11–24–99
Vol. 64 No. 226
Pages 66095–66354

Federal Register

Wednesday
November 24, 1999

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RESERVATIONS: 202–523–4538

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 760

RIN 0560–AG 10

Dairy Indemnity Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the authority citation for the Dairy Indemnity Payment Program (DIPP) regulations to cover the expenditure of additional funds appropriated under the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000. The DIPP indemnifies dairy farmers and manufacturers for losses suffered with respect to milk and milk products, through no fault of their own.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hill, Agricultural Program Specialist, Price Support Division, FSA, USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512; telephone (202) 720–9888; e-mail address is Elizabeth—Hill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Dairy Indemnity Payments, Number 10.053.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12988

This rule has been reviewed pursuant to Executive Order 12988. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of Commodity Credit Corporation that the terms of the regulations prevail. The provisions of this rule are not retroactive. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

The amendment to 7 CFR part 760 set forth in this final rule does not contain additional information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35. Existing information collections were approved by OMB and assigned OMB Control Number 0560–0116.

Background

The DIPP was originally authorized by section 331 of the Economic Opportunity Act of 1964. The statutory authority for the program was extended several times. Funds were appropriated for DIPP by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Act, 1999, (''the 1999 Act''), Pub. L. 105–277, 112 Stat. 2681, which authorized the program until the funds were expended. More recently, funds were appropriated for this program by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 (''the 2000 Act''), Pub. L. 106–78, 113 Stat. 1135, which authorizes the program to be carried out until the funds appropriated under the 2000 Act are expended. Not all the funds appropriated under the 1999 Act have been expended and the remaining funds are still available in addition to the funds appropriated under the 2000 Act.

The objective of DIPP is to indemnify dairy farmers and manufacturers of dairy products who, through no fault of their own, suffer income losses with respect to milk or milk products removed from commercial markets because such milk or milk products contain certain harmful residues. In addition, dairy farmers can also be indemnified for income losses with respect to milk required to be removed from commercial markets due to residues of chemicals or toxic substances or contamination by nuclear radiation or fallout.

The regulations governing the program are set forth at 7 CFR 760.1–760.34. This final rule makes no changes in the provisions of the regulations. Since the only purpose of this final rule is to revise the authority citation pursuant to the 2000 Act, it has been determined that no further public rulemaking is required. Therefore, this final rule shall become effective upon the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 760

Dairy products, Indemnity payments, Pesticides and pests.

Accordingly, 7 CFR part 760 is amended as follows:

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Dairy Indemnity Payment Program

The authority citation for Subpart—Dairy Indemnity Payment Program is revised to read as follows:

Authority: Dairy Indemnity Program, Pub. L. 105–277, 112 Stat. 2681 and Pub. L. 106–78, 113 Stat. 1135.

Signed in Washington, DC, on November 17, 1999.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 99–30640 Filed 11–23–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29317; Special Federal Aviation Regulation (SFAR) No. 82]

RIN 2120–AG67

Removal of the Prohibition Against Certain Flights Within the Territory and Airspace of Sudan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: This action removes Special Federal Aviation Regulation (SFAR) No. 82, which prohibits flight operations within the territory and airspace of Sudan by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is taken in response to the decrease in the tensions that followed U.S. military strikes against terrorist and industrial facilities associated with Usama Bin Ladin in Sudan and Afghanistan, which has reduced the threat of hostile actions against persons and aircraft engaged in flight operations within Sudan's territory and airspace.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

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 ((703) 321–3339), the Government Printing Office's (GPO) electronic bulletin board service ((202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322–2722 or (202) 267–5948). Internet users may reach the FAA's web page at http://www.faa.gov or the GPO web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave, SW, Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the docket number of this action.

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

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.dot.gov.

Background

On August 20, 1998, the U.S. military conducted strikes against terrorist and industrial facilities associated with Usama Bin Ladin in Sudan and Afghanistan. As a result of the strike, the FAA determined that a hostile reaction from armed elements in Sudan was possible, and that the safe overflight of Sudanese territory could not be guaranteed. Accordingly, the FAA issued a final rule prohibiting certain aircraft operations within the territory and airspace of Sudan on August 21, 1998. SFAR 82 prohibits flight operations within the territory and airspace of Sudan by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. The FAA imposed the flight prohibition in the exercise of its statutory responsibility for the safety of U.S.-registered aircraft and U.S. operators.

The FAA has since determined that tensions with Sudan have decreased, which has reduced the potential threat of hostile actions against persons and aircraft engaged in flight operations within Sudan's territory and airspace. Sudan has an extremely limited capability to target overflying aircraft and has expressed no intent to target civil aircraft within its airspace. There now appears to be no heightened threat to civil aviation within the territory and airspace of Sudan.

Regulatory Analyses

The FAA has determined that this action is not a ''significant regulatory action'' under Executive Order 12866, nor is it considered a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because this amendment removes a restriction that is no longer appropriate, the FAA finds that this final rule may be issued without public comment and may be made effective immediately. The FAA also certifies that this rule 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.

Therefore, on the basis of the foregoing information, I have determined that the immediate removal of SFAR 82 from 14 CFR Part 91 is appropriate. The Department of State has been advised of, and has no objection to, the action taken herein.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Sudan.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR Part 91 by removing SFAR 82 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 USC 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. Special Federal Aviation Regulation No. 82 is removed.

Issued in Washington, DC, on November 17, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–30663 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29844; Amdt. No. 419]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances required making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on November 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC:

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 419: Effective Date: December 30, 1999]

From	To	MEA
§ 95.1001 Direct Routes—U.S. Atlantic Routes—G430 Is Added to Read		
VIRGINIA KEY, FL VOR/DME	EONNS, FL FIX	3000
EONNS, FL FIX	AVION, FL FIX	4000
Atlantic Routes—G439		
DOLPHIN, FL VORTAC	MNATE, FL FIX	3000
MNATE, FL FIX	TWNNS, FL FIX	5000
TWNNS, FL FIX	*DROWN, FL FIX	5000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 419: Effective Date: December 30, 1999]

From	To	MEA
*5000—MRA		
95.6001 Victor Routes—U.S.		
95.6001 VOR Federal Airway 1 Is Amended to Read in Part		
COYLE, NJ VORTAC *1600—MOCA	DIXIE, NJ FIX	*2500
DIXIE, NJ FIX *1600—MOCA	KENNEDY, NY VOR/DME	*2500
95.6003 VOR Federal Airway 3 Is Amended to Read in Part		
ORMOND BEACH, FL VORTAC *3000—MRA **1400—MOCA	*SEBAG, FL FIX	**2000
SEBAG, FL FIX *1400—MOCA	BRUNSWICK, GA VORTAC	*2000
95.6006 VOR Federal Airway 6 Is Amended to Read in Part		
SELINSGROVE, PA VORTAC *5500—MRA **3300—MOCA	*SNOWY, PA FIX	**5000
SNOWY, PA FIX *3200—MOCA	ALLENTOWN, PA VORTAC	*13000
#ALLENTOWN, PA VORTAC *2200—MOCA #FJC R–115 UNUSABLE USE SBJ R–295	SOLBERG, NJ VOR/DME	*3000
SOLBERG, NJ VOR/DME	EMPYR, NY FIX	2300
95.6016 VOR Federal Airway 16 Is Amended to Read in Part		
MAXME, VA FIX	PULASKI, VA VORTAC	7700
COYLE, NJ VORTAC *1600—MOCA	DIXIE, NJ FIX	*2500
DIXIE, NJ FIX **1600—MOCA	KENNEDY, NY VOR/DME	*2500
95.6029 VOR Federal Airway 29 Is Amended to Read in Part		
POTTSTOWN, PA VORTAC *4000—MRA	*HIKES, PA FIX	2900
HIKES, PA, FIX	EAST TEXAS, PA VORTAC	2900
95.6045 VOR Federal Airway 45 Is Amended to Read in Part		
HENDERSON, WV VORTAC *9000—MRA	*BREMEN, OH FIX	10000
95.6063 VOR Federal Airway 63 Is Amended to Read in Part		
GIBSN, MO FIX	HALLSVILLE, MO VORTAC	2900
§ 95.6069 VOR Federal Airway 69 Is Amended to Read in Part		
BELCHER, LA VORTAC *3000—MRA	*COTTA, LA FIX	2000
COTTA, LA FIX *3000—MRA	*GOURD, LA FIX	2000
GOURD, LA FIX	EL DORADO, AR VORTAC	2000
§ 95.6136 VOR Federal Airway 136 Is Amended to Read in Part		
MAXME, VA FIX	PULASKI, VA VORTAC	7700
§ 95.6139 VOR Federal Airway 139 Is Amended to Read in Part		
KOBBY, NC FIX *4000—MRA	*WIDGE, NC FIX	2000
§ 95.6148 VOR Federal Airway 148 Is Amended to Read in Part		
GOPHER, MN VORTAC	*ALEEN, WI FIX	**5000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 419: Effective Date: December 30, 1999]

From	To	MEA
*4999—MRA **2700—MOCA		
ALEEN, WI FIX	HAYWARD, WI VOR/DME	*10000
*2800—MOCA		
HAYWARD, WI VOR/DME	IRONWOOD, MI VORTAC	*10000
*3000—MOCA		
IRONWOOD, MI VORTAC	HOUGHTON, MI VOR/DME	*3700
*3100—MOCA		
§ 95.6162 VOR Federal Airway 162 Is Amended to Read in Part		
EAST TEXAS, PA VORTAC	ALLENTOWN, PA VORTAC	3000
§ 95.6177 VOR Federal Airway 177 Is Amended to Read in Part		
WAUSAU, WI VORTAC	BAITS, WI FIX	*4500
*3500—MOCA		
BAITS, WI FIX	HAYWARD, WI VOR/DME	*10000
*3000—MOCA		
HYWARD, WI VOR/DME	DULUTH, MN VORTAC	*10000
*3000—MOCA		
§ 95.6229 VOR Federal Airway 229 Is Amended to Read in Part		
PANZE, NJ FIX	DIXIE, NJ FIX	2500
DIXIE, NJ FIX	KENNEDY, NY VOR/DME	*2500
*1600—MOCA		
§ 95.6276 VOR Federal Airway 276 Is Amended to Read in Part		
CASVI, NJ FIX	*GAMBY, NJ FIX	**3000
*6000—MRA **1400—MOCA		
§ 95.6280 VOR Federal Airway 280 Is Amended to Read in Part		
HOPET, NM FIX	CHISUM, NM VORTAC	7000
§ 95.6305 VOR Federal Airway 305 Is Amended to Read in Part		
BELCHER, LA VORTAC	*COTTA, LA FIX	2000
*3000—MRA		
COTTA, LA FIX	*FOSTE, LA FIX	2000
*3500—MRA		
FOSTE, LA FIX	EL DORADO, AR VORTAC	2000
§ 95.6345 VOR Federal Airway 345 Is Amended to Read in Part		
EAU CLAIRE, WI VORTAC	HAYWARD, WI VOR/DME	*5200
*3000—MOCA		
HAYWARD, WI VOR/DME	ASHLAND, WI VOR/DME	*4000
*2900—MOCA		
§ 95.6397 VOR Federal Airway 397 Is Amended to Read in Part		
MONROE, LA VORTAC	RUTTS, AR FIX	*6000
*1600—MOCA		
RUTTS, AR FIX	GREENVILLE, MS VOR/DME	2000
§ 95.6408 VOR Federal Airway 408 Is Amended to Read in Part		
POTTSTOWN, PA VORTAC	*HIKES, PA FIX	2900
*4000—MRA		
HIKES, PA FIX	EAST TEXAS, PA VORTAC	2900
EAST TEXAS, PA VORTAC	ALLENTOWN, PA VORTAC	3000
ALLENTOWN, PA VORTAC	LAKE HENRY, PA VORTAC	4000
LAKE HENRY, PA VORTAC	SAGES, NY FIX	6000
§ 95.6417 VOR Federal Airway 417 Is Amended to Read in Part		
MONROE, LA VORTAC	*BOLTS, MS FIX	**5000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 419: Effective Date: December 30, 1999]

From	To	MEA
*3400—MRA **1900—MOCA		
§ 95.6427 VOR Federal Airway 427 Is Amended to Read in Part		
WESEL, SC FIX *1999—MOCA	FLORENCE, SC VORTAC	*4000
§ 95.6440 VOR Federal Airway 440 Is Amended to Read in Part		
ANCHORAGE, AK VOR/DME *5000—MCA IVANN FIX W BND	*IVANN, AK FIX	2000
IVANN, AK, FIX *7000—MCA FRIDA FIX W BEND **6000—MOCA	*FRIDA, AK FIX	**6500
FRIDA, AK FIX *9400—MOCA	MIGAN, AK FIX	*10000
MIGAN, AK FIX *8600—MCA WINOR FIX E BND **8900—MOCA	*WINOR, AK FIX	**10000
WINOR, AK FIX	MC GRATH, AK VORTAC.	
SE BND		10000
NW BND		5000

§ 95.8003 VOR Federal Airway Changeover Points

From	To	Changeover Points	
		Distance	From
Airway Segment V–16 is Amended to Add Changeover Point			
HOLSTON MOUNTAIN, TN VORTAC	PULASKI, VA VORTAC	69	HOLSTON MOUNTAIN
Airway Segment V–83 is Amended to Modify Changeover Point			
CARLSBAD, NM VORTAC	CHISUM, NM VORTAC	31	CARLSBAD
Airway Segment V–136 is Amended to Add Changeover Point			
HOLSTON MOUNTAIN, TN VORTAC	PULASKI, VA VORTAC	69	HOLSTON MOUNTAIN
Airway Segment V–466 is Amended to Add Changeover Point			
GLADE SPRING, VA VOR/DME	PULASKI, VA VORTAC	58	GLADE SPRING

[FR Doc. 99–30661 Filed 11–23–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29843; Amdt. No. 418]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

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

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on November 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, November 4, 1999.

1. The authority citation for part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 418; Effective Date: November 4, 1999]

From	To	MEA
§ 95.1001 Direct Routes—U.S. Direct Routes—EPH Is Added to Read		
EPHRATA, WA VORTAC *6700—MOCA	OMAK, WA NDB	*8000
§ 95.6001 Victor Routes—U.S. § 95.6003 VOR Federal Airway 3 Is Amended to Read in Part		
TOWEY, SC FIX *1900—MOCA	SANDHILLS, NC VORTAC	*8000
§ 95.6066 VOR Federal Airway 66 Is Amended to Read in Part		
GREENWOOD, SC VORTAC *2200—MOCA	RICHE, SC FIX	*4000
RICHE, SC FIX *2200—MOCA	SANDHILLS, NC VORTAC	*8000
§ 95.6130 VOR Federal Airway 130 Is Amended to Read in Part		
MINNK, RI FIX	FALMA, RI FIX	3000
FALMA, RI FIX	MARTHAS VINEYARD, MA VOR/DME	3000
§ 95.6139 VOR Federal Airway 139 Is Amended to Read in Part		
PROVIDENCE, RI VORTAC	INNDY, RI FIX	2000
§ 95.6140 VOR Federal Airway 140 Is Amended to Read in Part		
GOSHN, TN FIX	NASHVILLE, TN VORTAC	3000
§ 95.6146 VOR Federal Airway 146 Is Amended to Read in Part		
PUTNAM, CT VOR/DME	PROVIDENCE, RI VORTAC	3000
§ 95.6151 VOR Federal Airway 151 Is Amended to Read in Part		
GAILS, MA FIX	PROVIDENCE, RI VORTAC	2000
PROVIDENCE, RI VORTAC	PUTNAM, CT VOR/DME	3000
PUTNAM, CT VOR/DME	GARDNER, MA VORTAC	3000
GARDNER, MA VORTAC	KEENE, NH VORTAC	3600

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 418; Effective Date: November 4, 1999]

From	To	MEA
KEENE, NH VORTAC	STRUM, NH FIX	3600
STRUM, NH FIX	*UNKER, NH FIX	6000
*6000–MRA		
§ 95.6155 VOR Federal Airway 155 Is Amended to Read in Part		
CHESTERFIELD, SC VOR/DME	LILLS, NC FIX	2000
LILLS, NC FIX	SANDHILLS, NC VORTAC	*8000
*2100—MOCA		
§ 95.6188 VOR FEDERAL AIRWAY 188 Is Amended to Read in Part		
CARMEL, NY VOR/DME	GROTON, CT VOR/DME	3000
§ 95.6188 VOR FEDERAL AIRWAY 220 Is Amended to Delete		
NORFOLK, NE VOR/DME	YANKTON, SD VOR/DME	3700
YANKTON, SD VOR/DME	DOLTS, SD INT	*3400
*2700 MOCA		
DOLTS, SD INT	SIOUX FALLS, SD VORTAC	*3400
*2700 MOCA		
SIOUX FALLS, SD VORTAC	WATERTOWN, SC VORTAC	*3700
*3000 MOCA		
WATERTOWN, SD VORTAC	FARGO, ND VORTAC	5000
*4000 MRA		
FARGO, ND VORTAC	SHELS, MN INT	*3000
*4000 MRA		
SHELS, MN INT	GRANDFORKS, ND VOR/DME	3000
§ 95.62700 VOR FEDERAL AIRWAY 270 Is Amended to Read in Part		
TUSON, NY FIX	ATHOS, NY FIX	*6000
*5600–MOCA		
ATHOS, NY FIX	CHESTER, MA VOR/DME	4000
§ 95.6303 VOR FEDERAL AIRWAY 303 Is Amended to Read in Part		
HOT SPRINGS, AR VOR/DME	BLURB, AR FIX	*3500
*3000–MOCA		
BLURB, AR FIX	BLIMP, AR FIX	*4100
*3600–MOCA		
BLIMP, AR FIX	FORT SMITH, AR VORTAC	*2900
*2400–MOCA		
§ 95.6374 VOR FEDERAL AIRWAY 374 Is Amended To Read in Part		
CARMEL, NY VOR/DME	*BETHA, CT FIX	2500
*800O–MRA		
BETHA, CT FIX	CREAM, NY FIX	2500
CREAM, NY FIX	KURITY, CT FIX	2500
KURITY, CT FIX	GROTON, CT VOC/DME	3000
GROTON, CT VOR/DME	MINNIK, RI FIX	3000
MINNIK, RI FIX	FALMA, RI FIX	3000
FALMA, RI FIX	MARTHAS VINEYARD, MA VOR/DME	3000
§ 95.6405 VOR FEDERAL AIRWAY 405 Is Amended to Read in Part		
PROVIDENCE, RI VORTAC	FALMA, RI FIX	*3000
*1400–MOCA		
FALMA, RI FIX	MARTHAS VINEYARD, MA VOR/DME	3000
§ 95.6430 VOR FEDERAL AIRWAY 430 Is Amended to Read in Part		
DINER, MI FIX	IRON MOUNTAIN, MI VORTAC	*5000
*3400–MOCA		
§ 95.6491 VOR FEDERAL AIRWAY 491 Is Amended to Read in Part		
UNION, SD FIX	HAYNI, ND FIX	*9000
*5000–MOCA		
HAYNI, ND FIX	DICKINSON, ND VORTAC	*5000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 418; Effective Date: November 4, 1999]

From	To	MEA
*4500–MOCA DICKINSON, ND VORTAC	MINOTA, ND VORTAC	*6000
*4300–MOCA		

§ 95.6532 VOR FEDERAL AIRWAY 532 Is Amended to Read in Part

LITTLE ROCK, AR VOTAC	*PARDON, AR FIX	2600
*3500–MRA		
PARON, AR FIX	GATZY, AR FIX	*3700
*3100–MOCA		
GATZY, AR FIX	BLURB, AR FIX	*5500
*3200–MOCA		
BLURB, AR FIX	BLIMP, AR FIX	*4100
*3600–MOCA		
BLIMP, AR FIX	FORTH SMITH, AR VOTAC	*2900
*2400–MOCA		

§ 95.8003 VOR Federal Airway Changeover Points

From	To	Changeover Points	
		Distance	From
Airway Segment V–12 is Amended to Modify Changeover Point			
EMPORIA, KS VORTAC	JOHNSON COUNTY, KS VOR/DME	49	EMPORIA

[FR Doc. 99–30660 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–1170]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the safe use of 2-methyl-4,6-bis-[(octylthio)methyl] phenol as a stabilizer for repeat use rubber articles. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

DATES: This regulation is effective November 24, 1999. Submit written objections and requests for a hearing by December 27, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 6, 1999 (64 FR 24407), FDA announced that a food additive petition (FAP 9B4660) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-methyl-4,6-bis-[(octylthio)methyl] phenol as a stabilizer for repeat use rubber articles.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as a stabilizer for repeat use rubber articles is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4660 (64 FR 24407, May 6, 1999). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

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

Any person who will be adversely affected by this regulation may at any time on or before December 27, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any

particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for ''2-methyl-4,6-bis-[(octylthio)methyl] phenol'' in item ''4.'' under the heading ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * *
2-Methyl-4,6-bis-[(octylthio)methyl] phenol (CAS Reg. No. 110553–27–0)	For use only: * * * 4. At levels not to exceed 1.7 percent by weight of the finished rubber products complying with § 177.2600 of this chapter.
* * *	* * * *

Dated: October 22, 1999.

L. Robert Lake,

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

[FR Doc. 99–30569 Filed 11–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Moxidectin Gel

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health. The supplemental NADA provides for oral use of moxidectin gel for horses and ponies for treatment and control of *Gasterophilus nasalis* (3rd instars) infections.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Div. of American Home Products Corp., 800 5th St. NW, P.O. Box 518, Fort Dodge, IA 50501, filed supplemental NADA 141–087 that provides for use of Quest™ moxidectin 2-percent equine oral gel in horses and ponies for treatment and control of horse stomach bot *G. nasalis* (3rd instars). The product is approved for treatment and control of infections of certain large strongyles, small strongyles (adult and larvae), encysted cyathostomes, ascarids, pinworms, hairworms, large-mouth stomach worms, and horse stomach bots (*G. intestinalis* (2nd and 3rd instars)), and for suppression of strongyle egg production for 84 days. The supplemental NADA is approved as of October 4, 1999, and the regulations are amended in 21 CFR 520.1452(d)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

Also, § 520.1452 is amended in paragraph (d)(2) to state that the drug will suppress strongyle egg production for 84 days, and paragraph (d)(3) is amended to remove statements required elsewhere by the regulations or not required to be codified.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, except on Federal holidays.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act, this approval for nonfood producing animals qualifies for 3 years of marketing exclusivity beginning October 4, 1999, because the application contains substantial evidence of the effectiveness of the drug involved or any studies of animal safety required for approval of the application and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use for treatment and control of horse stomach bot *G. nasalis (3rd instars) infections.*

FDA has determined under 21 CFR 25.33(d) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an

environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.1452 is amended by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 520.1452 Moxidectin gel.

