatory text as § 165.102(b). Proposed §§ 165.102(a)(1) and 165.102(a)(2) would not be changed under the regulatory approaches being considered in this document. The proposed standard for container integrity in proposed § 165.102(b) could be deleted because there is an equivalent standard in the incorporated DOT standards.

§ 165.102(b) *DOT standards.* (1) Pesticide products that meet the definition of a hazardous material in 49 CFR 171.8 shall be packaged as required by 49 CFR parts 171–180. In addition, such pesticide products shall comply with the requirements of this subpart.

(2) Pesticide products that do not meet the definition of a hazardous material in 49 CFR 171.8 shall be packaged in containers that are designed, constructed, and marked to comply with the requirements of 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.203, 173.213, 173.240, 173.241, Part 178, and Part 180 as applicable to a Packing Group III material, liquid or solid, as appropriate. In addition, such pesticide products shall comply with the requirements of this subpart.

(3) Limited quantities of pesticide products that do not meet the definition of a hazardous material in 49 CFR 171.8 are excepted from the requirements set out in paragraph (b)(2) of this section when packaged in combination packagings according to this paragraph. Each package shall conform to the general requirements for packagings and packages in 49 CFR 173.24 and may not exceed 30 kilograms (66 pounds) gross weight. The following combination packagings are authorized:

(i) For liquids, inner packagings not over 5.0 liters (1.3 gallons) net capacity each, packed in strong outer packagings.

(ii) For solids, inner packagings not over 5.0 kilograms (11.0 pounds) net capacity each, packed in strong outer packagings.

(4) The Agency may modify or waive the requirements of this section if a person provides an application for exemption to the Director of the Office of Pesticide Programs that contains data showing that the alternative (partial or modified) set of standards achieves a level of safety that is at least equal to that specified in the requirements of this section.

(5) If the Department of Transportation proposes to change any of the regulations that are incorporated in paragraph (b)(1), (b)(2), or (b)(3) of this section, the Agency will provide notice to the public in the **Federal Register**.

EPA is considering the following two modifications to the regulatory text for the final rule for Subpart G ''Refillable Container Standards: Container Design and Residue Removal.'' First, EPA is considering replacing the proposed regulatory text for 40 CFR 165.120 with the following potential alternative regulatory text. [This language is very

similar to the above regulatory text for nonrefillable containers. The main differences are the lists of regulatory sections that eligible antimicrobial products in Toxicity Category I would have to comply with.]

§ 165.120 *Applicability and scope.*

(a) *Scope.* This subpart establishes design and construction standards and requirements for refillable containers used for the sale or distribution of pesticide products. This subpart also establishes the standards and requirements for repackaging pesticide products into refillable containers.

(b) Manufacturing use products. This subpart does not apply to containers that contain manufacturing use products, as defined in § 158.153(h) of this chapter.

(c) *Antimicrobial pesticide products.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, this subpart does not apply to containers that contain a pesticide product that meets all of the following criteria:

(i) The pesticide product meets the definition of ''antimicrobial pesticide'' in FIFRA section 2(mm).

(ii) The label of the pesticide product includes directions for use on sites in at least one of the following antimicrobial product use categories:

(A) Food handling/storage establishments premises and equipment.

(B) Commercial, institutional, and industrial premises and equipment.

(C) Residential and public access premises.

(D) Medical premises and equipment.

(E) Materials preservatives.

(F) Industrial processes and water systems.

(G) Antifouling coatings.

(H) Wood preservatives.

(I) Swimming pools.

(iii) The pesticide product does not meet the criteria for hazardous waste as set out in part 261 of this chapter when the pesticide product is intended to be disposed.

(2) A pesticide product that meets the criteria in paragraphs (c)(1)(i), (c)(1)(ii)(A) through (ii)(H), and (c)(1)(iii) of this section is subject to the following requirements if the pesticide meets the criteria of Toxicity Category I as set out in 40 CFR 156.10(h)(1):

(i) 40 CFR 165.124(a) regarding DOT standards for refillable containers.

(ii) 40 CFR 165.124(b) regarding permanent marking for refillable containers.

(iii) 40 CFR 165.124(e) regarding apertures for refillable containers.

(iv) 40 CFR 165.124(f) regarding standards for bulk refillable containers.

(v) 40 CFR 165.126 regarding certification for refillable containers.

(vi) 40 CFR 165.128 regarding recordkeeping and inspection for refillable containers.

(vii) 40 CFR 165.129 – 165.136 regarding procedural standards for registrants and refillers who repackage pesticide into refillable containers.