* * * * *

(d) * * *

(2) *Indications for use.* Horses and ponies for treatment and control of large strongyles (*Strongylus vulgaris* (adults and L4/L5 arterial stages), *S. edentatus* (adult and tissue stages), *Triodontophorus brevicauda* (adults), *T. serratus* (adults)); small strongyles (*Cyathostomum* spp. (adults), *Cylicocyclus* spp. (adults), *Cylicostephanus* spp. (adults), *Gyalocephalus capitatus* (adults), undifferentiated lumenal larvae); encysted cyathostomes (late L3 and L4 mucosal cyathostome larvae); ascarids (*Parascaris equorum* (adults and L4 larval stages)); pinworms (*Oxyuris equi* (adults and L4 larval stages)); hairworms (*Trichostrongylus axei* (adults)); large-mouth stomach worms (*Habronema muscae* (adults)); and horse stomach bots (*Gasterophilus intestinalis* (2nd and 3rd instars) and *G. nasalis* (3rd instars)). One dose also suppresses strongyle egg production for 84 days.

(3) *Limitations.* Not for use in horses and ponies intended for food.

Dated: November 12, 1999.

Melanie R. Berson,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–30571 Filed 11–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 805

[Docket No. 85N–0322]

Medical Devices; Revocation of Cardiac Pacemaker Registry

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to revoke a regulation requiring a cardiac pacemaker registry. The registry, which was mandated by the Deficit Reduction Act of 1984, requires any physician and any provider of services who requests or receives Medicare payment for an implantation, removal, or replacement of permanent cardiac pacemaker devices and pacemaker leads to submit certain information to the registry. The information is used by FDA to track the performance of permanent cardiac pacemakers and pacemaker leads and by the Health Care Finance Administration (HCFA) to administer its Medicare payment program for these devices. This action is being taken to implement an act to Repeal An Unnecessary Medical Device Reporting Requirement passed by Congress in 1996 to remove the cardiac pacemaker registry to eliminate duplicative and unnecessary reporting.

DATES: This regulation is effective December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health (HFZ–342), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2970.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 23, 1987 (52 FR 27756), FDA and HCFA jointly issued a final rule to establish a national cardiac pacemaker registry as mandated by the Deficit Reduction Act of 1984 (Public Law 98–369). The new law, which was enacted on July 18, 1984, amended title XVIII of the Social Security Act, by adding section 1862(h) (42 U.S.C. 1395y(h)) to the Social Security Act . FDA and HCFA jointly issued a proposed rule announcing the establishment of this registry in the **Federal Register** of May 6, 1986 (51 FR 16792).

The final rule for the cardiac pacemaker registry was codified in part 805 (21 CFR part 805). Briefly summarized, the scope of the regulation provides that FDA establish a nationwide registry for cardiac pacemakers and pacemaker leads. FDA used the information submitted to the registry to track the performance of permanent pacemakers and pacemaker leads and to perform studies and analysis regarding the use of the devices. The agency transmitted data to the HCFA to administer its Medicare program and to other Federal components to carry out statutory responsibilities.

On October 2, 1996, an act to Repeal An Unnecessary Medical Device Reporting Requirement (Public Law 104–224), which amended title XVIII of the Social Security Act (42 U.S.C. 1395), became law. The purpose of the new law was to remove section 1862(h) (42 U.S.C. 1395y(h)) of the Social Security Act to eliminate duplicative and unnecessary reporting.

When section 1862(h) was added to the Social Security Act, there was a need to identify and keep track of defective pacemakers. In particular, there was a need to identify circumstances in which a defective pacemaker was surgically implanted in a patient, and then surgically removed, with both procedures being paid for by Medicare. One of the main reasons for this early pacemaker registry was that there was no good way to track defective implantable medical devices, and no viable way for HCFA to recover costs in those circumstances where a defective product was used. Congress enacted an act to repeal section 1862(h) of the Social Security Act because the SMDA of 1990 (Public Law 101–629) added section 519(e) to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(e)), which requires among other things that manufacturers track and collect data for certain devices, including permanently implanted pacemakers and pacemaker leads from the manufacturer through the distribution chain to the patient using the device.

Notice and comment rulemaking on the revocation of part 805 is unnecessary. The statutory authority for this rule has been revoked. Therefore, FDA concludes under 5 U.S.C. 553(b)(8) and 21 CFR 10.40(e)(1), that there is a good cause for revoking part 805 without notice and comment rulemaking.

II. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

III. Analysis of Impact

FDA has examined the impacts of the final rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages distributive impacts and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The final rule removes the medical device regulation requiring a national cardiac pacemaker registry from part 805. The agency certifies, under 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. In addition, this final rule will not impose expenditures of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a written statement under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

IV. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required (Public Law 104–13).

List of Subjects in 21 CFR Part 805

Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the authority of Public Law 104–224, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter 1 is amended as follows:

PART 805—CARDIAC PACEMAKER REGISTRY

1. Part 805 is removed.

Dated: November 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–30570 Filed 11–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 903

[Docket No. FR–4420–N–05]

RIN 2577–AB89

Public Housing Agency Plans; Option To Extend First Submission Due Date for Certain Public Housing Agencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of option to extend first submission date.

SUMMARY: This document provides notice to those public housing agencies (PHAs) that must submit their first Annual Plans in December 1999 or January 2000, that they have the option to submit their first plans between December 1, 1999 and January 31, 2000, or January 15, 2000 and February 29, 2000, respectively. HUD will soon be publishing additional information and direction to PHAs on their plan submissions. As a result, PHAs with December and January submission due dates may determine additional time is needed to prepare their first plans.

FOR FURTHER INFORMATION CONTACT: For further information contact the 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) 708–0730 (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: On October 21, 1999 (64 FR 56844), HUD published its final 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. HUD will soon be publishing additional information and direction to PHAs about certain plan components, and the plan submission process. As a result, PHAs with December 1999 and January 2000 submission due dates may determine additional time is needed to prepare their first plans. HUD is therefore providing: (1) PHAs that previously were to submit their first 5-Year and Annual Plans on December 1, 1999, with the option to submit their first plans between December 1, 1999, and January 31, 2000; and (2) PHAs that previously were to submit their first 5-Year and Annual Plans on January 15, 2000, with the option to submit their first plans between January 15, 2000, and February 29, 2000.

Dated: November 19, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–30710 Filed 11–22–99; 10:53 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

33 CFR Part 100

[CGD07–99–057]

RIN 2115–AE46

Special Local Regulations: Puerto Rico International Cup, Fajardo, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Temporary special local regulations are established for the Puerto Rico International Cup, in Fajardo, Puerto Rico. The event will be held from 1 p.m. to 2:30 p.m. on December 5, 1999, in Fajardo, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 12 p.m. and terminate at 3:30 p.m. AST on December 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 31, 1999, the Coast Guard published a notice of proposed rulemaking concerning these regulations in the **Federal Register** (64 FR 47461). No comments were received during the comment period.

Background and Purpose

These regulations create a regulated area offshore Fajardo, Puerto Rico which prohibits entry to non-participating vessels during the race. The participating race boats will be competing at high speeds with numerous spectator craft in the area, thus creating an extra or unusual hazard on the navigable waterways. These regulations are required to provide for the safety of life on navigable waters during the Puerto Rico International Cup, in Fajardo, Puerto Rico.

In accordance with 5 U.S.C. 553, good cause exists for making this rule effective in less that 30 days after **Federal Register** publication. Delaying

its effective date would be contrary to national safety interests and there was not sufficient time remaining for a full 30-day delayed effective date after the end of the comment period. The proposed rule had a full 60-day comment period. No comments were received and the event has been well publicized.

Regulatory Evaluation

This regulation is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area only encompasses Rada Fajardo, Puerto Rico, entry into which is only prohibited for 3½ hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider whether this rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less then 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately 3½ hours in a limited area off Fajardo.

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 13132, and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs 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 unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will 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 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 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

The Coast Guard considered the environmental impact of this rule and concluded that under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulations: In consideration of the foregoing, the Coast Guard amends part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–057 to read as follows:

§ 100.35T–07–057 Puerto Rico International Offshore Cup, Fajardo, Puerto Rico.

(a) *Regulated Area:* A regulated area is established for the waters in Rada Fajardo, encompassing an area bounded by point 1 in position 18°21′12″ N, 065°36′51″ W, thence to point 2 in position 18°19′48″ N, 065°34′34″ W, thence to point 3 in position 18°19′50″ N, 065°34′26″ W, thence to point 4 in position 18°22′22″ N, 065°35′19″ W, thence to point 5 in position 18°23′08″ N, 065°36′00″ W, thence to point 6 in position 18°23′08″ N, 065°36′09″ W, thence to point 7 in position 18°22′40″ N, 065°36′28″ W, thence to point 8 in position 18°21′20″ N, 065°36′55″ W, thence return to point 1. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander:* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Greater Antilles Section, San Juan, Puerto Rico.

(c) *Special Local Regulations:* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander.

(d) *Dates:* These regulations become effective at 12 p.m. and terminate at 3:30 p.m. AST on December 5, 1999.

Dated: November 15, 1999.

Thad W. Allen,

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

[FR Doc. 99–30658 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–99–095]

Drawbridge Operation Regulations; Raccoon Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the CONRAIL Railroad Bridge across Raccoon Creek, mile 2.0, in Bridgeport, New Jersey. Beginning at 7 a.m. on November 22, through 5 p.m. on December 6, 1999, the bridge may remain in the closed position. This closure is necessary to conduct structural reconstruction of the bridge's bascule span.

DATES: This deviation is effective from 7 a.m. on November 22 until 5 p.m. on December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Coast Guard received a letter from the Consolidated Rail Corporation (CONRAIL) on October 20, 1999 requesting a temporary deviation from the current operating schedule of the bridge contained in 33 CFR 117.741. CONRAIL intends to conduct maintenance and repair work that involves the installation of new rails and ties on the bridge deck and superstructure. This work requires completely immobilizing the operation of the bascule span during this phase of the work. In the event of an emergency, openings of the span will be provided as quickly as possible, but may take two hours or longer to accomplish. Requests for emergency openings can be made my contacting CONRAIL's resident engineer at (609) 820–7784.

In accordance with 33 CFR 117.35, the District Commander approved Conrail's request for a temporary deviation from the governing regulations in a letter dated October 25, 1999.

The Coast Guard has informed the known commercial users of the waterway of the bridge closure so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

The temporary deviation allows the CONRAIL Railroad Bridge across Raccoon Creek, mile 2.0, in Bridgeport, New Jersey to remain closed from 7 a.m. on November 22, until 5 p.m. on December 6, 1999.

Dated: November 9, 1999.

Thomas E. Bernard,

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

[FR Doc. 99–30659 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300946; FRL–6390–5]

RIN 2070–AB78

Glyphosate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for glyphosate (*N*-(phosphonomethyl)glycine) in or on certain raw agricultural commodities from application of glyphosate in its acid form. Entek Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective November 24, 1999. Objections and requests for hearings, identified by docket control number OPP–300946, must be received by EPA on or before January 24, 2000.

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.'' To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300946 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.james@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 Codes	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–300946. 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 August 25, 1999 (64 FR 46382) (FRL–6093–7), 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 9F5095) for a tolerance by Entek Corporation, 6835 Deerpath Road, Suite E, Elkridge, MD 21075. This notice included a summary of the petition prepared by Entek, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.364 be amended by revising the existing tolerance regulation for glyphosate to allow application of glyphosate (in its acid form) on raw agricultural commodities (RACs).

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 tolerances for glyphosate by revising the existing tolerance regulation for glyphosate to allow application of glyphosate (in its acid form) on raw agricultural commodities (RACs). EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

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

1. Several acute toxicology studies placing technical-grade glyphosate in Toxicity Category III and Toxicity Category IV. Technical glyphosate is not a dermal sensitizer.

2. A 21–day dermal toxicity study in which rabbits were exposed to glyphosate at levels of 0, 10, 1,000, or 5,000 milligrams/kilogram/day (mg/kg/day). The systemic no observed adverse effect level (NOAEL) was 1,000 mg/kg/day and the lowest observed adverse effect level (LOAEL) was 5,000 mg/kg/day based on decreased food consumption in males. Although serum lactate dehydrogenase was decreased in both sexes at the high dose, this finding was not considered to be toxicologically significant.

3. A 1–year feeding study with dogs fed dosage levels of 0, 20, 100, and 500 mg/kg/day with a NOAEL of 500 mg/kg/day.

4. A 2–year carcinogenicity study in mice fed dosage levels of 0, 150, 750, and 4,500 mg/kg/day with no carcinogenic effect at the highest dose tested (HDT) of 4,500 mg/kg/day.

5. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 3, 10, and 31 mg/kg/day (males) and 0, 3, 11, or 34 mg/kg/day (females) with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 31 mg/ kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females) and a systemic NOAEL of 31 mg/kg/day (HDT) (males) and 34 mg/kg/day (HDT) (females). Because a maximum tolerated dose (MTD) was not reached, this study was classified as supplemental for carcinogenicity.

6. A chronic feeding/carcinogenicity study in male and female rats fed dosage levels of 0, 89, 362, and 940 mg/kg/day (males) and 1, 113, 457, and 1,183 mg/kg/day (females) with no carcinogenic effects noted under the conditions of the study at dose levels up to and including 940/1,183 mg/kg/day (males/females) (HDT) and a systemic NOAEL of 362 mg/kg/day (males) based on an increased incidence of cataracts and lens abnormalities, decreased urinary pH, increased liver weight and increased liver weight/brain ratio (relative liver weight) at 940 mg/kg/day (males) (HDT) and 457 mg/kg/day (females) based on decreased body weight gain 1,183 mg/kg/day (females) (HDT).

7. A developmental toxicity study in rats given doses of 0, 300, 1,000, and 3,500 mg/kg/day with a developmental (fetal) NOAEL of 1,000 mg/kg/day based on an increase in number of litters and fetuses with unossified sternebrae, and decrease in fetal body weight at 3,500 mg/kg/day, and a maternal NOAEL of 1,000 mg/kg/day based on decrease in body weight gain, diarrhea, soft stools, breathing rattles, inactivity, red matter in the region of nose, mouth, forelimbs, or dorsal head, and deaths at 3,500 mg/kg/day (HDT).

8. A developmental toxicity study in rabbits given doses of 0, 75, 175, and 350 mg/kg/day with a developmental NOAEL of 175 mg/kg/day (insufficient litters were available at 350 mg/kg/day to assess developmental toxicity); a maternal NOAEL of 175 mg/kg/day based on increased incidence of soft stool, diarrhea, nasal discharge, and deaths at 350 mg/kg/day (HDT).

9. A multi-generation reproduction study with rats fed dosage levels of 0, 3, 10, and 30 mg/kg/day with the parental NOAEL/LOAEL 30 mg/kg/day (HDT). The only effect observed was an increased incidence of focal tubular dilation of the kidney (both unilateral and bilateral combined) in the high-dose male F3b pups. Since the focal tubular dilation of the kidneys was not observed at the 1,500 mg/kg/day level (HDT) in the rat reproduction study discussed below, but was observed at the 30 mg/kg/day level (HDT) in the 3–generation rat reproduction study, the latter was a spurious rather than glyphosate-related effect. Therefore, the parental and reproductive (pup) NOAELs are 30 mg/kg/day.

10. A 2–generation reproduction study with rats fed dosage levels of 0, 100, 500, and 1,500 mg/kg/day with a systemic NOAEL of 500 mg/kg/day based on soft stools in F0 and F1 males and females at 1,500 mg/kg/day (HDT) and a reproductive NOAEL 1,500 mg/kg/day (HDT).

11. Mutagenicity data included chromosomal aberration *in vitro* (no aberrations in Chinese hamster ovary cells were caused with and without S9 activation); DNA repair in rat hepatocyte; *in vivo* bone marrow cytogenic test in rats; rec-assay with *B. subtilis*; reverse mutation test with *S. typhimurium*; Ames test with *S. typhimurium*; and dominant-lethal mutagenicity test in mice (all negative).

B. Toxicological Endpoints

1. *Acute toxicity*. No toxicological endpoint attributable to a single dose was identified in oral studies including the rat and rabbit developmental studies. There are no data requirements for acute or subacute neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

2. *Short- and intermediate-term toxicity*. No short- or intermediate-term dermal or inhalation endpoints were

identified. In a 21–day dermal toxicity study with rabbits, no systemic or dermal toxicity was seen following repeated applications of glyphosate at 0, 100, 1,000, or 5,000 mg/kg/day. The NOAEL was 1,000 mg/kg/day and the LOAEL was 5,000 mg/kg/day based on decreased food consumption in males. In addition, the use of 3% dermal absorption rate (estimated) in conjunction with the oral NOAEL of 175 mg/kg/day established in the rabbit development study yields a dermal equivalent dose of greater than 5,000 mg/kg/day.

Based on the low toxicity of the formulation product (Toxicity Category III and IV) and the physical characteristics of the technical product, there is minimal concern for potential inhalation exposure or risk. The acute inhalation study was waived for technical glyphosate. Some glyphosate end-use products are in Toxicity Category I or II for eye or dermal irritation. The Reregistration Eligibility Decision Document for Glyphosate (September 1993) indicates that the Agency is not adding any additional personal protective equipment (PPE) requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in Toxicity Categories I and II.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for glyphosate at 2.0 mg/kg/day. This RfD is based on the maternal NOAEL of 175 mg/kg/day from a rabbit developmental study and a 100-fold uncertainty factor.

4. *Carcinogenicity*. Glyphosate has been classified as a Group E chemical - no evidence of carcinogenicity in two acceptable animal species.

C. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.364) for the residues of glyphosate (*N*-(phosphonomethyl)glycine and its metabolite aminomethylphosphonic acid resulting from the application of the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate, in or on a variety of raw agricultural commodities. Tolerances are established on kidney of cattle, goats, hogs, horses, and sheep at 4.0 ppm; liver of cattle, goats, hogs, horses, and sheep at 0.5 ppm; and liver and kidney of poultry at 0.5 ppm. Risk assessments were conducted by EPA to assess dietary exposures from glyphosate 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. An acute dietary risk assessment was not performed because no endpoints attributable to single dose were identified in the oral studies including rat and rabbit developmental studies. There are no data requirements for acute and subchronic neurotoxicity studies and no evidence of neurotoxicity in any of the toxicity studies at very high doses. The Agency concludes with reasonable certainty that glyphosate dose not elicit an acute toxicological response. An acute dietary risk assessment is not needed.

ii. *Chronic exposure and risk*. The chronic dietary exposure analysis was conduced using the (RfD) of 2.0 mg/kg/day based on the maternal NOAEL of 175 mg/kg/day from a developmental study and an uncertainty factor of 100 (applicable to all population groups). The Dietary Exposure Evaluation Model (DEEM) analysis assumed tolerance levels residues and 100% of the crop treated. These assumptions resulted in the following theoretical maximum residue contributions (TMRCs) and percent of the RfDs for certain population subgroups. The TMRC for the US population (48 states) was 0.029960 or 1.5% of the RfD, 0.026051 or 1.3% of the RfD for nursing infants (less than 1 year old), 0.065430 or 3.3% of the RfD for non-nursing infants less than 1 year old; 0.064388 or 3.2% of the RfD for children (1–6 years old); 0.043017 or 2.2% of the RfD for children (7–12 years old); 0.030928 or 1.5% of the RfD for females (13+/nursing); 0.030241 or 1.5% of the RfD for non-Hispanic whites; and 0.030206 or 1.5% of the RfD for non-Hispanic blacks.

2. *From drinking water*. Generic expected environmental concentration (GENEEC) and Screening concentration and ground water (SCI-GROW) models were run to produce estimates of glyphosate concentrations in surface and ground water, respectively. The drinking water exposure for glyphosate from the ground water screening model, SCI-GROW, yields a peak and chronic Estimated Environmental Concentration (EEC) of 0.0011 parts per billion (ppb) in ground water. The GENEEC values represent upper-bound estimates of the concentrations that might be found in surface water due to glyphosate use. Thus, the GENEEC model predicts that glyphosate surface water concentrations range from a peak of 1.64 ppb to a 56–day average of 0.19 ppb. The model estimates are compared to chronic drinking water levels of comparison (DWLOC (chronic)). The DWLOC (chronic) is the theoretical concentration of glyphosate in drinking water so that the aggregate chronic exposure (food + water + residential) will occupy no more than 100% of the RfD. Glyphosate is registered for residential products, however, a residential exposure assessment is not required, since there are no endpoints selected for either dermal or inhalation exposure. The Agency's default body weights and consumption values used to calculate DWLOCs are as follows: 70 kilograms/liter (kg/2L) (adult male), 60 kg/2L (adult female), and 10 kg/1L (child).

i. *Acute exposure and risk*. An acute dietary endpoint and dose was not identified in the toxicology data base. Adequate rat and rabbit developmental studies did not provide a dose or endpoint that could be used for acute dietary risk purposes. Additionally, there were no data requirements for acute or subchronic rat neurotoxicity studies since there was no evidence of neurotoxicity in any of the toxicology studies at very high doses.

ii. *Chronic exposure and risk*. The DWLOC (chronic) (non-cancer) risk is calculated by multiplying the chronic water exposure (mg/kg/day) x (body weight) divided by the consumption (L) x 10^{-3} mg/µg. The DWLOCS are 69,000 µg/L for the U.S. population in 48 states, males (13+), non-Hispanic whites, and non-Hispanic blacks; and 19,000 µg/L for non-nursing infants (less than 1 year old) and children (1–6 years). The GENEEC and SCI-GROW estimated that average concentrations of glyphosate in the surface and ground water are less than the DWLOC (chronic). Therefore, taking into account present uses and uses proposed in this action, the Agency concludes with reasonable certainty that no harm will result from chronic aggregate exposure to glyphosate.