(viii) 40 CFR 165.139 regarding compliance date for refillable containers.

(3) A pesticide product that meets the criteria in paragraphs (c)(1)(i), (c)(1)(ii)(I), and (c)(1)(iii) of this section is subject to the following standards if the pesticide meets the criteria of Toxicity Category I as set out in § 156.10(h)(1) of this chapter:

(i) 40 CFR 165.124(a) regarding DOT standards for refillable containers;

(ii) 40 CFR 165.124(f) regarding standards for bulk refillable containers;

(iii) 40 CFR 165.126 regarding certification for refillable containers;

(iv) 40 CFR 165.128 regarding recordkeeping and inspection for refillable containers;

(v) 40 CFR 165.129 regarding the transfer of registered pesticide products into refillable containers;

(vi) 40 CFR 165.130 – 165.132 regarding procedural standards for registrants who repackage pesticide into refillable containers;

(vii) 40 CFR 165.134(a) – 165.134(h) regarding procedural standards for refillers who repackage pesticide into refillable containers;

(viii) 40 CFR 165.136(a) regarding recordkeeping for each pesticide product that is repackaged by a refiller; and

(ix) 40 CFR 165.139 regarding compliance date for refillable containers.

(d) *General applicability.* Except for pesticide products that are excluded by paragraph (b) of this section or addressed by paragraph (c) of this section, a pesticide product distributed or sold in a nonrefillable container shall meet all of the standards of this subpart if at least one of the conditions in paragraphs (d)(1) through (4) below is met:

(1) The product meets the criteria of Toxicity Category I as set out in § 156.10(h)(1) of this chapter.

(2) The product meets the criteria of Toxicity Category II as set out in § 156.10(h)(1) of this chapter.

(3) The container size is equal to or larger than 5.0 liters (1.3 gallons) for liquid formulations or 5.0 kilograms (11.0 pounds) for solid formulations.

(4) The product label meets the standards in paragraphs (d)(4)(i) and (ii) of this section:

(i) The product label includes at least one of the following environmental hazard statements:

(A) This pesticide is toxic (or extremely toxic) to wildlife.

(B) This pesticide is toxic (or extremely toxic) to fish.

(C) This pesticide is toxic (or extremely toxic) to birds.

(D) This chemical is known to leach through soil into ground water under certain conditions as a result of agricultural use. Use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in ground-water contamination.

(E) This chemical demonstrates the properties and characteristics associated with chemicals detected in ground water. Use of this chemical in areas where soils are permeable, particularly where the water table is shallow, may result in ground-water contamination.

(F) Any environmental hazard statement pertaining to wildlife, fish, birds, or groundwater.

(ii) The product label permits outdoor use.

Second, EPA is considering deleting proposed §§ 165.124(a)(3) and 165.124(c) and incorporating the following regulatory text as § 165.124(c). Proposed §§ 165.124(a)(1) and 165.124(a)(2) would not be changed under the regulatory approaches being considered in this document. The proposed standard for minibulk container integrity in proposed § 165.124(c) could be deleted because there is an equivalent standard in the incorporated DOT standards.

§ 165.124(c) *DOT standards.* (1) Pesticide products that meet the definition of a hazardous material in 49 CFR 171.8 shall be packaged as required by 49 CFR parts 171–180. In addition, such pesticide products shall comply with the requirements of this subpart.

(2) Pesticide products that do not meet the definition of a hazardous material in 49 CFR 171.8 shall be packaged in containers that are designed, constructed, and marked to comply with the requirements of 49 CFR 173.24, 173.24a, 173.24b, 173.28, 173.203, 173.213, 173.240, 173.241, Part 178, and Part 180 as applicable to a Packing Group III material, liquid or solid, as appropriate. In addition, such pesticide products shall comply with the requirements of this subpart.

(3) Limited quantities of pesticide products that do not meet the definition of a hazardous material in 49 CFR 171.8 are excepted from the requirements set out in paragraph (b)(2) of this section when packaged in combination packagings according to this paragraph. Each package shall conform to the general requirements for packagings and packages in 49 CFR 173.24 and may not exceed 30 kilograms (66 pounds) gross weight. The following combination packagings are authorized:

(i) For liquids, inner packagings not over 5.0 liters (1.3 gallons) net capacity each, packed in strong outer packagings.

(ii) For solids, inner packagings not over 5.0 kilograms (11.0 pounds) net capacity each, packed in strong outer packagings.