3. *From non-dietary exposure*. Glyphosate is currently registered for use on the following residential non-food sites: Around ornamentals, shade trees, shrubs, walk, driveways, flower beds and home lawns. Based on the registered uses of glyphosate, the potential for residential exposures exists. However, based on the low acute toxicity and lack of other toxicological concerns, glyphosate does not meet the Agency's criteria for residential data requirements. Exposures from residential uses are not expected to pose undue risks or harm to public health.

i. *Acute exposure and risk*. There are no acute toxicological concerns for glyphosate. Glyphosate has been the subject of numerous incident reports, primarily for eye and skin irritation injuries, in California. Some glyphosate end-use products are in Toxicity

Categories I and II for eye and dermal irritation. The Reregistration Eligibility Decision Document for Glyphosate (September 1993) indicates the Agency is not adding additional PPE requirements to labels of end-use products, but that it continues to recommend the PPE and precautionary statements required for end-use products in Toxicity Categories I and II.

ii. *Chronic exposure and risk*. Although there are registered residential uses for glyphosate, glyphosate does not meet the Agency's criteria for residential data requirements, due to the lack of toxicological concerns. Incidental acute and/or chronic dietary exposures from residential uses of glyphosate are not expected to pose undue risks to the general population, including infants and children.

iii. *Short- and intermediate-term exposure and risk*. EPA identified no toxicological concerns for short-intermediate-and long-term dermal or inhalation routes of exposures. The Agency concludes that exposures from residential uses of glyphosate are not expected to pose undue risks.

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 glyphosate 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, glyphosate 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 glyphosate 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*. There was no acute dietary endpoint identified, therefore there are no acute toxicological concerns for glyphosate.

2. *Chronic risk*. Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food will utilize 1.5% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non- nursing infants (less than 1 year old) and children (1–6 years) as 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 glyphosate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glyphosate 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. Short- and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios.

4. *Aggregate cancer risk for U.S. population*. Glyphosate has been classified as a Group E chemical, with no evidence of carcinogenicity for humans 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 glyphosate, 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 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*. The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to in utero and postnatal exposure to glyphosate.

iii. *Conclusion*. There is a complete toxicity data base for glyphosate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on these data, there is no indication that the developing fetus or neonate is more sensitive than adult animals. No developmental neurotoxicity studies are being required at this time. A developmental neurotoxicity data requirement is an upper tier study and required only if effects observed in the acute and 90–day neurotoxicity studies indicate concerns for frank neuropathy or alterations seen in fetal nervous system in the developmental or reproductive toxicology studies. The Agency believes that reliable data support the use of the standard 100-fold uncertainty factor, and that a tenfold (10x) uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk*. There are no acute toxicological endpoints for glyphosate. The Agency concludes that establishment of the proposed tolerances would not pose an unacceptable aggregate risk.

3. *Chronic risk*. Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to glyphosate from food will utilize 3.3% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary

exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to glyphosate 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*. Short-term and intermediate-term dermal and inhalation risk is not a concern due to the lack of significant toxicological effects observed with glyphosate under these exposure scenarios.

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 glyphosate residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The qualitative nature of the residue in plants is adequately understood. Studies with a variety of plants including corn, cotton, soybeans, and wheat indicate that the uptake of glyphosate or its metabolite, aminomethylphosphonic acid (AMPA), from soil is limited. The material which is taken up is readily translocated. Foliarly applied glyphosate is readily absorbed and translocated throughout the trees or vines to the fruit of apples, coffee, dwarf citrus (calamondin), pears and grapes. Metabolism via *N*-methylation yields *N*-methylated glycines and phosphonic acids. For the most part, the ratio of glyphosate to AMPA is 9 to 1 but can approach 1 to 1 in a few cases (e.g., soybeans and carrots). Much of the residue data for crops reflect a detectable residue of parent (0.05 – 0.15 ppm) along with residues below the level of detection (<0.05 ppm) of AMPA. The terminal residue to be regulated in plants is glyphosate *per se*.

The qualitative nature of the residue in animals is adequately understood. Studies with lactating goats and laying hens fed a mixture of glyphosate and AMPA indicate that the primary route of elimination was by excretion (urine and feces). These results are consistent with metabolism studies in rats, rabbits, and cows. The terminal residues in eggs, milk, and animal tissues are glyphosate and its metabolite AMPA; there was no evidence of further metabolism. The terminal residue to be regulated in livestock is glyphosate *per se*.

B. Analytical Enforcement Methodology

Adequate enforcement methods are available for analysis of residues of glyphosate in or on plant commodities. These methods include GLC (Method I in Pesticides Analytical Manual (PAM) II; the limit of detection is 0.05 ppm) and High Performance Liquid Chromatography (HPLC) with fluorometric detection. Use of the GLC method is discouraged due to the lengthiness of the experimental procedure. The HPLC procedure has undergone successful Agency validation and was recommended for inclusion in PAM II. A GC/MS method for glyphosate in crops has also been validated by EPA's Analytical Chemistry Laboratory (ACL).

C. Magnitude of Residues

The available crop field trial residue data support established tolerances for glyphosate. Application of glyphosate as the acid will not result in residues which exceed currently established tolerances.

D. International Residue Limits

Codex Maximum Residue Levels (MRLs) exist for barley, dry peas, dry beans, and canola seed at 20, 5, 2, and 10 pp, respectively for glyphosate. Canadian glyphosate MRLs exist for barley, barley milling fractions, peas, beans, and lentils at 10, 15, 5, 2, and 4 ppm, respectively. Mexican glyphosate MRLs exist for barley, peas, and beans at 0.1, 0.2, and 0.2 ppm, respectively. Application of glyphosate as the acid in the United Sates will not cause any new conflicts with existing MRLs.

E. Rotational Crop Restrictions

Glyphosate labels currently bear a 30–day minimum plant back interval for crops on which the use of glyphosate is not registered.

V. Conclusion

Therefore, the tolerances are established for residues of glyphosate (*N*-(phosphonomethyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate and/or the monoammonium salt of glyphosate in or on the raw agricultural commodities.

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–300946 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 January 24, 2000.

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., 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–300946, 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).

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408. 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 any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). 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). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 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. In addition, 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 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' This final rule 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 FFDCA section 408(n)(4).

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.* , as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final 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: November 9, 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 §180.364, by revising paragraph (a)(1) introductory text, paragraph (a)(2) introductory text, and paragraph (a)(3) introductory text to read as follows:

§180.364 Glyphosate; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of glyphosate, (*N*-

(phosphonomethyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, and/or the monoammonium salt of glyphosate in or on the following food commodities:

* * * * *

(2) Tolerances are established for the residues of glyphosate, (*N*-(phosphonomethyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, and/or the monoammonium salt of glyphosate in or on the following food commodities:

* * * * *

(3) Tolerances are established for the residues of glyphosate, (*N*-(phosphonomethyl)glycine) resulting from the application of glyphosate, the isopropylamine salt of glyphosate, and/or the monoammonium salt of glyphosate in or on the following food commodities:

* * * * *

[FR Doc. 99–30408 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

I.D. 111899C

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark Species

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

ACTION: Fishing season notification.

SUMMARY: NMFS notifies eligible participants of the opening and closing of fishing seasons for Atlantic large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks.

DATES: The fishery opening for LCS is effective January 1, 2000; the LCS closure is effective from 11:30 p.m. local time March 31, 2000, through June 30, 2000. The fishery opening for SCS and pelagic sharks are January 1, 2000; no closure dates for these fisheries are included in this document.

FOR FURTHER INFORMATION CONTACT: Steve Meyers or Margo Schulze, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On June 30, 1999, NMFS received a Court Order from Judge Steven D. Merryday relative to the May, 1997, lawsuit challenging commercial harvest quotas for Atlantic sharks. Specifically, the order states: '' ... the Court hereby preliminarily, and until further order of the Court, expressly ENJOINS the defendant and his designees from enforcing the 1999 regulations, 64 Fed. Reg. 29090 (May, 28, 1999) with respect to Atlantic shark commercial catch quotas and fish-counting methods (including the counting of dead discards and state commercial landings after federal closures) that are different from the quotas and fish counting methods prescribed by the 1997 Atlantic shark regulations, 62 Fed. Reg. 16648 (April 7, 1997).''

As such, the annual 2000 LCS quota continues at the 1997 level of 1,285 mt dw for all species of LCS, (Table 1 of appendix A to part 635), with no minimum size on ridgeback LCS. The SCS and pelagic shark quotas also revert to their annual 1997 levels, of 1,760 and 580 mt dw, respectively. The 1997 prohibited species list now applies to only five prohibited species: white, basking, whale, sand tiger and bigeye sand tiger. The limited access provisions for commercial harvests still apply, including trip limits for directed and incidental shark permit holders.

The first semiannual fishing season of the 2000 fishing year for the commercial fishery for LCS in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea will open January 1, 2000. Catch rate data from the first semiannual fishing season from 1997 and 1998 for LCS species indicate that the LCS quota of 642.5 mt dw will be attained within 90 days. Accordingly, the Assistant Administrator for Fisheries (AA) has determined, based on these projected catch rates and the available quota, that the quota for the 2000 first semiannual season for LCS in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will be attained as of March 31, 2000. The LCS fishery will close March, 31, 2000, at 11:30 p.m. local time.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under § 635.4. The sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under § 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

The first semiannual quota for SCS is 880 mt dw. The first semiannual quota for pelagic sharks is 290 mt dw. When quotas are projected to be reached for these fisheries, the AA will file notification of closure at the Office of the Federal Register at least 14 days before the effective date.

Those vessels that have not been issued a limited access permit under § 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at §§ 635.22(c) and 635.20(d). The recreational fishery is not affected by any closure in the commercial fishery.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under Executive Order 12866.

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

Dated: November 18, 1999.

Bruce C. Morehead,

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

[FR Doc. 99–30667 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 226
Wednesday, November 24, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

[Docket No. PRM–150–2]

Envirocare of Utah, Inc.; Withdrawal of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing, at the petitioner's request, a petition for rulemaking (PRM–150–2) (58 FR 9552, February 22, 1993) filed by Envirocare of Utah. In PRM–150–2, the petitioner requested that the Commission amend its regulations in 10 CFR Part 150 to exempt those persons that generate or dispose of very low specific activity wastes contaminated with special nuclear materials that are not capable of forming a critical reaction from the current possession limits specified in its regulations. In withdrawing this petition, the petitioner indicated that the NRC Order dated May 7, 1999 (64 FR 27826, May 21, 1999), satisfied the intent of the petition.

ADDRESSES: A copy of the petitioner's letter, dated August 25, 1999, requesting the withdrawal of the petition is available for public inspection at the NRC Public Document Room located at 2120 L Street NW. (Lower Level), Washington, DC 20012–7082, telephone: (202) 634–3273.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail jmm2@nrc.gov.

SUPPLEMENTARY INFORMATION:

On February 22, 1993 (58 FR 5992), the NRC published in the **Federal Register** a notice of receipt of a petition for rulemaking PRM–150–2 that requested NRC to exempt persons who generate or dispose of very low specific activity wastes contaminated with special nuclear materials. Based upon the petitioner's letter requesting that its petition be rescinded dated August 25, 1999, the NRC is withdrawing this petition for rulemaking. The basis for petitioner's request for withdrawal is that the NRC issued an Order on May 7, 1999, which exempted Envirocare of Utah, Inc. from the licensing requirements in 10 CFR Part 70. Accordingly, the NRC is not taking any further action on the petition because it has been withdrawn by the petitioner.

Dated at Rockville, Maryland, this 18th day of November, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–30642 Filed 11–23–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 917, 925, 930, 940, 950, 954, 955, 958, 965, 966, and 980

[No. 99–57]

RIN 3069–AA84

Federal Home Loan Bank Financial Management and Mission Achievement; Withdrawal of Proposed Rule; Notice of Cancellation of Public Hearing

AGENCY: Federal Housing Finance Board.

ACTION: Withdrawal of proposed rule; Notice of cancellation of public hearing.

SUMMARY: The Federal Housing Finance Board (Finance Board) is withdrawing its recently-proposed Financial Management and Mission Achievement (FMMA) regulation in light of the enactment of the Federal Home Loan Bank System Modernization Act of 1999 (Bank System Modernization Act). Although the Finance Board is withdrawing the proposed FMMA regulation, it intends to re-propose certain sections of the FMMA regulation in one or more separate rulemakings. However, the Finance Board will take no action to promulgate proposed or final regulations limiting Federal Home Loan Bank (Bank) assets or advances beyond those currently in effect, except to the extent necessary to protect the safety and soundness of the Banks, until the Finance Board has promulgated final capital regulations pursuant to the requirements of the Bank System Modernization Act and the statutory period for submission of capital plans by the Banks to the Finance Board has expired.

The Finance Board also hereby is canceling the public hearing on the proposed FMMA regulation scheduled for November 29 and 30, 1999.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Director and Chief Economist, (202) 408–2821; or Scott L. Smith, Deputy Director, (202) 408–2991, Office of Policy, Research and Analysis, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Finance Board proposed a regulation in the **Federal Register** of September 27, 1999 to adopt new financial management and mission achievement rules, and amend certain existing regulations, for the Banks. *See* 64 FR 52163 (Sept. 27, 1999). The preamble to the proposed FMMA regulation contains a detailed discussion of the background and reasons for the proposed FMMA regulation. Generally, the proposed FMMA regulation would have modernized policies governing the business activities of the Banks and, for the first time, would have established regulatory standards for mission achievement by the Banks and a definition of mission assets. The proposal would have enabled the Banks to help their members be more effective competitors in the housing finance and community lending marketplace, which in turn would have assured that benefits accrued to consumers.

The proposal would have imposed a risk-based capital requirement, pursuant to which each Bank would have been required to maintain capital based on the credit, market, and operations risks to which it is exposed. The risk-based capital regime was designed to build upon the regulatory framework used by other financial institution and government-sponsored enterprise (GSE) regulators.

The mission achievement requirement in the proposal would have: codified the authority of the Banks to hold mortgage assets, including mortgage-backed securities; allowed mortgage assets

meeting certain regulatory requirements to be counted as mission assets; and eliminated the use of the Banks' GSE advantages in issuing debt to fund arbitrage investments.

The proposal also would have specified the responsibilities of the boards of directors and senior management of the Banks, as a means of ensuring that they fulfill their duties in operating the Banks in a safe and sound manner and in furtherance of their mission.

In a separate rulemaking, the Finance Board proposed to reorganize its regulations to implement a more logical and efficient presentation of the rules governing the Banks and the Bank System, as well as to prepare for the anticipated incorporation of the revisions to be made by the FMMA proposal. *See* 64 FR 52148 (Sept. 27, 1999). In view of the technical, housekeeping nature of the proposed reorganization provisions, the Finance Board is not withdrawing the proposed reorganization regulation, which the Finance Board intends to finalize, with any necessary amendments, at the earliest practicable date. The comment period for the proposed reorganization regulation closes December 27, 1999.

II. Reasons for Withdrawal of the Proposed FMMA Regulation

In light of the enactment of the Bank System Modernization Act, the Finance Board is withdrawing the proposed FMMA regulation. The Finance Board intends to re-propose certain sections of the proposed regulation in one or more separate rulemakings, and to propose capital requirements for the Banks in accordance with the Bank System Modernization Act. However, the Finance Board will take no action to promulgate proposed or final regulations limiting Bank assets or advances beyond those currently in effect, except to the extent necessary to protect the safety and soundness of the Banks, until the Finance Board has promulgated final capital regulations pursuant to the requirements of the Bank System Modernization Act and the statutory period for submission of capital plans by the Banks to the Finance Board has expired. The Finance Board will consult with the House and Senate Banking Committees regarding the content of both the capital regulations and any financial management or mission related regulations prior to issuing them in proposed form.

III. Cancellation of Public Hearing

In the **SUPPLEMENTARY INFORMATION** to the proposed FMMA regulation, the Finance Board announced that it would hold a public hearing on its proposed FMMA regulation. *See* 64 FR 52165. The hearing was scheduled to be held on November 29–30, 1999. As a result of the Finance Board's action herein to withdraw the proposed FMMA regulation, the public hearing is no longer necessary and is cancelled.

List of Subjects in 12 CFR Parts 917, 925, 930, 940, 950, 954, 955, 958, 965, 966 and 980

Community development, Credit, Housing and Federal home loan banks.

Dated: November 17, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–30552 Filed 11–23–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Ayres Corporation (Ayres) S2R series airplanes that are equipped with at least one main landing gear fuselage attach bolt with a grease fitting installed through the shank. The proposed AD would require replacing the main landing gear fuselage attach bolts that are drilled with a grease fitting with undrilled (no grease access) attach bolts. This AD is the result of a report of cracks found in all four main landing gear fuselage attach bolts on one of the affected airplanes. The actions specified by the proposed AD are intended to prevent collapse of the main landing gear caused by cracked main landing gear fuselage attach bolts, which could result in main landing gear collapse with possible wing fuel tank rupture and consequent fire.

DATES: Comments must be received on or before January 21, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–57–AD, Room 506, 901 Locust, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Ayres Corporation, P.O. Box 3090, One Ayres Way, Albany, Georgia 31706–3090; telephone: (912) 883–1440; facsimile: (912) 439–9790. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 99–CE–57–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–57–AD, Room 506,

901 Locust, Kansas City, Missouri 64106.

Discussion

The FAA has received a report of cracks found in all four main landing gear fuselage attach bolts on an Ayres S2R series airplane. Further analysis reveals that the main landing gear fuselage attach bolts are cracking at the 1/16-inch (.0625-inch) grease access hole, which is located approximately 1 7/8 inches (1.875 inches) deep and then drilled from the side to intersect the center hole. The side drilled hole is causing the fatigue cracking that results in the attach bolt failure.

These main landing gear fuselage attach bolts that are drilled with a grease fitting incorporate part number 21418T001 or 21418T005.

This condition, if not corrected in a timely manner, could result in main landing gear collapse with possible wing fuel tank rupture and consequent fire.

Relevant Service Information

Ayres has issued Service Bulletin No. SB–AG–42, dated June 16, 1999, which specifies replacing the main landing gear fuselage attach bolts that are drilled with a grease fitting with undrilled (no grease access) attach bolts, part number AN10–33 or NAS6610–42D.

The procedures to accomplish this replacement are included in both the service bulletin and the applicable maintenance manual.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent collapse of the main landing gear caused by cracked main landing gear fuselage attach bolts.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Ayres S2R series airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require replacing the main landing gear fuselage attach bolts that are drilled with a grease fitting with undrilled (no grease access) attach bolts.

Accomplishment of the proposed action would be required in accordance with both Ayres Service Bulletin No. SB–AG–42, dated June 16, 1999, and the applicable maintenance manual.

Differences Between the Service Bulletin and the Proposed AD

Ayres Service Bulletin No. SB–AG–42, dated June 16, 1999, specifies repetitive inspections and repetitive replacements of the main landing gear fuselage attach bolts. The FAA does not have justification to mandate the repetitive inspections and repetitive replacements. Based on all available information, the FAA has determined that initially replacing the main landing gear fuselage attach bolts with attach bolts of improved design will correct the unsafe condition on the affected airplanes.

Cost Impact

The FAA estimates that 1,000 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $88 per airplane (4 bolts per airplane at $22 each). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $328,000, or $328 per airplane.

Regulatory Impact

The proposed rule does not have Federalism implications as defined in Executive Order No. 13132. This means it 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. The FAA has not consulted with state authorities prior to publication of this proposed rule.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Ayres Corporation: Docket No. 99–CE–57–AD.

Applicability: The following airplane models; all serial numbers; certificated in any category, that have at least one main landing gear fuselage attach bolt (that is drilled with a grease fitting), part number 21418T001 or 21418T005 (or FAA-approved equivalent part number): S–2R, S2R–G1, S2R–G5, S2R–G6, S2R–G10, S2R–R3S, S2R–T11, S2R–T15, S2R–T34, S2R–T45, S2R–T65, S2R–R1340, S2R–R1820, S2RHG–T34, and S2RHG–T65.

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

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

To prevent collapse of the main landing gear caused by cracked main landing gear fuselage attach bolts, which could result in main landing gear collapse with possible wing fuel tank rupture and consequent fire, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, replace each main landing gear fuselage attach bolt that is drilled with a grease fitting with an undrilled (no grease access) attach bolt, part number AN10–33 or NAS6610–42D (or FAA-approved equivalent part number). Accomplish this replacement in accordance with both Ayres Service Bulletin No. SB–AG–42, dated June 16, 1999, and the applicable maintenance manual.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a main landing gear fuselage attach bolt (that is drilled with a grease fitting), part number 21418T001 or 21418T005 (or FAA-approved equivalent part number).

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

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(e) All persons affected by this directive may obtain copies of the service information referred to herein upon request to the Ayres Corporation, P.O. Box 3090, One Ayres Way, Albany, Georgia 31706–3090; or may examine this service information at the FAA, Central Region, Office of the Regional Counsel, Room 506, 901 Locust, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 18, 1999.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30588 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney JT9D series turbofan engines. This proposal would require installation of an improved No. 4 bearing internal oil pressure tube, initial and repetitive inspections of the No. 4 bearing oil pressure tube for turbine exhaust case (TEC) strut clearance and alignment, and, if necessary, replacement with serviceable parts. This proposal is prompted by loss of integrity in the oil system, which allows oil to migrate into high temperature metal cavities in the turbine exhaust case and cause oil fires. The actions specified by the proposed AD are intended to prevent oil fires in and around the No. 4 bearing area, which could result in excessive growth of the sixth stage low pressure turbine (LPT) disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane.

DATES: Comments must be received by January 24, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ane-adcomment@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7147, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted 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–NE–25–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, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–25–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of oil fires in and around the No. 4 bearing area on Pratt & Whitney (PW) JT9D series turbofan engines. The investigation revealed that the oil fires were caused by loss of integrity in the oil system, which allows oil to migrate into high temperature metal cavities in the turbine exhaust case (TEC) and cause oil fires. The heat generated by the fire can cause excessive growth of the sixth stage low pressure turbine (LPT) disk. This condition, if not corrected, could result in oil fires in and around the No. 4 bearing area, which could result in excessive growth due to heat of the sixth stage low pressure turbine (LPT) disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane.