(4) The Agency may modify or waive the requirements of this section if a person provides an application for exemption to the Director of the Office of Pesticide Programs that contains data showing that the alternative (partial or modified) set of standards achieves a level of safety that is at least equal to that specified in the requirements of this section.

(5) If the Department of Transportation proposes to change any of the regulations that are incorporated in section (b)(1), (b)(2), or (b)(3) of this section, the Agency will provide notice to the public in the **Federal Register**.

VIII. Statutory Review Requirements

As required by FIFRA 25(a), this document was submitted to the U.S. Department of Agriculture (USDA) for review and comment. USDA elected not to comment officially on it. This document was submitted to the Committee on Agriculture of the U.S. House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate. EPA did not receive comments on this document. The FIFRA Scientific Advisory Panel

(SAP) waived its review of this document.

IX. References

1. U.S. EPA, ''Proposed Rule: Standards for Pesticide Containers and Containment'' 59 FR 6712 (February 11, 1994).

2. U.S. EPA, ''Summary of Comments on the Proposed Rule on Standards for Pesticide Containers and Containment,'' (October 28, 1996).

3. U.S. EPA, ''Appendix of Antimicrobial Product Use Sites and Categories,'' (January 14, 1997).

4. Rogers, William H. ''Environmental Law: Hazardous Wastes and Substances,'' West Publishing, St. Paul, Minnesota, pp. 40–59, (1992).

5. U.S. EPA, ''Characterization of Antimicrobial Pesticides,'' (July 16, 1998).

6. U.S. EPA, ''Pesticide Industry Sales and Usage: 1994 and 1995 Market Estimates,'' number 733–R–002, (August 1997).

7. U.S. EPA, ''Pesticide Regulation (PR) Notice 96–8: Toxicologically Significant Levels of Pesticide Active Ingredients,'' (October 31, 1996).

8. U.S. EPA, ''Characterization of Pesticides as Department of Transportation Hazardous Materials,'' (July 15, 1998).

9. U.S. DOT, ''Notice of Actions on Exemption Applications,'' 63 FR 14990 (March 27, 1998).

10. U.S. EPA, ''Regulatory Impact Analysis: Proposed Container Design and Residue Removal Regulations Under the Federal Insecticide, Fungicide, and Rodenticide Act as Amended, 1988,'' (1993).

11. U.S. EPA, ''Regulatory Impact Analysis: Standards for Pesticide Containment Structures Under the Federal Insecticide, Fungicide, and Rodenticide Act as Amended, 1988,'' (1993).

12. U.S. EPA, ''Use of an Alternate Definition for 'Small Business' in the Small Entity Economic Impact Analysis Conducted for the 1994 Proposed Standards for Pesticide Container and Containment [RIN 2070–AB95],'' (1999).

13. U.S. EPA, ''Economic Analysis for the Potential Changes Discussed in the Supplemental **Federal Register** Notice,'' (July 28, 1998).

14. U.S. EPA, ''Supporting Statement for SF–83; Container Design and Residue Removal Regulations (40 CFR part 165),'' prepared for EPA by Mitchell Systems Corporation (1993).

X. Regulatory Assessment Requirements

The regulatory assessment requirements applicable to the original proposed rule are discussed in the preamble for that proposal. (See 59 FR 6774, February 11, 1994) The following discussion is intended to supplement that original discussion by describing the regulatory assessment requirements applicable to this action.

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). The Agency's estimated impacts of the proposed rule are contained in a document entitled ''Regulatory Impact Analysis: Proposed Container Design and Residue Removal Regulations under the Federal Insecticide, Fungicide, and Rodenticide Act as Amended, 1988'' (Ref. 10) The Agency's estimates with regard to the potential changes discussed in this document are contained in a document entitled ''Economic Analysis for the Potential Changes Discussed in the Supplemental **Federal Register** Notice'' (Ref. 13). Both of these documents are available as a part of the public version of the official record for this rulemaking (see Unit I.B.3 of this document). The impacts related to the potential changes discussed in this document are briefly summarized here.

1. *Summary of potential economic impacts.* EPA estimates that the potential changes presented in this document would decrease the overall estimated cost of the rule by 13 to 27%.

As set out in the Regulatory Impact Analysis (RIA) of the 1994 proposed rule (Ref. 10), the annualized cost of the proposed rule was estimated to be between $38.7 million and $49.9 million, which would be split between the pesticide formulating industry (about $20 million to $27.2 million), the pesticide refilling industry ($11.2 million), independent (for-hire) pesticide applicators ($1.6 million) and pesticide end users ($6 million to nearly $10 million).

The potential regulatory changes discussed in this document would primarily affect the pesticide formulating industry. The proposed regulations that would apply to the pesticide refilling industry (i.e., mainly the ''procedural'' container-related standards and the containment regulations), independent pesticide applicators (the containment standards), and pesticide end users (the label requirements) would not be modified significantly by the changes discussed in this document.

EPA estimates that the potential changes discussed in this document would decrease the overall cost of the rule by 13 to 27%. The regulatory options discussed in Units III and IV of this document would lower the costs by decreasing the number of pesticide products and containers that would be subject to the pesticide container standards and by excluding certain antimicrobial products from the nonrefillable residue removal standard. (See Ref. 13 for a more detailed discussion of the economic analysis.)

2. *Antimicrobial exemption.* EPA estimates that about 25% of the 20,000 currently registered pesticide products are eligible antimicrobial pesticides. As discussed in Unit IV.C.3 of this document, an estimated 70% of eligible antimicrobial pesticides are classified in Toxicity Category I and, therefore, would be subjected to the container standards. Also, the nonrefillable residue removal standard accounts for about 50% of the annualized cost for the pesticide formulating industry, as estimated in the economic analysis of the proposed rule.

If EPA implemented the exemption for certain antimicrobial products as discussed in this document, 30% of the eligible antimicrobial products would be exempt from the rule and the remaining products would not have to comply with the nonrefillable residue removal standard. In this scenario, the cost to the pesticide formulating industry for eligible antimicrobials to comply with the rule would be $1.8 million to $2.4 million (compared to a range of $5.0 million to $6.8 million for the same products to comply with the proposed rule).

3. *Modifications to the scope.* For the purpose of analyzing how many products, other than eligible antimicrobials, would be included by the scope modifications under consideration, EPA estimates that 50 to 90% of pesticides other than eligible antimicrobial pesticides would meet one of the scope criteria, as shown in the following table 10.

TABLE 10.—ANALYSIS OF THE SCOPE CRITERIA UNDER CONSIDERATION

Criterion	Percentage of products included in criterion (%)
Toxicity Category I	10 – 25
Toxicity Category II	15 – 20
Environmental Hazard Statement	10 – 20
Container Size	15 – 25
Total	**50 – 90**

According to this estimate, 10 to 50% of products other than eligible antimicrobials would be categorized as ''lower-risk'' and would be exempt from the container standards. If EPA implemented the modifications to the scope as discussed in this document, the cost to the formulating industry for products other than eligible antimicrobials to comply with the rule would be $7.5 million to $18.4 million

(compared to a range of $15.0 million to $20.4 million for the proposed rule).

4. *Combined cost decrease.* Therefore, the estimated annual cost to the pesticide formulating industry of the container standards (considering the antimicrobial exemption and the modifications to the scope) would be $9.3 million to $20.8 million. The following table 11 compares the costs of the container standards estimated for the proposed rule and the changes being considered in this document. EPA estimates that the changes considered in this document would lead to a $6.4 million to $10.6 million cost decrease compared to the proposed rule -- a 13 to 27% decrease.

TABLE 11.—COMPARISON OF COST ESTIMATES

Industry Segment	Annualized Cost (millions of $)		Percent Decrease (%)
	1994 Proposal (59 FR 6712)	Changes in this Document	
Pesticide formulating industry	19.9 – 27.2	9.3 – 20.8	31 – 53
Pesticide refilling industry	11.2	11.2	0
Independent (for-hire) pesticide applicators	1.6	1.6	0
Pesticide end users	6.0 – 9.9	6.0 – 9.9	0
Total	**38.7 – 49.9**	**28.1 – 43.5**	**13 –27**

5. *DOT packaging standards.* The third major regulatory change considered in this document would require all pesticide containers (that are subject to the container regulations) to comply with at least the DOT packing group III standards in addition to pesticide-specific requirements which were previously proposed. Unlike the other two issues that have already been discussed, the change to refer to and adopt the DOT PG III standards would increase the costs to the pesticide formulating industry.

However, EPA believes that the magnitude of the cost increase from referring to and adopting the DOT PG III standards will be relatively minor, particularly compared to the $6.4 million to $10.6 million decrease from the other changes. As discussed in Unit V.D of this document, despite the increase in potentially applicable testing requirements, EPA believes referring to and adopting the DOT standards would not greatly increase the economic burden of the regulations because: (i) Many pesticide products are classified as DOT hazardous materials; (ii) many other pesticides are voluntarily packaged in containers that meet the DOT standards; and (iii) the container and pesticide manufacturing industries are familiar with the DOT regulations.