Service Information

The FAA has reviewed and approved the technical contents of PW Service Bulletins (SB) No. 5707, dated September 17, 1986, and JT9D–7R4–72–289, dated March 26, 1986, that describe procedures for installation of an improved No. 4 bearing internal oil pressure tube; and PW JT9D Engine Manuals, part numbers (P/Ns) 646028, 777210, 754459, and 785059, that describe TEC inspection procedures.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require installation of an improved No. 4 bearing internal oil pressure tube, initial and repetitive inspections of the No. 4 bearing oil pressure tube for TEC strut clearance and alignment, and, if necessary, replacement with serviceable

parts. The actions would be required to be accomplished in accordance with the SB described previously and in accordance with certain sections of the engine manuals.

Economic Analysis

There are approximately 2,310 engines of the affected design in the worldwide fleet. The FAA estimates that (1) 1,183 engines installed on airplanes of U.S. registry would be affected by this proposed AD, (2) it would take approximately 1 work hour per engine to accomplish the proposed actions, and (3) the average labor rate is $60 per work hour. Required parts would cost approximately $1,465 per engine. Review of purchase order documents indicate that approximately 1,547 pressure tubes have been sold to the airlines; therefore this action would affect only 763 engines. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,163,575.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order No. 13132, because it would not have a substantial direct effect 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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:

Pratt & Whitney: Docket No. 99–NE–25–AD.

Applicability: Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –7Q, –7Q3, –20, –20J, –59A, –70A, and –7R4D series turbofan engines, installed on but not limited to Boeing 747 and 767 and McDonnell Douglas DC–10 series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent oil fires in and around the No. 4 bearing area, which could result in excessive growth due to heat of the sixth stage low pressure turbine (LPT) disk, liberation of the sixth stage LPT disk, uncontained engine failure, and damage to the airplane, accomplish the following:

Installation of Improved Hardware

(a) At the next time when the ''N'' or ''P'' flange is disconnected after the effective date of this AD, install an improved No. 4 bearing internal oil pressure tube in accordance with PW Service Bulletin (SB) No. 5707, dated September 17, 1986, and SB JT9D–7R4–72–289, dated March 26, 1986.

Inspections

(b) Perform initial and repetitive inspections of the No. 4 bearing oil pressure tube and turbine exhaust case (TEC) strut for clearance and alignment, and, if necessary, replace with serviceable parts, in accordance with the applicable PW JT9D Engine Manuals, part numbers (P/Ns) 646028, 777210, and 754459, Turbine Exhaust Case Inspection 01, Section 72–53–01, and P/N 785059, Turbine Exhaust Case Inspection 01, Section 72–53–05, as follows:

(1) Initially inspect at the next time when the ''N'' or ''P'' flange is disconnected after the effective date of this AD.

(2) Thereafter, inspect at each time when the ''N'' or ''P'' flange is disconnected.

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

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

Ferry Flights

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

Issued in Burlington, Massachusetts, on October 18, 1999.

David A. Downey,

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

[FR Doc. 99–30630 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–132–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 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 Boeing Model 767 series airplanes. This proposal would require repetitive inspections of the side load underwing fitting bushings for broken sealant or bushing migration, and corrective action, if necessary. This proposal would also provide optional terminating action in lieu of repetitive inspections. This proposal is prompted by reports of migrated bushings and corrosion on the side load fittings. The actions specified by the proposed AD are intended to prevent corrosion in the side load underwing fitting, which could result in cracking and consequent reduced structural integrity of the wing strut.

DATES: Comments must be received by January 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–132–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.

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 99–NM–132–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–132–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of migrated bushings on the side load underwing fittings on Boeing Model 767 series airplanes. Where migrated bushings were found, several cases of corrosion of the side fitting lug bore were reported. Migration of the side load fitting bushing breaks the moisture barrier to the fitting bore, and can cause corrosion of the fitting bore. Bushing migration can also cause damage to the adjacent structure when the bushing contacts the adjacent structure as it migrates outward. This condition, if not corrected, could result in cracking and consequent reduced structural integrity of the wing strut.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57–0063, dated May 7, 1998, which describes procedures for repetitive detailed visual inspections of the side load underwing fitting bushings for broken sealant or bushing migration, and corrective action, if necessary. The corrective action includes reworking the side load fitting and installing a new bushing, if necessary. The service bulletin also describes optional terminating action to rework the side load fitting that may be accomplished in lieu of repetitive detailed visual inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect broken sealant or bushing migration of the side load fitting bushing before it represents a hazard to the airplane.

Differences Between the Proposed Rule and the Service Bulletin

Boeing Service Bulletin 767–57–0063, dated May 7, 1998, specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, as specified in paragraph (d) of this proposed AD, the Manager's approval letter must specifically reference this AD.

Cost Impact

There are approximately 663 airplanes of the affected design in the worldwide fleet. The FAA estimates that 312 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 inspection, 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 $74,880, 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.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 12 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour.

Required parts would cost approximately $1,500 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be $2,220 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order

12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this 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 99–NM–132–AD.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767–57–0063, dated May 7, 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 (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion in the side load underwing fitting, which could result in cracking and consequent reduced structural integrity of the wing strut, accomplish the following:

Initial Inspection

(a) Accomplish a detailed visual inspection of the side load underwing fitting to detect broken sealant or bushing migration, in accordance with Boeing Service Bulletin 767–57–0063, dated May 7, 1998, at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 10 years since the date of manufacture, or

(2) Within 3000 cycles or 18 months after the effective date of this AD, whichever occurs first.

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 intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Repetitive Inspections

(b) If no broken sealant or evidence of bushing migration is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 6 years.

Corrective Action

(c) If evidence of broken sealant or bushing migration is detected, prior to further flight, accomplish the corrective action specified in paragraph (c)(1) or (c)(2) of this AD, except as provided by paragraph (d) of this AD.

(1) Remove the bushing and inspect the side load fitting lug bore for corrosion as shown in Figure 3 of Boeing Service Bulletin 767–57–0063, dated May 7, 1998, and rework as specified in Figure 3 of the service bulletin.

(2) Reseal the bushing and service the side load fitting in accordance with Boeing Service Bulletin 767–57–0063, dated May 7, 1998. Within 3,000 flight cycles or 18 months, whichever occurs first, remove the bushing and inspect the side load fitting lug bore for corrosion as shown in Figure 3 of the service bulletin, and rework as specified in Figure 3 of the service bulletin.

(d) For airplanes on which broken sealant or evidence of bushing migration is detected: During the accomplishment of the actions specified in paragraphs(c)(1) or (c)(2) of this AD, if damage to the lug bore or fitting is found that is outside the limits specified in Boeing Service Bulletin 767–57–0063, dated May 7, 1998; prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this AD, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(e) Accomplishment of rework of the side load fitting in accordance with Figure 1 or Figure 3 of Boeing Service Bulletin 767–57–0063, dated May 7, 1998, constitutes terminating action for the requirements of this AD.

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

Note 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

(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.

Issued in Renton, Washington, on November 18, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30631 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–309–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes. This proposal would require manufacture and installation of a placard on the left-hand instrument panel in the cockpit to prohibit push-backs of the airplane while the engines are running. In lieu of accomplishing

the placard installation, this proposal would require repetitive installation of a new tow bracket sub-assembly that has the serial number and date of installation vibro etched on it. 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 fatigue failure of the towing bracket. Failure of the towing bracket could cause a towing vehicle to collide into the propeller while the airplane engines are running, and consequently, cause damage to the airplane, and injure ground personnel, flight crew, or passengers.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–309–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–309–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace (Jetstream) Model 4101 airplanes. The CAA advises that the shock strut of the nose landing gear (NLG) on the subject airplanes is approaching the 12,000 landing life limitations for NLG parts. The life limitations for some shock struts of the NLG are constrained by the towing bracket on the nose leg of the NLG. Fatigue failure of the towing bracket could cause a towing vehicle to collide into the propeller while the airplane engines are running, and consequently, cause damage to the airplane, and injure ground personnel, flight crew, or passengers.

Explanation of Relevant Service Information

British Aerospace has issued Jetstream Service Bulletin J41–11–024, dated May 11, 1999, which describes procedures for the manufacture and installation of a placard on the left-hand instrument panel in the cockpit to prohibit push-backs of the airplane while the engines are running. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–05–99, dated May 19, 1999, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

British Aerospace also has issued Jetstream Service Bulletin J41–32–070, dated September 14, 1999, which describes procedures for repetitive vibro etching the serial number and date of installation on the new tow bracket sub-assembly, and installing a new sub-assembly. The procedures may be accomplished in lieu of the placard installation described in Jetstream Service Bulletin J41–11–024. The CAA issued British airworthiness directive 004–05–99 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

Accomplishment of the actions specified in either of the service bulletins is intended to adequately address the identified unsafe condition.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Jetstream Service Bulletin J41–11–024 described previously. In lieu of the actions specified in that service bulletin, this proposed AD would require accomplishment of the actions specified in Jetstream Service Bulletin J41–32–070.

Cost Impact

The FAA estimates that 59 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed placard installation, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the placard installation proposed by this AD on U.S. operators is estimated to be $3,540, or $60 per airplane.

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

Should an operator elect to accomplish the optional action that would be provided by this AD action, it would take approximately 2 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. The cost of required parts would be approximately $733 per airplane. Based on these figures, the cost impact of the optional action would be $853 per airplane, per replacement cycle.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Docket 99–NM–309–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the towing bracket, which could cause a towing vehicle to collide into the propeller while the airplane engines are running, and consequently, could cause damage to the airplane, and injure ground personnel, flight crew, or passengers, accomplish the following:

Placard Installation

(a) Prior to the accumulation of 12,000 total landings on the shock strut of the nose landing gear (NLG), or within 5 days after the effective date of this AD, whichever occurs later: Except as provided by paragraph (b) of this AD, manufacture and install a placard on the left-hand instrument panel in the cockpit to prohibit push-backs with engines running, in accordance with Jetstream Alert Service Bulletin J41–11–024, dated May 11, 1999.

Repetitive Action

(b) In lieu of accomplishing the actions specified in paragraph (a) of this AD, at the time specified in paragraph (a) of this AD, vibro etch the serial number and date of installation on a new tow bracket sub-assembly; and install the new tow bracket sub-assembly, in accordance with Jetstream Service Bulletin J41–32–070, dated September 14, 1999. Repeat the vibro etch process and installation of a new sub-assembly thereafter at intervals not to exceed 12,000 landings on the shock strut of the NLG.

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 §§ 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 British airworthiness directive 004–05–99.

Issued in Renton, Washington, on November 18, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–30632 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–17]

Proposed Amendment of Class E Airspace; Puerto Rico, PR

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend Class E airspace at Puerto Rico, PR. This proposal would increase the size of the Puerto Rico, PR, Class E airspace area to include the airspace within Warning Areas W–370A, W–373A and W–373C, in order to facilitate the handling, reduce the coordination and increase the safety of United States military aircraft returning to Roosevelt Roads Naval Station below 5,500 feet mean sea level (MSL), which is the floor of the overlying San Juan Low Class E airspace area, in instrument meteorological conditions (IMC) from the Warning Areas.

DATES: Comments must be received on or before December 27, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–17, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasonsed regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ASO–17.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Puerto Rico, PR. This proposal would increase the size of the Puerto Rico, PR, Class E airspace areas to include the airspace within Warning Areas W–370A, W–373A and W–373C, in order to facilitate the handling, reduce the coordination and increase the safety of United States military aircraft returning to Roosevelt Roads Naval Station below 5,500 MSL, which is the floor of the overlying San Juan Low Class E airspace area, in IMC from the Warning Areas. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface 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 would be published subsequently in the Order.

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

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 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.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of 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.

* * * * *

ASO PR E5 Puerto Rico, PR [Revised]

San Juan Fernando Luis Ribas Dominicci Airport, PR
(Lat. 18°27′41″ N., long. 66°05′89″ W.)

That airspace extending upward from 1200 feet or more above the surface of the earth beginning at lat. 18°50′″ N., long. 68°00′″ W.; to lat. 18°45′23″ N., long. 66°54′58″ W.; to lat. 18°33′ N., long. 64°22′ W.; to lat. 17°20′ N., long. 64°22′ W.; to lat. 17°29′ N., long. 64°54′ W.; to lat. 17°29′53″ N., long. 64°55′39″ W.; to lat. 17°29′53″ N., long. 66°18′20″ W.; to lat. 17°44′53″ N., long. 66°16′49″ W.; to lat. 17°47′16″ N., long. 66°16′56″ W.; to lat. 17°42′ N., long. 68°00′ W.; to the point of beginning; excluding that airspace within Warning Area W–371; and that airspace extending upward from 2,700 feet above the surface of the earth beginning at lat. 18°33′″ N., long. 64°22′ W.; to lat. 18°25′23″ N., long. 62°52′ W.; to lat. 17°47′ N., long. 62°23′ W.; to lat. 17°22′ N., long. 62°59′ W.; to lat. 16°58′ N., long. 63°00′ W.; to lat. 17°20′ N., long. 64°22′ W.; to the point of beginning; and that airspace extending upward from 2,700 feet above the surface of the earth beginning at lat. 18°45′23″ N., long. 66°54′58″ W.; to lat. 19°00′ N., long. 66°10′ W.; to lat. 19°00′ N., long. 5°45′ W.; to lat. 18°45′ N., long. 64°22′ W.; to lat. 18°33′ N., long. 64°22′ W.; to the point of beginning.

* * * * *

Issued in College Park, Georgia, on November 4, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–30662 Filed 11–23–99 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 310

''Do-Not Call ''Provisions of Telemarketing Sales Rule; Meeting

AGENCY: Federal Trade Commission.

ACTION: Announcement of public forum on the ''Do-Not-Call'' provision of the telemarketing sales rule.

SUMMARY: The Federal Trade Commission plans to hold a public

forum on January 11, 2000, to discuss issues relating to the ''do-not-call'' provision of the Telemarketing Sales Rule, 16 CFR Part 310.

DATES: The public forum will be held on January 11, 2000, in Washington, DC, from 8:30 a.m. until 5:30 p.m. Notification of interest in participating in the forum must be submitted on or before December 10, 1999.

ADDRESSES: Notification of interest in participating in the public forum should be submitted in writing to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 238, Washington, DC 20580. The public forum will be held at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room 432, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Catherine C. Harrington-McBride (202) 326–2452 (email cmcbride@ftc.gov), Karen Leonard (202) 326–3597, (email kleonard@ftc.gov), or Carole I. Danielson (202) 326–3115 (email cdanielson@ftc.gov), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Section A. Background

On August 16, 1994, President Clinton signed into law the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''the Act''),[1] which directed the Commission to prescribe rules prohibiting deceptive and abusive telemarketing acts or practices. In response to this Congressional directive, the Commission promulgated its Telemarketing Sales Rule (''the Rule''), 16 CFR Part 310, which became effective on December 31, 1995.[2]

The Telemarketing Act directed the Commission to include in its rules ''a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of such consumer's right to privacy.'' [3] Section 310.4(b) of the Rule sets forth two prohibitions on sellers and telemarketers which were intended to effectuate this requirement of the Act. First, § 310.4(b)(1)(i) prohibits causing any telephone to ring, or engaging any person in telephone conversation, repeatedly or continuously with the intent to annoy, abuse, or harass any person at the called number.[4] The second provision in the Rule intended to limit unsolicited telephone calls is the ''do-not-call'' requirement set forth in § 310.4(b)(1)(ii). This section prohibits any telemarketer from initiating, or any seller from causing a telemarketer to initiate, an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive such a call made by or on behalf of the seller whose goods or services are being offered. This provision is modeled on a similar provision included in the FCC's regulations,[5] adopted pursuant to the Telephone Consumer Protection Act (''TCPA'').[6]

Although both the FTC and the FCC have similar regulations prohibiting sellers or telemarketers from calling persons who have stated that they do not wish to be called, there are differences in the enforcement of the TCPA and the Telemarketing Sales Rule. The Rule may be enforced by the Commission or the States.[7] In addition to injunctions, each violation can result in a court's assessment of civil penalties up to $11,000 per violation, or an order to pay redress or disgorgement under Section 13(b) of the FTC Act, 15 U.S.C. 53(b). By contrast, the TCPA ''do-not-call'' provisions primarily have been enforced by consumers. The TCPA provides a private right of action for a consumer who receives more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the FCC's regulation.[8] Such a plaintiff can recover the greater of $500 or actual damages.

Because of the differences in the agencies' ''do-not-call'' provisions, the Commission declined to make a blanket pronouncement that compliance with the TCPA's ''do-not-call'' procedures would constitute compliance with the Telemarketing Sales Rule.[9] Nonetheless, the Commission has clarified that sellers and telemarketers need compile only one list of consumers who wish not to be called in order to comply with the recordkeeping provisions of both the TCPA and the Rule.[10]

While much of the TSR takes aim against fraudulent telemarketing, an equally important goal of the TSR is to protect consumers' right to privacy. In the five years since the Rule became effective, consumers increasingly have become interested in choosing what information is available about them and with whom and under what circumstances that information may be shared. In response to these concerns, local telephone companies and others have begun to market products that allow consumers to screen out calls from telemarketers, for example, by playing a message stating that no telemarketing calls are accepted or by blocking all calls except those from specific numbers selected by the consumer. Many states have responded to consumer concerns by enacting ''no call'' legislation,[11] under which consumers may have their names placed on a list maintained by a centralized list-holder of persons who do not wish to receive telemarketing calls.[12] Sellers or telemarketers who call any of the persons on that list would be in violation of state law. Increased consumer awareness of the right to be placed on a ''do-not-call'' list also has resulted in the Commission receiving numerous consumer inquiries on how to stop receiving telemarketing calls and how to assert the right to sue an offending seller or telemarketer under the TCPA.[13]

During the year 2000, the Commission will be conducting a review of its Telemarketing Sales Rule.[14] Simultaneously with this rule review, the Commission intends to conduct a broader study of telemarketing. The planned result is a separate report on the technological, social, business, and

[1] 15 U.S.C. 6101 *et seq.*

[2] 60 FR 43842 (August 23, 1995).

[3] 15 U.S.C. 6102(a)(3)(A).

[4] This provision is modeled on a similar provision in the Fair Debt Collection Practices Act (''FDCPA''). 15 U.S.C. 1692(d)(5). The legislative history of the Telemarketing Act indicated Congress' intent that the Commission consider the FDCPA in establishing prohibited abusive telemarketing acts or practices. *See, e.g.,* H.R. Rep. No. 20, 103rd Cong., 1st Sess. at 8.

[5] 47 CFR 64.1200(a)–(f), 64.1200(e).

[6] 47 U.S.C. 227.

[7] *See* 15 U.S.C. 6102(c), 6103. In addition, a person who suffers more than $50,000 in actual damages has a private right of action under the Rule. *See* 15 U.S.C. 6104.

[8] *See* 47 U.S.C. 227(c)(5).

[9] 60 FR at 43855.

[10] *Id.*

[11] *See, e.g.!, Alabama, 1999 Ala. Acts 589; Alaska, 1996 Alaska Sess. Laws 142; Arkansas, 1999 Ark. Acts 1465; Florida, Fla. Stat. § 501.059; Georgia, Ga. Comp. R. & Regs. r. 515–14–1; Kentucky, 1999 Ky. Rev. Stat. Ann. § 367.46951 (Michie 1999); Oregon, 1999 Ore. Laws 564; Tennessee,1999 Tenn. Pub. Acts 478.*

[12] The idea of a central ''no-call'' list is not new. For many years, Direct Marketing Association (''DMA'') has maintained a no-call database called the ''Telephone Preference Service.'' Consumers may place their names and numbers on a list, which is provided to all DMA members. To remain in good standing with the DMA, its members agree to check the list regularly and remove from their call lists any person who has requested not to be called.

[13] FTC staff refers consumers to the FCC for assistance on how to assert their rights under the TCPA.

[14] The Telemarketing Act directs the Commission to conduct a review of the Rule and its impact on fraudulent telemarketing after 5 years following its promulgation, and to report the results to Congress. 15 U.S.C. 6108.

other forces that have shaped the practice of telemarketing over the past two decades. The report will also look forward, assessing emerging trends for the future. The Commission will publish a separate **Federal Register** notice shortly to solicit comments and opinions in connection with both the rule review and the broader report on the telemarketing industry. In addition to requesting written comments and academic studies, the Commission plans to hold a series of public forums to afford staff and interested parties an opportunity to explore relevant issues.

The first forum in this series will address the ''do-not-call'' issue. By devoting an entire forum to this single topic, the Commission staff expects that interested parties will have sufficient time to explore the many facets of this important topic. This forum will be held in advance of the deadline for submitting written comments in the overall rule review so that participants will be able to use the ''do-not-call'' discussion to advance alternative approaches, to gain deeper insight into the forces motivating the various interested parties, and to make their subsequent written comments more focused than they might otherwise be.

After analyzing the complete record of the rule review, which will include the information provided at all the forums as well as all written comments and academic studies, the Commission will determine whether to propose amendments to the ''do-not-call'' provision or any of the other Rule provisions. The Commission will also use the information gathered during the review process in its report on telemarketing.

Section B. Public Forum

The FTC staff will conduct a public forum to discuss the issues raised by the ''do-not-call'' requirement set forth in § 310.4(b)(1)(ii) of the Telemarketing Sales Rule. The purpose of the forum is to facilitate a discussion among members of industry, consumer groups, state regulators, and law enforcement agencies about issues raised by this provision, and possible solutions to any concerns raised in the forum.

Section C. Request To Participate

The FTC invites members of the public, industry, and other interested parties to participate in the forum. To be eligible to participate, you must file a request to participate by December 10, 1999. If the number of parties who request to participate in the forum is so large that including all requesters would inhibit effective discussion among participants, FTC staff will select as participants a limited number of parties to represent the relevant interests. Selection will be based on the following criteria:

1. The party submitted a request to participate by December 10, 1999.

2. The party's participation would promote the representation of a balance of interests at the forum.

3. The party's participation would promote the consideration and discussion of the issues to be presented in the forum.

4. The party has expertise in issues to be raised in the forum.

5. The party adequately reflects the views of the affected interest(s) which it purports to represent.

If it is necessary to limit the number of participants, those who requested to participate but were not selected will be afforded an opportunity, if at all possible, to present statements during a limited time period at the end of the session. The time allotted for these statements will be based on the amount of time necessary for discussion of the issues by the selected parties, and on the number of persons who wish to make statements.

Requesters will be notified as soon as possible after December 10, 1999, whether they have been selected to participate.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–30700 Filed 11–23–99; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Family Member Dental Plan

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the comprehensive CHAMPUS regulation pertaining to the Expanded Active Duty Dependents Benefit Plan. The new plan, and this proposed rule: places the responsibility for TRICARE Family Member Dental Plan (TFMDP) enrollment and a large portion of the appeals program on the dental plan contractor; allows the dental plan contractor to bill eligible dependents for plan premiums in certain circumstances; reduces the enrollment period from 24 to 12 months; excludes Reserve component members ordered to active duty in support of a contingency operation from the mandatory 12 month enrollment; simplifies enrollment types and exceptions; reduces cost-shares for certain enlisted grades; adds anesthesia as a covered benefit; incorporates legislative authority for calculating the method by which premiums may be raised and allowing premium reductions for certain enlisted grades; and reduces administrative burden by reducing redundant language, referencing language appearing in other CFR sections and removing language more appropriate to the actual contract. These improvements will provide Uniformed Service families with numerous quality of life benefits that will improve participation in the plan, significantly reduce enrollment errors and positively effect utilization of this important dental plan.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Address all comments concerning this proposed rule to TRICARE Management Activity/Special Contract Operations Branch, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Lt Col Brian W. Grassi, 303–676–3496.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Changes

The Basic Active Duty Dependents Dental Benefit Plan was implemented on August 1, 1987, allowing military personnel to voluntarily enroll their dependents in a basic dental health care plan. Under this plan, DoD shared the cost of the premium with the active duty service member. Although the plan was viewed as a major step in benefit enhancement for military families, there were still complaints that the enabling legislation was too restrictive in scope and that there should be expansion of services to better meet the dental needs of the Uniformed Service family.

Congress responded to these concerns by authorizing the Secretary of Defense to develop and implement an Expanded Active Duty Dependents Dental Benefit Plan (the Defense Authorization Act, Public Law 102–484, sec. 701). The provisions of this Act specified the expended benefit structure, as well as maximum monthly premiums for enrollees. Cost-sharing levels for the expanded benefits were left up to the discretion of the Secretary of Defense after consultation with the other Administering Secretaries. The provisions of this Act were implemented on April 1, 1993.

Thereafter, Congress granted legislative authority to allow the Secretary of Defense to expand the dental plan outside the United States and to provide one year of continued dental coverage for enrolled beneficiaries to service members who die while on active duty (The Defense Authorization Act, Public Law 103–337, sec. 703). In addition, the Congress granted subsequent legislative authority to allow the Secretary of Defense to waive or reduce the cost-shares in overseas locations (The Defense Authorization Act, Public Law 105–85, sec. 732).

In Fiscal Year 1999, the Congress authorized a methodology by which the enrollee's share of the premium could be increased. This methodology is tied to the lesser of the percent increase in the basic pay of active duty service members or the basic pay for statutory pay systems plus one-half percent. In authorizing language, the Secretary of Defense could apply this premium increase methodology as if it had been in place continuously since December 31, 1993. To allow for an expanded and more comprehensive benefit, the Department will apply this premium increase methodology as authorized. The language further instructed the Secretary of Defense to advise the Congress of any plans to reduce dental plan benefits and to wait one year, after notification, before any benefits could be reduced (The Defense Authorization Act, Public Law 105–261, sec. 701).

The legislative provisions have been codified in 10 U.S.C. Chapter 55, sec. 1076a, Dependents Dental Program, and are reflected in the regulatory provisions of this rule.

II. Programmatic Improvements

The below programmatic improvements will be effective once the follow-on TFMDP contract has been awarded and the performance period has begun. At the present time, the performance period is expected to begin on February 1, 2001.

A. Contractor Enrollment

Since the plan began, the Uniformed Services have administered the dental plan enrollment, disenrollment and eligibility determination functions. The complexities of the dental plan combined with a high turnover rate of relatively inexperienced Service personnel and other competing responsibilities, separate Service procedures, databases and data transfer processes, high cost and lengthy delays in software modifications, and Uniformed Service personnel downsizing, created the need for a centralized and uniform enrollment process. This can be best achieved by an experienced dental plan contractor and will allow active duty service members to contact one organization to enroll, disenroll, re-enroll and discuss other TFMDP benefit and claims adjudication issues. By allowing the contractor to administer the enrollment function across all of the Uniformed Services, enrollment becomes portable whereas the current system does not allow an active duty member from one Service to enroll through a separate Service. Contractor enrollment will also simplify the payroll deduction and eligibility determination process and reduce the possibility of waste and abuse at the local level. In addition, it maintains a stable, trained work force at the front end of the TFMDP and greatly improves customer service.

An added benefit to contractor enrollment will be the elimination of the current required Uniformed Service enrollment forms. The complex DD Form 2494, Active Duty Dependent Dental Plan Enrollment Form, and the DD Form 2494–1, Supplemental Active Duty Dependent Dental Plan Enrollment Form, will no longer be needed and will be replaced by a standard, simplified contractor enrollment form as well as telephonic and fax enrollment options.

Contractor enrollment has proven to be a success with the TRICARE Managed Care Support contractors as well as with contracted enrollment via the TRICARE Selected Reserve Dental Program and the Tricare Retiree Dental Program. The Uniformed Services will continue, as with the former dental plan and current TRICARE/CHAMPUS programs, to determine eligibility for the dental plan and process any changes regarding eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

B. Contractor Direct Billing

The dental plan is financed through premiums jointly paid by the Government and the active duty service member. The active duty service member's share of the premiums is deducted from their payroll accounts. In certain situations, otherwise eligible dependents are precluded from enrolling in the dental plan if their sponsor does not have an active payroll account nor has insufficient funds in that account. These eligible dependents include dependents of incarcerated sponsors and survivors. By allowing the contractor to directly bill these dependents for their premium share, dependents previously excluded from enrollment can now receive coverage. This improvement eliminates a previous enrollment termination provision in the regulation where eligibility for basic pay was a deciding criterion for continued enrollment in the dental plan.

C. Reduction in Mandatory Enrollment Period

A mandatory enrollment period is an essential factor behind Government and contractor actuarial estimates in developing the TFMDP premium and provides a guarantee to the contracting community that they will collect a certain amount of premiums for the potential benefit payout. The proposed regulation reduces the previous longstanding 24-month mandatory enrollment period to 12 months since this 24-month period precluded numerous, otherwise eligible, dependents from enrolling in the dental plan. These eligible dependents include those that are near the end of their active service and have new eligible dependents, enlisted service members who are outside of their re-enlistment window of opportunity, and Reserve/Guard personnel called to active duty for less than 24 months (such as Reserve/Guard personnel on active duty for training and special assignments). Reduction to a 12-month enrollment period for the TFMDP has a precedent with other TRICARE plans, to include the TRICARE Managed Care Prime option and the Tricare Selected Reserve Dental Program. By introducing this more liberal enrollment period, the proposed regulation also calls for a 12-month ''lock-out'' if the active duty service member disenrolls before completing the 12-month enrollment period or if the active duty service member fails to pay their premiums. A 12-month lock-out period also applies to a Reserve component member who disenrolls before completing the special mandatory enrollment period for Reserve component members ordered to active duty in support of a contingency operation. This ''lock-out'' period has a precedent with other commercial dental insurance plans as well as the TRICARE Managed Care Prime option, the TRICARE Selected Reserve Dental Program and the TRICARE Retiree Dental Program. ''Lock-out'' periods also discourage potential beneficiaries from enrolling in an insurance plan, receiving all of their benefit in a few months and then disenrolling without paying a full 12 months' worth of premiums.

Beneficiaries enrolled in the current dental plan at the time when TFMDP coverage begins must complete their two (2) year enrollment period established under that superceded plan except if one of the conditions for valid disenrollment applies. Once this

original two (2) year enrollment period is met, the active duty member may continue TFMDP enrollment on a month-to-month basis. A new one (1) year enrollment period will only be incurred if the active duty member disenrolls and attempts to re-enroll in the TFMDP at a later date.

D. Enrollment Period for Certain Reserve Component Sponsors

The proposed regulation provides that the 12-month enrollment period shall not apply to eligible dependents of Reserve component sponsors ordered to active duty for more than 30 days but less than 12 months (other than for training) in support of a contingency operation as defined in 10 U.S.C. sec. 101(a)(13). Orders may be issued under statutory authorities for recalling Reserve component members to active duty, but must specify that the member is serving in support of a specific contingency operation under the statutory definition. This disparate treatment for certain Reserve component members is necessary because of the involuntary nature of their call to active duty and statutory limitations on their periods of active duty.

By contrast, active duty members are enlisted, reenlisted or commissioned for periods of active duty longer than one year. The active duty member has the option to enroll eligible dependents at any time during that period of active duty prior to the last 12 months of service, and at a relatively constant premium cost. Similarly, other Reserve component members generally volunteer for call to active duty and serve for at least one year; therefore they will have the option to enroll family members at any time other than in the last 12 months of that service.

However Reserve component members ordered to active duty in support of a contingency operation are normally limited by statute to a period of active duty of 9 months or less. While 38 U.S.C. Chapter 43 provides that a Reserve component member who has coverage under a civilian employer sponsored dental program may elect to continue that coverage during a period of active duty, for up to 18 months; if serving for more than 30 days, the member may be required to pay the full premium cost with employer cost-sharing no longer required. Upon release from active duty, 38 U.S.C. Chapter 43, provides that the Reserve component member may be reinstated in his or her civilian employer sponsored program without a waiting period. Without an exception to the mandatory 12 month enrollment period for TFMDP, members who cannot afford to pay the full premium for continuing their civilian plan would be unable to provide dental insurance coverage for their family members while on active duty. This exclusion to the 12-month enrollment period is therefore necessary to preclude such prejudicial treatment of Reserve component members ordered to active duty for less than 12 months to support a contingency operation. In its place, a separate enrollment period is created for the Reserve component member.

E. Reduction in Cost-Shares for Certain Enlisted Pay Grades

Although certain cost-shares are mandated by law, the Secretary of Defense has the prerogative to adjust cost-shares for certain types of dental procedures. Available data shows that our lower-paid enlisted families are reluctant to pursue specialized dental care because of the amount of their cost-share. To allow greater participation and dental benefit utilization among our younger enlisted families, this proposed regulation would have a two-tiered maximum cost-share dependent on the active duty service member's pay grade. With the rates below, this reduction for enlisted service members does not have a measurable effect on the overall premium.

[In percent]

Covered services	Cost-share for pay grades E–1, E–2, E–3 and E–4	Cost-share for all other pay grades
Diagnostic	0	0
Preventive, except Sealants	0	0
Emergency Services	0	0
Sealants	20	20
Professional Consultations	20	20
Professional Visits	20	20
Post Surgical Services	20	20
Basic Restorative (example: amalgams, resins, stainless steel crowns)	20	20
Endodontic	30	40
Periodontic	30	40
Oral and Maxillofacial Surgery	30	40
General Anesthesia	40	40
Intravenous Sedation	50	50
Other Restorative (example: crowns, onlays, casts)	50	50
Prosthodontic	50	50
Medications	50	50
Orthodontic	50	50
Miscellaneous Services	50	50

A reduction in cost shares has been chosen over a reduction in premium rates for enlisted service members in these pay grades because the premium rates have traditionally been affordable as compared to similar dental benefits programs administered by commercial dental insurance plans and given the fact that the Government pays 60 percent of the total premium. As such, the greatest effect on participation and utilization can best be achieved through a reduction in cost-shares.

F. Simplification on Enrollment Options

Under the proposed rule, TFMDP enrollment options have been simplified to assist the beneficiary, Government, provider of care and the dental plan contractor. Under the prior dental plan, dependents were asked to choose from several different enrollment options

depending on whether they had children under the age of 4. With the advances in pediatric dentistry (pedodontics), dental care for children between the ages of 1 and 4 is highly recommended. As such, the dental plan contractor will offer sponsors the opportunity to enroll these particular dependents when eligibility information indicates a dependent is 1 year of age or older. Although there will continue to be two separate premiums, a ''single'' premium for one covered life and a ''family'' premium for more than one covered life, providing additional exceptions to this rule based on age will advance pediatric care among our beneficiary population, simplify enrollment processing by the dental plan contractor and promote greater understanding of enrollment options by all parties.

G. Addition of Anesthesia Services

Local anesthesia, in conjunction with other covered dental procedures, is considered integral to the procedure itself and has been covered for several years. Other anesthesia services were historically excluded due to their high cost. The proposed regulation allows the Department to add other types of anesthesia services to the TFMDP benefit package.

H. Appeals Plan

Under the TFMDP, the Department wishes to procure a responsive, simple, and two (or greater) tiered appeals program within the dental plan contractor's operation. We have had similar success with this approach under the TRICARE Selected Reserve Dental Program and the TRICARE Retiree Dental Program, where the contractors administer the first two levels of the appeals program, which are termed the initial determination and the reconsideration. Under the TFMDP, the appealing parties would appeal adverse decisions through the contractor's established appeal process where separate parties would perform the initial determination and reconsideration reviews (whether internal or external to the organization). the final level of review would be, as before, to the Department, subscribing to guidelines under the Formal Review and Hearing procedures listed in 32 CFR 199.10.

I. Plan Transition

The programmatic improvements are scheduled to take effect when the follow-on TFMDP contract to the current Expanded Active Duty Dependents Dental Plan contract is awarded and the performance period begins. Considering the magnitude of the planned improvements, the Department plans to ''phase-out'' operations under the former contractor and method of operation to accommodate late claims processing and to allow the Uniformed Services time to process retroactive enrollment and coverage information to assist our beneficiaries. This ''phase-out'' schedule will be jointly determined between the Department and the outgoing and incoming dental plan contractors.

III. Administrative Changes

The proposed regulation incorporates several administrative changes. There is revised language on Federal preemption of State and local laws that conforms the dental regulation language to reflect the Department's previous exercise of statutory authority in this area. Other changes include: widespread publication of premium rates; allowing the Department to modify the benefit package based on developments in common dental care practices and standard dental insurance plans; permitting the dental plan contractor to pay ''by report'' procedures by providing an additional allowance to the primary covered procedure; removing detailed descriptions of types of authorized providers in favor of more general language; updating dental terminology to be consistent with the American Dental Association's Council on Dental Care Program's Code on Dental Procedures and Nomenclature; and, reorganizing and adding language on the maximum amount payable by the TFMDP.

The proposed regulation incorporates plan name and other changes to reflect current terminology, such as outdated references to the former TRICARE Management Activity address, ''Active Duty Dependent Dental Plan'' and superceded regulations. It also reduces redundant language and reduces the overall size of the regulation through cross-references to applicable language appearing in other CFR sections. This includes references to appeals, fraud and abuse, eligibility, and adjunctive dental care as well as information on the former dental plans. Items that are more appropriate for inclusion in the actual contract statement of work have also been removed and transferred to that document. This includes equality of benefit processing, coordination of benefits, participating provider lists, Government review of billing practices, and how a Dental Explanation of Benefits should be structured. Finally, the regulation has been reorganized for better flow, ease of reading and understanding.

IV. Costs

The changes in the proposed regulation coincide with the upcoming recompetition of the TFMDP contract. As such, the Department plans to include these requirements in the request for proposal. By relaxing or eliminating some current contractual requirements and adding a greater number of eligible dependents, we anticipate that costs for the programmatic improvements can be met through contractor internal efficiencies and the competitive nature of the bid process and will result in affordable premiums comparable to what dental plan enrollees presently pay.

V. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any ''significant regulatory action'' defined as one that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This proposed rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this proposed rule are minor revisions to the existing regulation. Since this proposed rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.13 is revised to read as follows:

§ 199.13 TRICARE Family Member Dental Plan.

(a) *General provisions*—(1) *Purpose.* This section prescribes guidelines and policies for the delivery and administration of the TRICARE Family Member Dental Plan (TFMDP) of the Uniformed Service of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS) and the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA). The TFMDP is a premium based indemnity dental insurance coverage plan that is available to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven Uniformed Services and their voluntary decision to accept enrollment in the plan and cost share (when applicable) with the Government in the premium cost of the benefits. The TFMDP is authorized by 10 U.S.C. 1076a, Dependents' Dental Program, and this section was previously titled the ''Active Duty Dependents Dental Plan''.

(2) *Applicability*—(i) *Geographic scope.* (A) The TFMDP is applicable geographically within the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands. These areas are collectively referred to as the ''CONUS (or Continental United States) service area''.

(B) *Extension of the TFMDP to areas outside the CONUS service area.* In accordance with the authority cited in 10 U.S.C. 1076a(h), the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) may extend the TFMDP to areas other than those areas specified in paragraph (a)(2)(i)(A) of this section for the eligible dependents of active duty members of the Uniformed Services. These areas are collectively referred to as the ''OCONUS (or outside the Continental United States) service area''. In extending the TFMDP outside the CONUS service area, the ASD(HA), or designee, is authorized to establish program elements, methods of administration and payment rates and procedures to providers that are different from those in effect for the CONUS service area to the extent the ASD(HA), or designee, determines necessary for the effective and efficient operation of the TFMDP. This includes provisions for preauthorization of care if the needed services are not available in a Uniformed Service overseas dental treatment facility and payment by the Department of certain cost-shares (or co-payments) and other portions of a provider's billed charges. Other difference may occur based on limitations in the availability and capabilities of the Uniformed Service overseas dental treatment facility and a particular nation's civilian sector providers in certain areas. These differences include varying licensure and certification requirements of OCONUS providers, Uniformed Service provider selection criteria and local results of provider selection, referral, beneficiary pre-authorization and marketing procedures, and care for beneficiaries residing in distant areas. The Director, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) shall issue guidance, as necessary, to implement the provisions of this paragraph (a)(2)(i)(B). Beneficiaries will be eligible for the same TFMDP benefits in the OCONUS service area although services may not be available or accessible in all OCONUS countries.

(ii) *Agency.* The provisions of this section apply throughout the Department of Defense (DoD), the United States Coast Guard, the USPHS and NOAA.

(iii) *Exclusion of benefit services performed in military dental care facilities.* Except for emergency treatment, dental care provided outside the United States, and services incidental to noncovered services, beneficiaries enrolled in the TFMDP may not obtain those services that are benefits of the TFMDP in military dental care facilities, as long as those covered benefits are available for cost-sharing under the TFMDP. Enrolled beneficiaries may continue to obtain noncovered services from military dental care facilities subject to the provisions for space available care.

(3) *Authority and responsibility*—(i) *Legislative authority*— (A) *Joint regulations.* 10 U.S.C. 1076a authorizes the Secretary of Defense, in consultation with the Secretary of Health and Human Services, and the Secretary of Transportation, to prescribe regulations for the administration of the TFMDP.

(B) *Administration.* 10 U.S.C. 1073 authorizes the Secretary of Defense to administer the TFMDP for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction, the Secretary of Transportation to administer the TFMDP for the Coast Guard, when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services to administer the TFMDP for the Commissioned Corps of the NOAA and the USPHS.

(ii) *Organizational delegations and assignments*—(A) *Assistant Secretary of Defense (Health Affairs) (ASD(HA)).* The Secretary of Defense, by 32 CFR part 367, delegated authority to the ASD(HA) to provide policy guidance, management control, and coordination as required for all DoD health and medical resources and functional areas including health benefit programs. Implementing authority is contained in 32 CFR part 367. For additional implementing authority see § 199.1. Any guidelines or policy necessary for implementation of this § 199.13 shall be issued by the Director, OCHAMPUS.

(B) *Evidence of eligibility.* DoD, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a listing of persons eligible to receive benefits under the TFMDP.

(4) *Preemption of State and local laws.* (i) Pursuant to 10 U.S.C. 1103 and section 8025 (fourth proviso) of the Department of Defense Appropriations Act, 1994, DoD has determined that, in the administration of 10 U.S.C. chapter 55, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including, but not limited to, the assurance of uniform national health programs for military families and the operation of such programs at the lowest possible cost to DoD, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to the dental services contracts that implement this section.

(ii) Based on the determination set forth in paragraph (a)(4)(i) of this section, any State or local law relating to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery or financing methods is preempted and does not apply in connection with the TFMDP contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TFMDP contract. (However, DoD may, by contract, establish legal obligations on the part of the dental plan contractor to conform with requirements similar or identical to requirements of State or local laws or regulations.)

(iii) The preemption of State and local laws set forth in paragraph (a)(4)(ii) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods,

within the meaning of the statutes identified in paragraph (a)(4)(i) of this section. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees, or other payments are applicable to a broad range of business activity. For purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(5) *Plan funds.*—(i) *Funding sources.* The funds used by the TFMDP are appropriated funds furnished by the Congress through the annual appropriation acts for DoD, the Department of Health and Human Services and the Department of Transportation and funds collected by the Uniformed Services or contractor through payroll deductions or through direct billing as premium shares from enrolled beneficiaries.

(ii) *Disposition of funds.* TFMDP funds are paid by the Government (or in the case of direct billing, by the beneficiary) as premiums to an insurer, service, or prepaid dental care organization under a contract negotiated by the Director, OCHAMPUS, or a designee, under the provisions of the Federal Acquisition Regulation (FAR) (48 CFR chapter 1).

(iii) *Plan.* The Director, OCHAMPUS, or designee provides an insurance policy, service plan, or prepaid contract of benefits in accordance with those prescribed by law and regulation; as interpreted and adjudicated in accord with the policy, service plan, or contract and a dental benefits brochure; and as prescribed by requirements of the dental plan contractor's contract with the Government.

(iv) *Contracting out.* The method of delivery of the TFMDP is through a competitively procured contract. The Director, OCHAMPUS, or a designee, is responsible for negotiating, under provisions of the FAR, a contract for dental benefits insurance or prepayment that includes responsibility for:

(A) Development, publication, and enforcement of benefit policy, exclusions, and limitations in compliance with the law, regulation, and the contract provisions;

(B) Adjudicating and processing claims; and conducting related supporting activities, such as enrollment, disenrollment, collection of premiums, eligibility verification, provider relations, and beneficiary communications.