6. *Request for comments.* EPA is interested in comments on its assessment of the potential impacts associated with the changes presented in this document. EPA is particularly interested in any information or data specific to the number of products and containers that would be excluded by these potential changes, and any information or data related to the costs or cost savings attributable to each of these potential changes.

B. Paperwork Reduction Act

This action does not contain any new information collection requirements that need additional approval or review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq (PRA). In conjunction with the proposed rule that was published in 1994, EPA prepared an Information Collection Request (ICR) document for the paperwork burden imposed by the proposed container and labeling standards (EPA ICR No. 1631.01) (Ref. 14). Although EPA specifically sought comment on the ICR document in the proposed rule, EPA is hereby seeking additional comment on the original estimated burden presented in that ICR document, specifically with regard to the anticipated decrease in the burden resulting from this action. The ICR document is available in the public version of the official record for the proposed rule (Ref. 14), and a copy may be obtained in person from the PIRIB as described in Unit I.B.3. of this document, by mail from Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by calling (202) 260–2740, or electronically by sending an e-mail message to ''farmer.sandy@epa.gov.'' An electronic copy of the ICR document has also been posted with this **Federal Register** notice on EPA's home page.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register** as part of the final rule, are maintained in a list at 40 CFR part 9. The information requirements contained in EPA's 1994 proposal, as potentially amended by the changes discussed in this document, are not effective until EPA issues a final rule and has obtained OMB approval for the information collection requirements contained in the final rule.

Under the PRA, ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA anticipates that the changes being considered in this document should decrease the estimated total annual reporting and recordkeeping burden of 573,425 hours by about 13 to 27%. This decrease results mainly from decreasing the number of products and containers subject to the regulations. Not requiring eligible antimicrobial products to comply with the nonrefillable residue removal standard should further decrease the original burden estimates. In addition, referring to and adopting the DOT standards as a minimum should streamline the reporting and recordkeeping process by allowing companies to use the processes and systems they currently have in place for complying with the DOT HMR. Many companies cited this as a significant reason for supporting the

DOT regulatory option. On the other hand, the potential additional step of EPA providing a separate notice in the **Federal Register** whenever DOT issued a **Federal Register** notice that proposes to change any of the incorporated DOT standards may increase the burden on EPA and industry. However, EPA believes that any such increase would be insignificant compared to the decreases described above.

Please note that OMB has not approved the ICR associated with the container and labeling provisions in the 1994 proposed rule. Instead, OMB provided comments about the proposed residue removal standard and the potential burden that the standard may have on registrants of products with active ingredients that have low toxicities or that are present at small concentrations. Specifically, OMB stated that ''EPA should consider less burdensome testing requirements to meet the objective that disposal of containers pose no unreasonable risk to health or the environment.'' As stated in Unit IV.C.3 of this document, EPA is considering changes to the residue removal standard in the context of preparing a final rule, but is not specifically addressing this issue in this document. However, EPA's preferred approach for implementing the FQPA antimicrobial provision -- excluding eligible antimicrobial products in Toxicity Category I from the nonrefillable residue removal standard and exempting all other eligible antimicrobial products from the entire rule -- would greatly decrease the potential burden that would be imposed by the final rule and would address OMB's comment.

EPA is specifically interested in your comments on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the EPA at the address provided in Unit I.C of this document. In addition, send a copy of your comments on the ICR to OMB at the following address: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the ICR number in any correspondence. The final rule will respond to comments that EPA receives on the information collection requirements.

C. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), EPA has determined that this regulatory action is not subject to the requirements of sections 202 and 205, because this action does not contain a ''Federal mandate'' that would result in expenditures of $100 million or more for State, local, or Tribal governments, in the aggregate, or for the private sector in any one year. This regulatory action would not impose an enforceable duty on any State, local or Tribal governments or on anyone in the private sector. In addition, this document contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the Unfunded Mandates Reform Act.

D. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, 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 document does not create an unfunded Federal mandate on State, local or tribal governments. This document 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 document.

E. Executive Order 13084

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

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

F. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities and has determined that this document will not adversely affect environmental justice.

G. Executive Order 13045

This document is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866 (see Unit X.A above), nor do the environmental health or safety risks addressed by this action have an affect on children.