(6) *Role of Health Benefits Advisor (HBA).* The HBA is appointed (generally by the commander of an Uniformed Services medical treatment facility) to serve as an advisor to patients and staff in matters involving the TFMPD. The HBA may assist beneficiaries in applying for benefits, in the preparation of claims, and in their relations with OCHAMPUS and the dental plan contractor. However, the HBA is not responsible for the TFMPD's policies and procedures and has no authority to make benefit determinations or obligate the TFMPD's funds. Advice given to beneficiaries by HBAs as to determination of benefits or level of payment is not binding on OCHAMPUS or the dental plan contractor.

(7) *Right to information.* As a condition precedent to the provision of benefits hereunder, the Director, OCHAMPUS, or designee, shall be entitled to receive information from an authorized provider or other person, institution, or organization (including a local, State, or United States Government agency) providing services or supplies to the beneficiary for which claims for benefits are submitted. While establishing enrollment and eligibility, benefits, and benefit utilization and performance reporting information standards, the Government has established and does maintain a system of records for dental information under the TFMDP. By contract, the Government audits the adequacy and accuracy of the dental plan contractor's system of records and requires access to information and records to meet plan accountabilities, to assist in contractor surveillance and program integrity investigations and to audit OCONUS financial transactions where the Department has a financial stake. Such information and records may relate to attendance, testing, monitoring, examination, or diagnosis of dental disease or conditions; or treatment rendered; or services and supplies furnished to a beneficiary; and shall be necessary for the accurate and efficient administration and payment of benefits under this plan. To assist in claims adjudication, grievance and fraud investigations, and the appeals process, and before an interim or final determination can be made on a claim of benefits, a beneficiary or active duty service member must provide particular additional information relevant to the requested determination, when necessary. Failure to provide the requested information may result in denial of the claim and inability to effectively investigate the grievance or fraud or process the appeal. The recipient of such information shall in every case hold such records confidential except when:

(i) Disclosure of such information is necessary to the determination by a provider or the dental plan contractor of beneficiary enrollment or eligibility for coverage of specific services;

(ii) Disclosure of such information is authorized specifically by the beneficiary;

(iii) Disclosure is necessary to permit authorized Government officials to investigate and prosecute criminal actions;

(iv) Disclosure constitutes a routine use of a record which is compatible with the purpose for which it was collected. This includes a standard and acceptable business practice commonly used among dental insurers which is consistent with the principle of preserving confidentiality of personal information and detailed clinical data. For example, the release of utilization information for the purpose of determining eligibility for certain services, such as the number of dental prophylaxis procedures performed for a beneficiary, is authorized;

(v) Disclosure is pursuant to an order form a court of competent jurisdiction; or

(vi) Disclosure by the Director, OCHAMPUS, or designee, is for the purpose of determining the applicability of, and implementing the provisions of, other dental benefits coverage or entitlement.

(8) *Utilization review and quality assurance.* Claims submitted for benefits under the TFMDP are subject to review by the Director, OCHAMPUS, or designee, for quality of care and appropriate utilization. The Director, OCHAMPUS, or designee, is responsible for appropriate utilization review and quality assurance standards, norms, and criteria consistent with the level of benefits.

(b) *Definitions.* For most definitions applicable to the provisions of this section, refer to 199.2. The following definitions apply only to his section:

(1) *Assignment of benefits.* Acceptance by a nonparticipating provider of payment directly from the insurer while reserving the right to charge the beneficiary or active duty service member for any remaining amount of the fees for services which exceeds the prevailing fee allowance of the insurer.

(2) *Authoried provider.* A dentist, dental hygienist, or certified and licensed anesthetist specifically authorized to provide benefits under the TFMPD in paragraph (f) of this section.

(3) *Beneficiary.* A dependent of an active duty member who has been enrolled in the TFMDP, and has been determined to be eligible for benefits, as set forth in paragraph (c) of this section.

(4) *Beneficiary liability.* The legal obligation of a beneficiary, his or her estate, or responsible family member to pay for the costs of dental care or treatment received. Specifically, for the purposes of services and supplies covered by the TFMDP, beneficiary liability includes cost-sharing amounts or any amount above the prevailing fee determination by the insurer where the provider selected by the beneficiary is not a participating provider or a provider within an approved alternative delivery system. In cases where a nonparticipating provider does not accept assignment of benefits, beneficiaries may have to pay the nonparticipating provider in full at the time of treatment and seek reimbursement directly from the insurer for all or a portion of the nonparticipating provider's fee. Beneficiary liability also includes any expenses for services and supplies not covered by the TFMDP, less any available discount provided as a part of the insurer's agreement with an approved alternative delivery system.

(5) *By report.* Dental procedures which are authorized as benefits only in unusual circumstances requiring justification of exceptional conditions related to otherwise authorized procedures. These services are further defined in paragraph (e) of this section.

(6) *Contingency operation.* Defined in 10 U.S.C. 101(a)(13) as a military operation designated as a contingency operation by the Secretary of Defense or a military operation that results in the exercise of authorities for ordering Reserve component members to active duty without their consent and is therefore automatically a contingency operation.

(7) *Cost-share.* The amount of money for which the beneficiary (or active duty service member) is responsible in connection with otherwise covered dental services (other than disallowed amounts) as set forth in paragraph (e) of this section. A cost-share may also be referred to as a ''co-payment.''

(8) *Defense Enrollment Eligibility reporting System (DEERS).* The automated system that is composed of two phases:

(i) Enrolling all active duty and retired service members, their dependents, and the dependents of deceased service members; and

(ii) Verifying their eligibility for health care benefits in the direct care facilities and through the TFMDP.

(9) *Dental hygienist.* Practitioner in rendering complete oral prophylaxis services, applying medication, performing dental radiography, and providing dental education services with a certificate, associate degree, or bachelor's degree in the field, and licensed by an appropriate authority.

(10) *Dentist.* Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.) who is licensed to practice dentistry by an appropriate authority.

(11) *Diagnostic services.* Category of dental services including:

(i) Clinical oral examinations;

(ii) Radiographic examinations; and

(iii) Diagnostic laboratory tests and examinations provided in connection with other dental procedures authorized as benefits of the TFMDP and further defined in paragraph (e) of this section.

(12) *Endodontics.* The etiology, prevention, diagnosis, and treatment of diseases and injuries affecting the dental pulp, tooth root, and periapical tissue as further defined in paragraph (e) of this section.

(13) *Initial determination.* A formal written decision on a TFMDP claim, a request for TFMDP benefit [pre-determination, a request by a provider for approval as an authorized provider, or a decision suspending, excluding or terminating a provider as an authorized provider under the TFMFDP. Rejection of a claim or pre-determination, or of a request for benefit or provider authorization for failure to comply with administrative requirements, including failure to submit reasonably requested information, is not an initial determination. Responses to general or specific inquiries regarding TFMDP benefits are not initial determinations.

(14) *Nonparticipating provider.* A dentist or dental hygienist that furnished dental services to a TFMDP beneficiary, but who has not agreed to participate or to accept the insurer's fee allowances and applicable cost share as the total charge for the services. A nonparticipating provider looks to the beneficiary or active duty member for final responsibility for payment of his or her charge, but may accept payment (assignment of benefits) directly from the insurer or assist the beneficiary in filing the claim for reimbursement by the dental plan contractor. Where the nonparticipating provider does not accept payment directly from the insurer, the insurer pays the beneficiary or active duty member, not the provider.

(15) *Oral and maxillofacial surgery.* Surgical procedures performed in the oral cavity as further defined in paragraph (e) of this section.

(16) *Orthodontics.* The supervision, guidance, and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex as further defined in paragraph (e) of this section.

(17) *Participating provider.* A dentist or dental hygienist who has agreed to accept the insurer's reasonable fee allowances or other fee arrangements as the total charge (even though less than the actual billed amount), including provision for payment to the provider by the beneficiary (or active duty member) of any cost-share for covered services.

(18) *Party to the initial determination.* Includes the TFMDP, a beneficiary of the TFMDP and a participating provider of services whose interests have been adjudicated by the initial determination. In addition, a provider who has been denied approval as an authorized TFMDP provider is a party to that initial determination, as is a provider who is suspended, excluded or terminated as an authorized provider, unless the provider is excluded under another federal or federally funded program.

(19) *Periodontics.* The examination, diagnosis, and treatment of diseases affecting the supporting structures of the teeth as further defined in paragraph (e) of this section.

(20) *Preventive services.* Traditional prophylaxis including scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth as further defined in paragraph (e) of this section.

(21) *Prosthodontics.* The diagnosis, planning, making, insertion, adjustment, relinement, and repair of artificial devices intended for the replacement of missing teeth and associated tissues as further defined in paragraph (e) of this section.

(22) *Provider.* A dentist or dental hygienist as specified in paragraph (f) of this section. This term, when used in relation to OCONUS service area providers, may include other recognized professions authorized to furnish care under laws of that particular country.

(23) *Restorative services.* Restoration of teeth including those procedures commonly described as amalgam restorations, resin restorations, pin retention, and stainless steel crowns for primary teeth as further defined in paragraph (e) of this section.

(24) *Sealants.* A material designed for application on specified teeth to seal the surface irregularities to prevent ingress of oral fluids, food, and debris in order to prevent tooth decay.

(c) *Eligibility and enrollment*—(1) *General.* 10 U.S.C. 1076a, 1072(2)(A), (D), or (I) and 1072(6) set forth those persons who are eligible for voluntary enrollment in the TFMDP. A determination that a person is eligible for voluntary enrollment does not automatically entitle that person to benefit payments. The person must be enrolled in accordance with the provisions set forth in this section and meet any additional eligibility requirements in this part in order for dental benefits to be extended.

(2) *Eligibility.*—(i) *Person eligible (dependent).* A person who bears one of the following relationships to an active duty member (under a call or order that does not specify a period of thirty (30) days of less):

(A) *Spouse.* A lawful husband or wife, regardless of whether or not dependent upon the active duty member.

(B) *Child.* To be eligible, the child must be unmarried and meet the requirements set forth in § 199.3(b)(2)(iv)(A) and § 199.3(b)(2)(iv)(C).

(ii) *Determination of eligibility status and evidence of eligibility.*—(A) *Eligibility determination responsibility of the Uniformed Services.* Determination of a person's eligibility for the TFMDP is the responsibility of the active duty member's Uniformed Service. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, or designee, review the eligibility status. In such cases, a report on the result of the review and any action taken will be submitted to the Director, OCHAMPUS, or designee.

(B) *Procedures for determination of eligibility.* Uniformed Services identification cards do not distinguish eligibility for the TFMDP. Procedures for the determination of eligibility are identified in § 199.3(f)(2), except that Uniformed Services identification cards do not provide evidence of eligibility for the TFMDP. Although OCHAMPUS and the dental plan contractor must make determinations concerning a dependent's eligibility in order to ensure proper enrollment and proper disbursement of appropriated funds, ultimate responsibility for resolving a dependent's eligibility rests with the Uniformed Services.

(C) *Evidence of eligibility required.* Eligibility and enrollment in the TFMDP will be verified through the DEERS. Eligibility and enrollment information established and maintained in the DEERS file is the only acceptable evidence of TFMDP eligibility and enrollment. It is the responsibility of the active duty member or TFMDP beneficiary, parent, or legal representative, when appropriate, to provide adequate evidence for entry into the DEERS file to establish eligibility for the TFMDP, and to ensure that all changes in status that may effect eligibility are reported immediately to the appropriate Uniformed Service for action. Ineligibility for benefits is presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) *Enrollment—Previous plans*—(A) *Basic active duty dependents dental benefit plan.* The Basic Active Duty Dependents Dental Plan was effective from August 1, 1987, up to the date of implementation of the Expanded Active Duty Dependents Dental Benefit Plan. The Basic Active Duty Dependents Dental Benefit Plan terminated upon implementation of the expanded plan.

(B) *Expanded active duty dependents dental benefit plan.* The Expanded Active Duty Dependents Dental Benefit Plan was effective from August 1, 1993, up to the date of implementation of the TFMDP. The Expanded Active Duty Dependents Dental Benefit Plan terminates upon implementation of the TFMDP.

(ii) *TRICARE Family Member Dental Plan (TFMDP)*—(A) *Election of coverage.* (*1*) Except as provided in paragraph (c)(3)(ii)(A) (*2*) of this section, active duty members may voluntarily elect to enroll their eligible dependents following implementation of the TFMDP. In order to obtain TFMDP coverage, written or telephonic election by the active duty member must be made and will be accomplished by submission or telephonic completion of an application to the dental plan contractor. This election can also be accomplished via electronic means.

(*2*) Eligible dependents of active duty members enrolled in the Expanded Active Duty Dependents Dental Benefit Plan at the time of implementation of TFMDP will automatically be enrolled in TFMDP. No election to enroll in TFMDP will be required by the active duty member.

(B) *Premiums.* (*1*) Enrollment will be by either single or family premium as defined as follows:

(*i*) *Single premium.* One (1) covered eligible dependent.

(*ii*) *Family premium.* Two (2) or more covered eligible dependents. Under the family premium, all eligible dependents of the active duty member are enrolled.

(*2*) *Exceptions.* (*i*) An active duty member may elect to enroll only those eligible dependents residing in one location when the active duty member has eligible dependents residing in two or more geographically separate locations (*e.g.,* children living with a divorced spouse; a child attending college).

(*ii*) Instances where a dependent requires a hospital or special treatment environment (due to a medical, physical handicap, or mental condition) for dental care otherwise covered by the TFMDP, the dependent may be excluded from TFMDP enrollment and may continue to receive care from a military treatment facility.

(C) *Enrollment period*—(*1*) *General.* Enrollment of beneficiaries is for a period of one (1) year followed by month-to-month enrollment as long as the active duty member chooses to continue enrollment. Active duty members may enroll their family members in the TFMDP provided there is an intent to remain on active duty for a period of not less than one (1) year by the active duty member and the parent Uniformed Service. Family members enrolled in the TFMDP must remain enrolled for a minimum period of one (1) year unless one of the conditions for disenrollment specified in paragraph (c)(3)(ii)(E) of this section is met.

(*2*) *Reserve component members ordered to active duty in support of contingency operations.* The mandatory 12 month enrollment period does not apply to Reserve component members ordered to active duty (other than for training) in support of a contingency operation as designated by the Secretary of Defense. Affected Reserve component members may enroll in the TFMDP only if their orders specify that they are ordered to active duty in support of a contingency operation, as defined by 10 U.S.C., for a period of thirty-one (31) days or more. An affected Reserve component member must elect to enroll in TFMDP and complete the enrollment application within 30 days following entry on active duty. following enrollment, family members must remain enrolled, with the member paying premiums, until the end of the member's active duty period in support of the contingency operation or 12 months, whichever occurs first unless one of the conditions for disenrollment specified in paragraph (c)(3)(ii)(E) of this section is met.

(*3*) *Continuation of enrollment from Expanded Active Duty Dependents Dental Benefit Plan.* Beneficiaries enrolled in the Expanded Active Duty Dependents Dental Benefit Plan at the time when TFMDP coverage begins

must complete their two (2) year enrollment period established under this former plan except if one of the conditions for disenrollment specified in paragraph (c)(3)(ii)(E) of this section is met. Once this original two (2) year enrollment period is met, the active duty member may continue TFMDP enrollment on a month-to-month basis. A new one (1) year enrollment period will only be incurred if the active duty member disenrolls and attempts to re-enroll in the TFMDP at a later date.

(D) *Beginning dates of eligibility.* The beginning date of eligibility for TFMDP benefits is the first day of the month following the month in which the election of enrollment is completed, signed, and the enrollment and premium is received by the dental plan contractor, subject to a predetermined and publicized dental plan contractor monthly cut-off date. This includes any changes between single and family member premium coverage and coverage of newly eligible or enrolled dependents.

(E) *Changes in and termination of enrollment—(1) Changes in status of active duty member.* When the active duty member is separated, discharged, or retired, his or her dependents lose eligibility as of 11:59 p.m. on the last day of the month in which the change in status takes place. Eligible dependents of an active duty member serving a sentence of confinement in conjunction with a sentence of punitive discharge are still eligible for the TFMDP until such time as the active duty member's discharge is executed.

(*2*) *Continuation of eligibility for dependents of active duty members who die on active duty.* Eligible dependents of active duty members who die on or after October 1, 1993, while on active duty for a period of more than thirty (30) days and who are enrolled in the TFMDP on the date of the death of the active duty member shall be eligible for continued enrollment in the TFMDP for up to one (1) year from the date of the active duty member's death.

(*3*) *Changes in status of dependent.*—(*i*) *Divorce.* A spouse separated from an active duty member by a final divorce decree loses all eligibility based on his or her former marital relationship as of 11:59 p.m. of the last day of the month in which the divorce becomes final. The eligibility of the active duty member's own children (including adopted and eligible illegitimate children) is unaffected by the divorce. An unadopted stepchild, however, loses eligibility with the termination of the marriage, also as of 11:59 p.m. of the last day of the month in which the divorce becomes final.

(*ii*) *Annulment.* A spouse whose marriage to an active duty member is dissolved by annulment loses eligibility as of 11:59 p.m. of the last day of the month in which the court grants the annulment order. The fact that the annulment legally declares the entire marriage void from its inception does not affect the termination date of eligibility. When there are children, the eligibility of the active duty member's own children (including adopted and eligible illegitimate children) is unaffected by the annulment. An unadopted stepchild, however, loses eligibility with the annulment of the marriage, also as of 11:59 p.m. of the last day of the month in which the court grants the annulment order.

(*iii*) *Adoption.* A child of an active duty member who is adopted by a person, other than a person whose dependents are eligible for TFMDP benefits while the active duty member is living, thereby severing the legal relationship between the child and the active duty member, loses eligibility as of 11:59 p.m. of the last day of the month in which the adoption becomes final.

(*iv*) *Marriage of child.* A child of an active duty member who marries a person whose dependents are not eligible for the TFMDP, loses eligibility as of 11:59 p.m. on the last day of the month in which the marriage takes place. However, should the marriage be terminated by death, divorce, or annulment before the child is 21 years old, the child again becomes eligible for enrollment as a dependent as of 12:00 a.m. of the first day of the month following the month in which the occurrence takes place that terminates the marriage and continues up to age 21 if the child does not remarry before that time. If the marriage terminates after the child's 21st birthday, there is no reinstatement of eligibility.

(*v*) *Disabling illness or injury of child age 21 or 22 who has eligibility based on his or her student status.* A child 21 or 22 years old who is pursuing a full-time course of higher education and who, either during the school year or between semesters, suffers a disabling illness or injury with resultant inability to resume attendance at the institution remains eligible for the TFMDP for six (6) months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, the TFMDP can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child 21 or 22 years old in full-time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child 21 or 22 years old in student status does not have eligibility related to mental or physical incapacity as described in § 199.3(b)(2)(iv)(C)(*2*).

(*4*) *Other.*—(*1*) *Disenrollment because of no eligible beneficiaries.* When an active duty member ceases to have any eligible beneficiaries, enrollment is terminated.

(*ii*) *Option to disenroll as a result of a change in active duty station.* When an active duty member transfers with beneficiaries to a duty station where space-available dental care for the beneficiaries is readily available at the local Uniformed Service dental treatment facility or to locations within the OCONUS service area, the active duty member may elect, within ninety (90) calendar days of the transfer, to disenroll from the TFMDP. If the active duty member is later transferred to a duty station where dental care for the dependents is not available in the local Uniformed Service dental treatment facility, the active duty member may re-enroll his or her dependents in the TFMDP *provided* the member, as of the date of reenrollment, otherwise meets the requirements for enrollment, including the intent to remain on active duty for a period of not less than one (1) year.

(*iii*) *Option to disenroll after an initial one (1) year enrollment.* When an active duty member's enrollment has been in effect for a continuous period of one (1) year, the active duty member may disenroll at any time following procedures as set up by the dental plan contractor. Subsequent to the disenrollment, the active duty member may reenroll for another minimum period of one (1) year. If, during any one (1) year enrollment period, the active duty member disenrolls for reasons other than those listed in this paragraph (c)(3)(ii)(E) or fails to make premium payments, the active duty member and beneficiaries will be subject to a lock-out period of twelve (12) months. Following this period of time, active duty members will be able to reenroll if they so choose. The twelve (12) month lock-out period applies to a Reserve component member who disenrolls for reasons other than those listed in this paragraph (c)(3)(ii)(E) or fails to make premium payments after the member has enrolled pursuant to paragraph (c)(3)(ii)(C) of this section.

(d) *Premium sharing*—(1) *General.* Active duty members enrolling in the TFMDP shall be required to pay a

portion of the premium cost for their dependents.

(2) *Proportion of active duty member's premium share.* The proportion of premium share to be paid by the active duty member is established by the ASD (HA), or designee, at not more than forty (40) percent of the total premium.

(3) *Provision for increases in active duty member's premium share.* (i) Although previously capped at $20 per month, the law has been amended to authorize the cap on active duty members' premiums to rise, effective as of January 1 of each year, by the percent equal to the lesser of:

(A) The percent by which the rates of basic pay of active duty members are increased on such date; or

(B) The sum of one-half percent and the percent computed under 5 U.S.C. 5303(a) for the increase in rates of basic pay for statutory pay systems for pay periods beginning on or after such date.

(ii) Under the legislation authorizing an increase in the monthly premium cap, the methodology for determining the active duty member's TFMDP premium will be applied as if the methodology had been in continuous use since December 31, 1993.

(4) *Reduction of premium share or cost-shares for enlisted members.* For enlisted members in pay grades E–1 through E–4, the ASD (HA) or designee, may reduce the monthly premium and/or cost-shares these active duty members pay for selected benefits as specified in paragraph (e)(3)(i) of this section.

(5) *Premium payment method.* The active duty member's premium share shall be deducted from the active duty member's basic pay, if sufficient pay is available. For dependents who are otherwise eligible for TFMDP benefits and whose sponsors do not receive such pay, or if sufficient pay is available, the premium payment may be collected pursuant to procedures established by the Director, OCHAMPUS, or designee.

(6) *Annual notification of premium rates.* TFMDP premium rates will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed by the dental plan contractor and the Government.

(e) *Plan benefits.*—(1) *General.*—(i) *Scope of benefits.* The TFMDP provides coverage for diagnostic and preventive services, sealants, restorative services, endodontics, periodontics, prosthodontics, orthodontics and oral and maxillofacial surgery.

(ii) *Authority to act for the plan.* The authority to make benefit determinations and authorize plan payments under the TFMDP rests primarily with the insurance, service plan, or prepayment dental plan contractor, subject to compliance with Federal law and regulation and Government contract provisions. The Director, OCHAMPUS, or designee, provides required benefit policy decisions resulting from changes in Federal law and regulation and appeal decisions. No other persons or agents (such as dentists or Uniformed Services HBAs) have such authority.

(iii) *Dental benefits brochure.*—(A) *Content.* The Director, OCHAMPUS, or designee, shall establish a comprehensive dental benefits brochure explaining the benefits of the plan in common lay terminology. The brochure shall include the limitations and exclusions and other benefit determination rules for administering the benefits in accordance with the law and this part. The brochure shall include the rules for adjudication and payment of claims, appealable issues, and appeal procedures in sufficient detail to serve as a common basis for interpretation and understanding of the rules by providers, beneficiaries, claims examiners, correspondence specialists, employees and representatives of other Government bodies, HBAs, and other interested parties. Any conflict, which may occur between the dental benefits brochure and law or regulation, shall be resolved in favor of law and regulation.

(b) *Distribution.* The dental benefits brochure will be available through the dental plan contractor and will be distributed with the assistance of the Uniformed Service HBAs and major personnel centers at Uniformed Service installations to all members enrolling their dependents.

(iv) *Alternative course of treatment policy.* The Director, OCHAMPUS, or designee, may establish, in accordance with generally accepted dental benefit practices, alternative course of treatment policy which provides reimbursement in instances where the dentist and beneficiary select a more expensive service, procedure, or course of treatment than is customarily provided. The alternative course of treatment policy must meet the following conditions:

(A) The service, procedure, or course of treatment must be consistent with sound professional standards of dental practice for the dental practice for the dental condition concerned.

(B) The service, procedure, or course of treatment must be a generally accepted alternative for a service or procedure covered by the TFMDP for the dental condition.

(C) Payment for the alternative service or procedure may not exceed the lower of the prevailing limits fro the alternative procedure, the prevailing limits or dental plan contractor's scheduled allowance for the otherwise authorized benefit procedure for which the alternative is substituted, or the actual charge for the alternative procedure.

(2) *Benefits.* The following benefits are defined (subject to the TFMDP's exclusions, limitations, and benefit determination rules approved by OCHAMPUS) using the American Dental Association's Council on Dental Care Program's Code on Dental Procedures and Nomenclature. The Director, OCHAMPUS, or designee, may modify these services, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(i) *Diagnostic and preventive services.* Benefits may be extended for those dental services described as oral examination, diagnostic, and preventive services defined as traditional prophylaxis (*i.e.*, scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth) when performed directly by dentists and dental hygienists as authorized under paragraph (f) of this section. These include the following categories of service:

(A) *Diagnostic services.* (*1*) Clinical oral examinations.

(*2*) Radiographs and diagnostic imaging.

(*3*) Tests and laboratory examinations.

(B) *Preventive services.* (*1*) Dental prophylaxis.

(*2*) Topical fluoride treatment (office procedure).

(*3*) Other preventive services.

(*4*) Space maintenance (passive appliances).

(ii) *General services and services ''by report''.* The following categories of services are authorized when performed directly by dentists or dental hygienists, as authorized under paragraph (f) of this section, only in unusual circumstances requiring justification of exceptional conditions directly related to otherwise authorized procedures. Use of the procedures may not result in the fragmentation of services normally included in a single procedure. The dental plan contractor may recognize a ''by report'' condition by providing additional allowance to the primary covered procedure instead of recognizing or permitting a distinct billing for the ''by report'' service. These include the following categories of general services:

(A) Unclassified treatment.

(B) Anesthesia.

(C) Professional consultation.
(D) Professional visits.
(E) Drugs.
(F) Miscellaneous services.

(iii) *Restorative services.* Benefits may be extended for restorative services when performed directly by dentists or dental hygienists, or under orders and supervision by dentists, as authorized under paragraph (f) of this section. These include the following categories of restorative services:

(A) Amalgam restorations.
(B) Resin restorations.
(C) Inlay and onlay restorations.
(D) Crowns.
(E) Other restorative services.

(iv) *Endodontic services.* Benefits may be extended for those dental services involved in treatment of diseases and injuries affecting the dental pulp, tooth root, and periapical tissue when performed directly by dentists as authorized under paragraph (f) of this section. These include the following categories of endodontic services:

(A) Pulp capping.
(B) Pulpotomy and pulpectomy.
(C) Endodontic therapy.
(D) Apexification and recalcification procedures.
(E) Apicoectomy and periradicular services.
(F) Other endodontic procedures.

(v) *Periodontic services.* Benefits may be extended for those dental services involved in prevention and treatment of diseases affecting the supporting structures of the teeth to include periodontal prophylaxis, gingivectomy or gingivoplasty, gingival curettage, etc., when performed directly by dentists as authorized under paragraph (f) of this section. These include the following categories of periodontic services:

(A) Surgical services.
(B) Periodontal services.
(C) Other periodontal services.

(vi) *Prosthodontic services.* Benefits may be extended for those dental services involved in fabrication, insertion, adjustment, relinement, and repair of artificial teeth and associated tissues to include removal of complete and partial dentures, fixed crowns and bridges when performed directly by dentists as authorized under paragraph (f) of this section. These include the following categories of prosthodontic services:

(A) *Prosthodontics (removable).*
(*1*) Complete and partial dentures.
(*2*) Adjustment to dentures.
(*3*) Repairs to complete and partial dentures.
(*4*) Denture rebase procedures.
(*5*) Denture reline procedures.
(*6*) Other removable prosthetic services.

(B) *Prosthodontics (fixed).*
(*1*) Fixed partial denture pontics.
(*2*) Fixed partial denture retainers.
(*3*) Other partial denture services.

(vii) *Orthodontic services.* Benefits may be extended for the supervision, guidance, and correction of growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations through the use of orthodontic procedures and devices when performed directly by dentists as authorized under paragraph (f) of this section to include in-process orthodontics. These include the following categories of orthodontic services:

(A) Limited orthodontic treatment.
(B) Minor treatment to control harmful habits.
(C) Interceptive orthodontic treatment.
(D) Comprehensive orthodontic treatment.
(E) Other orthodontic services.

(viii) *Oral and maxillofacial surgery services.* Benefits may be extended for basic surgical procedure of the extraction, reimplantation, stabilization and repositioning of teeth, alveoloplasties, incision and drainage of abscesses, suturing of wounds, biopsies, etc., when performed directly by dentists as authorized under paragraph (f) of this section. These include the following categories of oral and maxillofacial surgery services:

(A) Extractions.
(B) Surgical extractions.
(C) Other surgical procedures.
(D) Alveoloplasty—surgical preparation of ridge for denture.
(E) Surgical incision.
(F) Repair of traumatic wounds.
(G) Complicated suturing.
(H) Other repair procedures.

(ix) *Exclusion of adjunctive dental care.* Adjunctive dental care benefits are excluded under the TFMP. For further information on adjunctive dental care benefits under TRICARE/CAMPUS, see § 199.4(e)(10).

(x) *Benefit limitations and exclusions.* The Director, OCHAMPUS, or designee, may establish such exclusions and limitations as are consistent with those established by dental insurance and prepayment plans to control utilization and quality of care for the services and items covered by the TFMDP.

(xi) *Limitation on reduction of benefits.* If a reduction in benefits is planned, the Secretary of Defense, or designee, may not reduce TFMDP benefits without notifying the appropriate Congressional committees. If a reduction is approved, the Secretary of Defense, or designee, must wait one year from the date of notice before a benefit reduction can be implemented.

(3) *Cost-shares, liability and maximum coverage.* (i) *Cost-shares.* The following table lists maximum active duty member cost shares for covered services for participating and nonparticipating providers of care. These are percentages of the dental plan contractor's determined allowable amount that the active duty member or beneficiary must pay to these providers:

[In percent]

Covered services	Cost-share for pay grades E–1, E–2, E–3 and E–4	Cost-share for all other pay grades
Diagnostic	0	0
Preventive, except Sealants	0	0
Emergency Services	0	0
Sealants	20	20
Professional Consultations	20	20
Professional Visits	20	20
Post Surgical Services	20	20
Basic Restorative (example: amalgams, resins, stainless steel crowns)	20	20
Endodontic	30	40
Periodontic	30	40
Oral and Maxillofacial Surgery	30	40
General Anesthesia	40	40

[In percent]

Covered services	Cost-share for pay grades E–1, E–2, E–3 and E–4	Cost-share for all other pay grades
Intravenous Sedation	50	50
Other Restorative (example: crowns, onlays, casts)	50	50
Prostodontic	50	50
Medications	50	50
Orthodontic	50	50
Miscellaneous Services	50	50

(ii) *Dental plan contractor liability.* Where the dental program contractor is unable to identify a participating provider of care (*i.e.,* a general dentist) within thirty five (35) miles of the beneficiary's place of residence with appointment availability within twenty one (21) calendar days, the dental program contractor will reimburse the beneficiary, or active duty member, or the nonparticipating provider selected by the beneficiary within thirty five (35) miles of the beneficiary's place of residence at the level of the provider's usual fees less the applicable beneficiary cost share, if any.

(iii) *Maximum coverage amounts.* Beneficiaries are subject to an annual maximum coverage amount for non-orthodontic dental benefits and a lifetime maximum coverage amount for orthodontics as established by the ASD (HA) or designee.

(f) *Authorized providers*—(1) *General.* Enrolled beneficiaries may seek covered services from any provider who is fully licensed and approved to provide dental care or covered anesthesia benefits in the state where the provider is located. This includes licensed dental hygienists, practicing within the scope of their licensure, subject to any restriction a state licensure or legislative body imposes regarding their status as independent providers of care.

(2) *Authorized provider status does not guarantee payment of benefits.* The fact that a provider is ''authorized'' is not to be construed to mean that the TFMDP will automatically pay a claim for services or supplies provided by such a provider. The Director, OCHAMPUS, or designee, also must determine if the patient is an eligible beneficiary, whether the services or supplies billed are authorized and medically necessary, and whether any of the authorized exclusions of otherwise qualified providers presented in this section apply.

(3) *Utlization review and quality assurance.* Services and supplies furnished by providers of care shall be subject to utilization review and quality assurance standards, norms, and criteria established under the TFMDP. Utilization review and quality assurance assessments shall be performed under the TFMDP. Utilization review and quality assurance assessments shall be performed under the TFMDP consistent with the nature and level of benefits of the plan, and shall include analysis of the data and findings by the dental plan contractor from other dental accounts.

(4) *Provider required.* In order to be considered benefits, all services and supplies shall be rendered by, prescribed by, or furnished at the direction of, or on the order of a TFMDP authorized provide practicing within the scope of his or her license.

(5) *Participating provider.* An authorized provider may elect to participate for all TFMDP beneficiaries and accept the fee or charge determinations as established and made known to the provider by the dental plan contractor. The fee or charge determinations are binding upon the provider in accordance with the dental plan contractor's procedures for participation. The authorized provider may not participate on a claim-by-claim basis. The participating provider must agree to accept, within one day of a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is based on the lower of the actual charge or the dental plan contractor's determination of the allowable charge; however, payments to participating providers shall be in accordance with the methodology specified in paragraph (g)(2)(ii) of this section. Payment is made directly to the participating provider, and the participating provider may only charge the beneficiary the percent cost-share of the dental plan contractor's allowable charge for those benefit categories as specified in paragraph (e) of this section, in addition to the full charges for any services not authorized as benefits.

(6) *Nonparticipating provider.* An authorized provider may elect to not participate for all TFMDP beneficiaries and request the beneficiary or active duty member to pay any amount of the provider's billed charge in excess of the dental plan contractor's determination of allowable charges (to include the appropriate cost share). Neither the Government nor the dental plan contractor shall have any responsibility for any amounts over the allowable charges as determined by the dental plan contractor, except where the dental plan contractor is unable to identify a participating provider of care within thirty five (35) miles of the beneficiary's place of residence with appointment availabiltiy within twenty one (21) calendar days. In such instances of the nonavailability of a participating provider, the nonparticipating provider located within thirty five (35) miles of the beneficiary's place of residence shall be paid his or her usual fees (either by the beneficiary or the dental plan contractor if the beneficiary elected assignment of benefits), less the percent cost-share as specified in paragraph (e)(i) of this section.

(i) *Assignment of benefits.* A nonparticipating provider may accept assignment of benefits for claims (for beneficiaries certifying their wilingness to make such assignment of benefits) by filing the claims completed with the assistance of the beneficiary or active duty member for direct payment by the dental plan contractor to the provider.

(ii) *No assignment of benefits.* A nonparticipating provider for all beneficiaries may request that the beneficiary or active duty member file the claim directly with the dental plan contractor, making arrangements with the beneficiary or active duty member for direct payment by the beneficiary or active duty member.

(7) *Alternative delivery system*—(i) *General.* Alternative delivery systems may be established by the Director, OCHAMPUS, or designee, as authorized providers. Only dentists, dental hygienists and licensed anesthetists shall be authorized to provide or direct the provision of authorized services and supplies in an approved alternative delivery system.

(ii) *Defined.* An alternative delivery system may be any approved

arrangement for a preferred provider organization, capitation plan, dental health maintenance or clinic organization, or other contracted arrangement which is approved by OCHAMPUS in accordance with requirements and guidelines.

(iii) *Elective or exclusive arrangement.* Alternative delivery systems may be established by contract or other arrangement on either and elective or exclusive basis for beneficiary selection of participating and authorized providers in accordance with contractual requirements and guidelines.

(iv) *Provider election of participation.* Otherwise authorized providers must be provided with the opportunity of applying for participation in an alternative delivery system and of achieving participation status based on reasonable criteria for timeliness of application, quality of care, cost containment, geographic location, patient availability, and acceptance of reimbursement allowance.

(v) *Limitation on authorized providers.* Where exclusive alternative delivery systems are established, only providers participating in the alternative delivery system are authorized providers of care. In such instances, the TFMDP shall continue to pay beneficiary claims for services rendered by otherwise authorized providers in accordance with established rules for reimbursement of nonparticipating providers where the beneficiary has established a patient relationship with the nonparticipating provider prior to the TFMDP's proposal to subcontract with the alternative delivery system.

(vi) *Charge agreements.* Where the alternative delivery system employs a discounted fee-for-service reimbursement methodology or schedule of charges or rates which includes all or most dental services and procedures recognized by the American Dental Association's Council on Dental Care Program's Code on Dental Procedures and Nomenclature, the discounts or schedule of charges or rates for all dental services and procedures shall be extended by its participating providers to beneficiaries of the TFMDP as and incentive for beneficiary participation in the alternative delivery system.

(g) *Benefit payment.*—(1) *General.* TFMDP benefit payments are made either directly to the provider or to the beneficiary or active duty member, depending on the manner in which the claim is submitted or the terms of the subcontract of an alternative delivery system with the dental plan contractor.

(2) *Benefit payment.* Beneficiaries are not required to utilize participating providers. For beneficiaries who do use these participating providers, however, these providers shall not balance bill any amount in excess of the maximum payment allowed by the dental plan contractor for covered services. Beneficiaries using nonparticipating providers may be balance-billed amounts in excess of allowable charges. The following general requirements for the TFMDP benefit payment methodology shall be met, subject to modifications and exceptions approved by the Director, OCHAMPUS, or designee:

(i) Nonparticipating providers (or the beneficiaries or active duty members of unassigned claims) shall be reimbursed at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, subject to the exception listed in paragraph (e)(3)(ii) of this section, less any cost-share amount due for authorized services.

(ii) Participating providers shall be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state as to constitute a significant financial incentive for participation, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services.

(3) *Fraud, abuse, and conflict of interest.* The provisions of § 199.9 shall apply except for § 199.9(e). All references to ''CHAMPUS contractors'', ''CHAMPUS beneficiaries'' and ''CHAMPUS providers'' in § 199.9 shall be construed to mean the ''dental plan contractor'', ''TFDP beneficiaries'' and ''TFMDP providers'' respectively for the purposes of this section. Examples of fraud include situations in which ineligible persons not enrolled in the TFMDP obtain care and file claims for benefits under the name and identification of an enrolled beneficiary; or when providers submit claims for services and supplies not rendered to beneficiaries; or when a participating provider bills the beneficiary for amounts over the dental plan contractors's determination of allowable charges; or when a provider fails to collect the specified patient cost-share amount.

(h) *Appeal and hearing procedures.* The provisions of § 199.10 shall apply except where noted in this section. All references to ''CHAMPUS contractors'', ''CHAMPUS beneficiaries'', ''CHAMPUS participating providers'' and ''CHAMPUS Explanation of Benefits'' in § 199.10 shall be construed to mean the ''dental plan contractor'', ''TFMDP beneficiaries'', ''TFMDP participating providers'' and ''Dental Explanation of Benefits of DEOB'' respectively for the purposes of this section. References to ''OCAMPUSEUR'' in § 199.10 are not applicable to the TFMDP or this section.

(1) *General.* See § 199.10(a).

(i) *Initial determination*—(A) *Notice of initial determination and right to appeal.* See § 199.10(a)(1)(i).

(B) *Effect of initial determination.* See § 199.10(a)(1)(ii).

(B) *Participation in an appeal.* Participating in an appeal is limited to any party to the initial determination, including OCHAMPUS, the dental plan contractor, and authorized representatives of the parties. Any party to the initial determination, except OCHAMPUS and the dental plan contractor, may appeal an adverse determination. The appealing party is the party who actually files the appeal.

(A) *Parties to the initial determination.* See § 199.10(a)(2)(i) and § 199.10(a)(2)(i)(A), (B), (C) and (E). In addition, a third party other than the dental plan contractor, such as an insurance company, is not a party to the initial determination and is not entitled to appeal, even though it may have an indirect interest in the initial determination.

(B) *Representative.* See § 199.10(a)(2)(ii).

(iii) *Burden of proof.* See § 199.10(a)(3).

(iv) *Evidence in appeal and hearing cases.* See § 199.10(a)(4).

(v) *Late filing.* If a request for reconsideration, formal review, or hearing is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the dental plan contractor, or the Director, OCHAMPUS, or designee, that timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits. The decision of the Director, OCHAMPUS, or a designee, on the request for an exception to the filing requirement shall be final.

(vi) *Appealable issue.* See § 199.10(a)(6), § 199.10(a)(6)(i), § 199.10(a)(6)(iv), including § 199.10(a)(6)(iv) (A) and (C), and § 199.10(a)(6)(v) for an explanation and examples of nonappealable issues.

Other examples of issues that are not appealable under this section include:

(A) The amount of the dental plan contractor-determined allowable charge since the methodology constitutes a limitation on benefits under the provisions of this section.

(B) Certain other issues on the basis that the authority for the initial determination is not vested in OCHAMPUS. Such issues include but are not limited to the following examples:

(*1*) A determination of a person's enrollment in the TFMDP is the responsibility of the dental plan contractor and ultimate responsibility for resolving a beneficiary's enrollment rests with the dental plan contractor. Accordingly, a disputed question of fact concerning a beneficiary's enrollment will not be considered an appealable issue under the provisions of this section, but shall be resolved in accordance with paragraph (c) of this section and the dental plan contractor's enrollment policies and procedures.

(*2*) Decisions relating to the issuance of a nonavailability statement (NAS) in each case are made by the Uniformed Services. Disputes over the need for an NAS or a refusal to issue an NAS are not appealable under this section. The one exception is when a dispute arises over whether the facts of the case demonstrate a dental emergency for which an NAS is not required. Denial of payment in this one situation is an appealable issue.

(*3*) Any decision or action on the part of the dental plan contractor to include a provider in their network or to designate a provider as participating is not appealable under this section. Similarly, any decision or action on the part of the dental plan contractor to exclude a provider from their network or to deny participating provider status is not appealable under this section.

(vii) *Amount in dispute.* (A) *General.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this section, except as set forth or further explained in § 199.10(a)(7)(ii), (iii) and (iv).

(B) *Calculated amount.* The amount in dispute is calculated as the amount of money the dental plan contractor would pay if the services involved in the dispute were determined to be authorized benefits of the TFMDP. Examples of amounts of money that are excluded by this section from payments for authorized benefits include, but are not limited to:

(*1*) Amounts in excess of the dental plan contractor's-determined allowable charge.

(*2*) The beneficiary's cost-share amounts.

(*3*) Amounts that the beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(*4*) Amounts excluded under the provisions of § 199.8 of this part.

(viii) *Levels of appeal.* See § 199.10(a)(8)(i). Initials determinations involving the sanctioning (exclusion, suspension, or termination) of TFMDP providers shall be appealed directly to the hearing level.

(ix) *Appeal decision.* See § 199.10(a)(9).

(2) *Reconsideration.* See § 199.10(b).

(3) *Formal review.* See § 199.10(c).

(4) *Hearing.*—(i) *General.* See § 199.10(d) and § 199.10(d)(1) through (d)(5) and (d)(7) through (d)(12) for information on the hearing process.

(ii) *Authority of the hearing officer.* The hearing officer, in exercising the authority to conduct a hearing under this part, will be bound by 10 U.S.C., chapter 55, and this part. The hearing officer in addressing substantive, appealable issues shall be bound by the dental benefits brochure, policies, procedures, instructions and other guidelines issued by the ASD(HA), or a designee, or by the Director, OCHAMPUS, or a designee, in effect for the period in which the matter in dispute arose. A hearing officer may not establish or amend the dental benefits brochure, policy, procedures, instructions, or guidelines. However, the hearing officer may recommend reconsideration of the policy, procedures, instructions or guidelines by the ASD(HA), or a designee, when the final decision is issued in the case.

(5) *Final decision.* See § 199.10(e)(1) and § 199.10(e)(1)(i) for information on final decisions in the appeal and hearing process, with the exception that no recommended decision shall be referred for review by ASD(HA).

Dated: November 12, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–30072 Filed 11–23–99; 8:45 am]

BILLING CODE 5001–10–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99–7]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of inquiry.

SUMMARY: The Copyright Office of the Library of Congress is preparing to conduct proceedings to make recommendations in accordance with section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which was added by the Digital Millennium Copyright Act and which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. The purpose of this rulemaking proceeding is to determine whether there are classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses if they are prohibited from circumventing such technological measures. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit information and views on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by such prohibition.

DATES: Written comments are due by February 10, 2000. Reply comments are due by March 13, 2000.