H. Regulatory Flexibility Act

Pursuant to section 605(b) of the RFA, EPA hereby certifies that this action will not have a significant economic impact on a substantial number of small

entities. The RFA requires an agency to prepare a regulatory flexibility analysis for any rule for which the agency is required to issue a notice of proposed rulemaking under the Administrative Procedures Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements that would result in any adverse impacts on the potentially affected entities. Instead, the changes considered in this document would decrease the potential impacts of the 1994 proposed rule. EPA prepared an initial regulatory flexibility analysis for the 1994 proposed rule. Although EPA did not specifically certify under section 605(b) of the RFA, EPA stated that the regulatory flexibility analysis showed that there would not be significant impact on potentially affected small facilities and that there would not be a substantial number of small aerial applicators adversely impacted (see 59 FR 6712, at 6776). This action does not affect that conclusion and the potential changes would only decrease the estimated total impact presented in that analysis.

The initial regulatory flexibility analysis that EPA prepared as part of the 1994 proposed rule made the following conclusions. First, whether or not small formulating facilities would be significantly impacted depended on how many container/formulation combinations would need to be tested to confirm compliance with the proposed residue removal standard. Second, representative refillers/refilling establishments would not be adversely affected by compliance with the 1994 proposed regulations. Third, some small for-hire applicators, primarily aerial application businesses, could be adversely affected by the proposed containment requirements.

The potential changes discussed in this document would not affect pesticide refillers and for-hire applicators significantly, so the relevant conclusions presented in the initial regulatory flexibility analysis that EPA prepared as part of the 1994 proposed rule would not change. The rest of this discussion focuses on EPA's assessment of the potential impact of the changes considered in this document on small formulating facilities, including the nonrefillable residue removal standard.

EPA anticipates that the changes being considered in this document would decrease the costs for small formulators. As discussed previously, EPA estimates that the changes in this document would lead to a 13 to 27% lower cost than the cost of the proposed rule. EPA believes that all formulators would experience similar cost decreases, since formulators in each of the size categories -- small, medium, and large -- would have products exempt from the container regulations by either the antimicrobial exemption or the scope criteria.

In addition, EPA believes that the antimicrobial exemption would make it unlikely that small formulating facilities in the household, industrial, and institutional pesticide markets would be significantly impacted. The crucial factor determining the significance of the impact on these facilities was the implementation of the residue removal standard. Under the approach being considered, antimicrobial products that would be subject to the container standards (eligible antimicrobial pesticides in Toxicity Category I) would not have to comply with the nonrefillable residue removal standard. While small household, institutional, and industrial formulators produce pesticides other than antimicrobials, exempting antimicrobial products from the nonrefillable residue removal standard should greatly decrease the potential economic impact on these facilities. Also, it is worth noting that changes to the residue removal standard are being considered separately from this document.

As discussed previously, the change to refer to and adopt the DOT PG III standards would increase the costs to the pesticide formulating industry. However, EPA believes that the magnitude of the cost increase from referring to and adopting the DOT PG III standards will be relatively minor, particularly compared to the significant cost decrease due to the other changes being considered. EPA therefore certifies that the regulatory changes considered in this notice will not have a significant economic impact on a substantial number of small entities.

As discussed in Unit VI. of this document, EPA believes it is appropriate to use alternate definitions of small business for the sole purpose of assessing the potential impacts of the proposed rule on the potentially impacted small businesses. With this document, EPA is providing the public with an opportunity to comment on these definitions and has consulted with the SBA Office of Advocacy as required by section 601(3). Seeking comment on the use of the alternate definitions does not impact EPA's ability to certify that this action, which is likely to decrease the potential burden of the 1994 proposed rule, will not result in a significant impact on a substantial number of small entities. Comments regarding the potential impacts of these changes, including any comments on the definitions, should be submitted to EPA according to the process established in Unit I.C. of this document.

I. National Technology Transfer and Advancement Act

This document 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). Section 12(d) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on this conclusion.

J. Federalism Review

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132 (64 FR 43255, August 10, 1999), which will go into effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987) on federalism still applies. Under this order, this rule will not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government. This rule does not apply to States; it applies to pesticide registrants, manufacturers and agricultural chemical dealers.

List of Subjects in 40 CFR Part 165

Environmental protection, Antimicrobial pesticides, Packaging and containers, Pesticides and pests.

Dated: October 12, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–27397 Filed 10–20–99; 8:45 am]

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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 ''P L U S'' (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.

S. 559/P.L. 106–72

To designate the Federal building located at 300 East 8th Street in Austin, Texas as the ''J.J. 'Jake' Pickle Federal Building''. (Oct. 19, 1999; 113 Stat. 1045)

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