ADDRESSES: Submissions by electronic mail should be made to ''1201@loc.gov''; see **SUPPLEMENTARY INFORMATION** section for file formats and other information about electronic filing. If delivered by hand, comments should be delivered to the Office of the General Counsel, Copyright Office, LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington DC. If delivered by mail, comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. See **SUPPLEMENTARY INFORMATION** section for information about formats of submissions.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or

Charlotte Douglass, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380; telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

1. Written Comments

The Copyright Office will be placing all comments and reply comments that are submitted in electronic form on its Website (http://lcweb.loc.gov/copyright/1201). Because of this, the Office prefers that comments and reply comments be submitted in electronic form, in one of the following formats:

If by electronic mail: Send to ''1201@loc.gov'' a message containing the name of the person making the submission, his or her title, organization, mailing address, telephone number, telefax number and e-mail address. The message should also identify the document clearly as either a comment or reply comment. The document itself must be sent as a MIME attachment, and must be in a single file in either Adobe Portable Document File (PDF) format (preferred), or in Microsoft Word Version 7.0 or earlier, or in WordPerfect 7 or earlier.

If by regular mail or hand delivery: Send, to the appropriate address listed above, two copies, each on a 3.5-inch write-protected diskette, labeled with the name of the person making the submission, his or her title and organization. The document itself must be in a single file in either Adobe Portable Document File (PDF) format (preferred), or in Microsoft Word Version 7.0 or earlier, or in WordPerfect Version 7 or earlier.

Anyone who is unable to submit a comment in electronic form should submit an original and fifteen paper copies by hand or by mail to the appropriate address listed above. It may not be feasible for the Office to place these comments on its website.

All written comments (in electronic or nonelectronic form) should contain the name of the person making the submission, his or her title, organization, mailing address, telephone number, telefax number and e-mail address.

2. Hearings and Further Comments

Following the receipt of reply comments, the Copyright Office will conduct hearings. The Office will then accept post-hearing written submissions that relate to matters addressed at the hearings. A hearing schedule will be announced in the future.

3. Mandate for Rulemaking Proceeding

On October 28, 1998, President Clinton signed into law the Digital Millennium Copyright Act, Pub. L. 105–304 (1998). Section 103 (subtitled ''Copyright Protection Systems and Copyright Management Information'') of Title I of the Act added a new Chapter 12 to title 17 United States Code, which among other things prohibits circumvention of access control technologies employed by or on behalf of copyright owners to protect their works. Specifically, new subsection 1201(a)(1)(A) provides, inter alia, that ''No person shall circumvent a technological measure that effectively controls access to a work protected under this title.'' Subparagraph (B) limits this prohibition. It provides that anticircumvention ''shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title'' as determined in this rulemaking. This prohibition on circumvention becomes effective two years after the date of enactment, on October 28, 2000.

During the 2-year period between the enactment and effective date of the provision, the Librarian of Congress must make the determination as to classes of works exempted from the prohibition. This determination will be made upon the recommendation of the Register of Copyrights in a rulemaking proceeding. The determination thus made will remain in effect during the succeeding three years. In making her recommendation, the Register of Copyrights is to consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on the Assistant Secretary's views. 17 U.S.C. 1201(a)(1)(C).

4. Background

The WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) require that Contracting Parties provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors (or, in the case of the WPPT, performers and producers of phonograms) use in connection with the exercise of their rights and that restrict acts which they have not authorized and are not permitted by law.

In fulfillment of these treaty obligations, Title I of the Digital Millennium Copyright Act makes it unlawful to defeat technological protections used by copyright owners to protect their works in digital environments, adding a new Chapter 12 to title 17, United States Code. Specifically, subsection (a)(1) of new section 1201 applies when a person who is not authorized by the copyright owner to gain access to a work seeks to do so by circumventing a technological measure put in place by the copyright owner to prevent access to the work. See Staff of House Committee on the Judiciary, 105th Cong., Section-By-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998, (hereafter House Manager's Report) (Representative Coble) 5 (Comm. Print 1998).

That section provides that ''No person shall circumvent a technological measure that effectively controls access to a work protected under this title.'' 17 U.S.C. 1201(a)(1)(A) (1998). The relevant terms are defined:

> [T]o ''circumvent a technological measure'' means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a technological measure, without the authority of the copyright owner; and (B) a technological measure ''effectively controls access to a work'' if the measure, in the ordinary course of its operation, requires the application of information, or a process or a treatment, with the authority of the copyright owner, to gain access to the work.

17 U.S.C. 1201(a)(3).

Congress found it appropriate to modify the prohibition to assure that the public will have continued ability to engage in noninfringing uses of copyrighted works, such as fair use. See H. R. Rep. No. 105–551, pt. 2, at 36 (1998) (hereinafter Commerce Comm. Report). To that end, the statute provides that:

> The prohibition contained in subparagraph (A) shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title, as determined under subparagraph (C).

17 U.S.C. 1201(a)(1)(B).

The prohibition against circumvention is subject to delayed implementation in order to permit determination whether users of particular classes of copyrighted works are likely to be adversely affected by the prohibition in their ability to make noninfringing uses. Within two years, upon the recommendation of the

Register of Copyrights in a rulemaking proceeding, the Librarian of Congress must determine whether to exempt certain classes of works (which he must identify) from the application of the anticircumvention prohibition due to such adverse effects.

Subparagraph (C) of section 1201(a)(1) provides that:

> During the 2-year period described in subparagraph(A), and during each succeeding 3-year period, the Librarian of Congress, upon the recommendation of the Register of Copyrights, who shall consult with the Assistant Secretary for Communications and Information of the Department of Commerce and report and comment on his or her views in making such recommendation, shall make the determination in a rulemaking proceeding on the record for purposes of subparagraph (B) of whether persons who are users of a copyrighted work are, or are likely to be in the succeeding 3-year period, adversely affected by the prohibition under subparagraph (A) in their ability to make noninfringing uses under this title of a particular class of copyrighted works.

17 U.S.C. 1201(a)(1)(C).

The Conference Report clarifies the procedure to be used in conducting the rulemaking:

> It is the intention of the conferees that, as is typical with other rulemaking under title 17, and in recognition of the expertise of the Copyright Office, the Register of Copyrights will conduct the rulemaking, including providing notice of the rulemaking, seeking comments from the public, consulting with the Assistant Secretary for Communications and Information of the Department of Commerce and any other agencies that are deemed appropriate, and recommending final regulations in the report to the Librarian.

H.R. Rep. No. 105–796, at 64 (1998).

Thus, the Register is to conduct a rulemaking proceeding, soliciting public comment and consulting with the Assistant Secretary of Commerce for Communications and Information, and make a recommendation to the Librarian, who by October 28, 2000, must make a determination whether any classes of copyrighted works should be exempt from the statutory prohibition against circumvention during the three years commencing on that date.

The primary responsibility of the Register and the Librarian in this respect is to assess whether the implementation of technological protection measures that effectively control access to copyrighted works is diminishing the ability of individuals to use copyrighted works in ways that are otherwise lawful. Commerce Comm. Report, at 37. As examples of technological protection measures in effect today, the Commerce Committee offered the use of ''password codes'' to control authorized access to computer programs, for example, or encryption or scrambling of cable programming, videocassettes, and CD-ROMs. *Id.*

Congress intended that the Register and Librarian solicit input that will enable them to consider a broad range of past or likely future adverse impacts. Thus, this notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public. The nature of the Librarian's inquiry is delineated in the statutory areas to be examined:

> (i) the availability for use of copyrighted works;
> (ii) the availability for use of works for nonprofit archival, preservation, and educational purposes;
> (iii) the impact that the prohibition on the circumvention of technological measures applied to copyrighted works has on criticism, comment, news reporting, teaching, scholarship, or research;
> (iv) the effect of circumvention of technological measures on the market for or value of copyrighted works; and
> (v) such other factors as the Librarian considers appropriate.

17 U.S.C. 1201(a)(1)(C).

Substantial Effect on Use

It is clear from the legislative history that a determination to exempt a class of works from the prohibition on circumvention must be based on a determination that the prohibition has a substantial adverse effect on noninfringing use of that particular class of works. The Commerce Committee noted that the rulemaking proceeding is to focus on ''distinct, verifiable, and measurable impacts, and should not be based upon *de minimis* impacts.'' Commerce Comm. Report, at 37. Similarly, the Manager's Report stated that ''[t]he focus of the rulemaking proceeding must remain on whether the prohibition on circumvention of technological protection measures (such as encryption or scrambling) has caused any substantial adverse impact on the ability of users to make non-infringing uses,'' and suggested that ''mere inconveniences, or individual cases * * * do not rise to the level of a substantial adverse impact.'' House Manager's Report, at 6.

Causal Connection

The legislative history also requires the Register and Librarian to disregard any adverse effects that are caused by factors other than the prohibition against circumvention. The House Manager's Report is instructive:

> The focus of the rulemaking proceeding must remain on whether the prohibition on circumvention of technological protection measures (such as encryption or scrambling) has caused any substantial adverse impact on the ability of users to make non-infringing uses. Adverse impacts that flow from other sources * * * or that are not clearly attributable to such a prohibition, are outside the scope of the rulemaking.

House Manager's Report, at 6. The House Commerce Committee came to a similar conclusion: ''Adverse impacts that flow from other sources, or that are not clearly attributable to implementation of a technological protection measure, are outside the scope of the rulemaking.'' Commerce Comm. Report, at 37.

Some technological protection measures may mitigate adverse effects. Along those lines, the Librarian must also seek information about positive impacts of technological access control measures. The House Manager's Report notes that:

> In assessing the impact of the implementation of technological measures, and of the law against their circumvention, the rule-making proceedings should consider the positive as well as the adverse effects of these technologies on the availability of copyrighted materials. The technological measures—such as encryption, scrambling, and electronic envelopes—that this bill protects can be deployed, not only to prevent piracy and other economically harmful unauthorized uses of copyrighted materials, but also to support new ways of disseminating copyrighted materials to users, and to safeguard the availability of legitimate uses of those materials by individuals.

House Manager's Report, at 6.

Another mitigating factor may arise when a work as to which the copyright owner has instituted a technological control is also available in formats that are not subject to technological protections. For example, a work may be available in electronic format only in encrypted form, but may also be available in traditional hard copy format which has no such technological restrictions on access. The availability without restriction in the latter format may alleviate any adverse effect that would otherwise result from the technological controls utilized in the electronic format. The Librarian is to consider the availability of works in such other formats. *Id.* at 7.

The requirements that proponents of an exemption demonstrate both causality and substantial adverse effects on noninfringing uses also apply to the determination whether users of works ''are likely to be'' affected adversely in the three years following the conclusion of the rulemaking. Proponents who are unable to satisfy those burdens in the

current rulemaking will have the opportunity to make their cases in each of the triennial proceedings that will succeed it.

Scope of ''Class of Copyrighted Works''

A major consideration is to determine how to define the scope of boundaries of a ''particular class'' of copyrighted works. This inquiry seeks to elicit information to assist the Librarian in addressing that ultimate question.

The House Manager's Report advises that the scope of ''class of works'' is narrower than the category of works set forth in 17 U.S.C. 102(a). For example, it notes that within the category of literary works, one finds prose journals, periodicals, and books as well as computer programs, and concludes that it is unlikely that the impact on prohibiting circumvention of access control technologies will be the same for scientific journals as it is for computer operating systems. Therefore, all of these types of literary works most likely would not fall within the same class of works for purposes of this section 1201(a)(1)(A) determination. *Id.* at 7. The Commerce Committee Report concurs that ''the 'particular class of copyrighted works' (should) be a narrow and focused subset of the broad categories of works of authorship than is (sic) identified in Section 102 of the Copyright Act (17 U.S.C. 102).'' Commerce Comm. Report, at 38.

Nevertheless, the Judiciary Committee cautioned against drawing the categories too narrowly, as would be its conclusion if, for example, particular genres of motion pictures were to be divided into thematic categories such as Westerns, comedies or live action dramas. House Manager's Report, at 7.

5. Specific Questions

The Office seeks comment on the following specific questions. Persons submitting comments need not address all questions, but are encouraged to respond to those as to which they have particular knowledge or information. Persons submitting comments are encouraged to submit concrete evidence, examples and data supporting their responses to these questions. Such submissions will carry greater weight than unsupported allegations and predictions.

In response to each question, persons submitting comments are requested to distinguish between (a) their response with respect to the current state of affairs, and (b) their response with respect to the state of affairs that is likely to exist during the period between October 28, 2000 and October 28, 2003. For example, in responding to Question No. 3, persons submitting comments are requested to state (a) what technological measures that effectively control access to copyrighted works exist today, and (b) what new technological measures that effectively control access to copyrighted works are likely to be introduced between October 28, 2000 and October 28, 2003. In discussing the state of affairs that is likely to exist during the period between October 28, 2000 and October 28, 2003, persons submitting comments should explain the basis for their projections.

A. Technological Measures

1. What technological measures that effectively control access to copyrighted works exist today?

2. Do different technological measures have different effects on the ability of users to make noninfringing uses? Can and should the Librarian take account of those different effects in determining whether to exempt any classes of works from the anticircumvention provisions of section 1201? If so, how? In determining what constitutes a class of works?

B. Availability of Works

3. How has the use of technological measures that effectively control access to copyrighted works affected the availability of such works to persons who are or desire to be lawful users of such works?

4. Are there specific works or classes of works that, because of the implementation of such technological measures, have become unavailable to persons who desire to be lawful users of such works? If so, identify those works or classes of works and explain how they have become unavailable.

5. Are there specific works or classes of works which, because of the implementation of such technological measures, have become less available to persons who desire to be lawful users of such works? If so, identify those works or classes of works, explain the ways in which they have become less available, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

6. If there are works that are available both in formats to which technological measures have been applied and in formats to which technological measures have not been applied, to what extent can the works in the latter formats substitute for the works in the formats to which technological measures have been applied?

7. Are there works or classes of works that are available only electronically and only in formats to which such technological measures have been applied? If so, what are they?

C. Availability of Works for Nonprofit Archival, Preservation, and Educational Purposes

8. Has the use of technological measures that effectively control access to copyrighted works affected the availability of such works for nonprofit archival purposes? If so, how? Are there specific works or classes of works that have been affected in this respect? If so, identify them, explain how they have been affected, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

9. Has the use of technological measures that effectively control access to copyrighted works created problems with respect to the preservation of such works? If so, how? Are there specific works or classes of works that have been affected in this respect? If so, identify them and explain how they have been affected.

10. Has the use of technological measures that effectively control access to copyrighted works affected the availability of such works for nonprofit educational purposes? If so, how? Are there specific works or classes of works that have been affected in this respect? If so, identify them, explain how they have been affected, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

11. For purposes of this rulemaking, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used for nonprofit archival, preservation, and/or educational purposes? (*E.g.,* ''new broadcasts'' may not be an exempted class of works, but ''news broadcasts used in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place of instruction,'' may be an exempted class.) Explain why or why not.

D. Impact on Criticism, Comment, News Reporting, Teaching, Scholarship, or Research

12. What impact has the use of technological measures that effectively control access to copyrighted works had on the ability of interested persons to engage in criticism, comment, news

reporting, teaching, scholarship, or research?

13. What impact has the use of technological measures that effectively control access to copyrighted works had on the ability of interested persons to engage in noninfringing uses of such works, including fair use and activities permitted by exemptions prescribed by law?

14. Are there specific works or classes of works with respect to which the ability of interested persons to engage in criticism, comment, news reporting, teaching, scholarship, or research has been hindered because of the implementation of such technological measures? If so, identify them, explain how such activities have been hindered, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

15. Are there specific works or classes of works with respect to which the ability of interested persons to engage in noninfringing uses has been hindered because of the implementation of such technological measures? If so, identify them, explain how such activities have been hindered, and explain whether those works or classes of works are also available in other formats to which such technological measures have not been applied.

16. For purposes of this rulemaking, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used for purposes of criticism, comment, news reporting, teaching, scholarship, or research? Explain why or why not.

17. For purposes of this rulemaking, in classifying works that are to be exempted from the prohibition against circumvention of technological measures that control access, should any classes of works be defined, in part, based on whether the works are being used in ways that do not constitute copyright infringement, e.g., as fair use or in a manner permitted by exemptions prescribed by law? Explain why or why not.

E. Effect of Circumvention on the Market for or Value of Copyrighted Works

18. In what ways can technological measures that effectively control access to copyrighted works be circumvented? How widespread is such circumvention?

19. Has such circumvention (or the likelihood of circumvention) had any impact on the price of copyrighted works? Please explain.

20. Has such circumvention (or the likelihood of circumvention) had any impact on the availability of copyrighted works? In particular formats or in all formats? Please explain.

21. Has such circumvention had any other impact on the marketing of copyrighted works? If so, please explain the impact and which works or classes of works have been affected.

22. Do the answers to any of these questions relating to the effect of circumvention on the market for or value of copyrighted works depend upon the class of work? Please explain.

F. Other Factors and Questions

23. For purposes of this rulemaking, what criteria should be used in determining what is a ''class'' of copyrighted works?

24. With respect to any adverse effect on use of or access to copyrighted works that has been identified in response to any of the preceding questions, is there an explanation for the adverse effect other than the presence of technological measures that effectively control access to copyrighted works?

25. Has the use of technological measures that effectively control access to copyrighted works resulted in making copyrighted works more widely available? Please explain.

26. Has the use of technological measures that effectively control access to copyrighted works resulted in facilitating lawful uses of copyrighted works?

27. Are there other factors that should be taken into account? If so, please identify and address those factors.

28. What other comments, if any, do you have?

29. Do you wish to testify at a hearing to be conducted by the Copyright Office in connection with this rulemaking?

Dated: November 15, 1999.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–30556 Filed 11–23–99; 8:45 am]

BILLING CODE 1410–30–P

POSTAL SERVICE

39 CFR Part 111

Standards Governing the Design of Curbside Mailboxes; Meeting

AGENCY: Postal Service.

ACTION: Notice of Meeting.

SUMMARY: The Postal Service will hold further meetings of a Consensus Committee to develop recommendations for revision of USPS STD 7A, which governs the design of curbside mailboxes. The committee will develop and adopt its recommendations through a consensus process. The committee will consist of persons who represent the interests affected by the proposed rule, including mailbox manufacturers, mailbox accessory manufacturers, and postal customers.

Meeting Dates: The third committee meeting is tentatively scheduled for January 12–13, 2000. The meeting tentatively scheduled for December 14–15, 1999 is canceled.

Meeting Place: U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Annamarie Gildea, (202) 268–3558.

SUPPLEMENTARY INFORMATION: Mail comments and all other communications regarding the committee to Annamarie Gildea, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Room 7142, Washington, DC 20260. Committee documents will be available for public inspection and copying between 9 a.m. and 4 p.m. weekdays at the address above. Entry into U.S. Postal Service Headquarters is controlled. Persons wishing to attend the next meeting must send a fax to Annamarie Gildea at 202–268–5293 no later than January 5, 2000 with the person's name and organizational affiliation, if any. For additional information regarding the USPS STD 7A Consensus Committee, see **Federal Register** Vol 64, No. 158, p. 44681 (August 17, 1999).

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–30377 Filed 11–23–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0196; FRL–6480–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a disapproval of revisions to the

California State Implementation Plan (SIP). These revisions concern the potential exemption of sources from applicable emission limits contained in certain source category specific rules when excess emissions occur during facility start-up and shutdown. EPA has evaluated these revisions and is proposing to disapprove them because they contain deficiencies that, if approved, would weaken the SIP.

DATES: Comments on this proposed action must be received in writing on or before December 9, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule (the Technical Support Document, or TSD, dated November 9, 1999) are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865. E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1202.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for disapproval is South Coast Air Quality Management District (SCAQMD) Rule 429—Startup and Shutdown Exemption Provisions for Oxides of Nitrogen. Rule 429 was submitted to EPA by the SCAQMD on January 28, 1992.

II. Background

This document addresses EPA's proposed action for South Coast Air Quality Management District (SCAQMD) Rule 429—Startup and Shutdown Exemption Provisions for Oxides of Nitrogen. SCAQMD adopted Rule 429 on December 21, 1990, and submitted it to EPA on January 28, 1992. Rule 429 was found to be complete on April 3, 1992, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V [1].

III. EPA Evaluation and Proposed Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the Clean Air Act (CAA) and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in EPA policy guidance documents. EPA policy on excess emissions occurring during start-up and shutdown is contained in a memorandum dated September 20, 1999, entitled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Start-up, and Shutdown'' (the Excess Emissions Policy). In general, the guidance document cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted rules meet Federal requirements, are fully enforceable, and strengthen or maintain the SIP.

There is currently no version of South Coast Air Quality Management District (SCAQMD) Rule 429—Startup and Shutdown Exemption Provisions for Oxides of Nitrogen in the SIP. The submitted rule includes the following provisions:

- Definitions of various terms used in the rule.
- General provisions establishing the applicability of the rule and requiring that facilities seeking relief under Rule 429 mitigate emissions to the extent practicable.
- Time limits on start-up and shutdown intervals and a maximum number of scheduled start-ups/shutdowns per year for each affected source category.
- Provisions describing the notification and recordkeeping requirements for facilities seeking relief under Rule 429.

SCAQMD Rule 429 requires that facilities seeking exemption for excess emissions give prior notification of scheduled start-ups and shutdowns. Exemptions are allowed only for excess emissions that occur during scheduled start-ups and shutdowns for which notification is given. Rule 429 also requires that records of certain process variables be maintained and kept on-site for a period of two years.

Under Section 110(l) of the CAA, EPA may not approve a SIP revision ''if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of [the Act].'' This provision serves to ensure that the State, in seeking a revision to its SIP, does not impair its compliance with the statutory mandates applicable to the SIP. One such requirement is Section 172(c)(1), which mandates that SIP provisions implement reasonably available control technology (RACT).

In order to clarify which excess emissions provisions are approvable as SIP revisions under the CAA, and to provide guidance to States and local air districts, the Agency recently reissued its policy. The Excess Emissions Policy states that EPA may approve SIP revisions providing source-category specific exemptions for excess emissions that occur during start-up and shutdown periods only if the source's control strategy is such that compliance with otherwise applicable emission limits is technologically infeasible during these periods. The policy also requires that the frequency and duration of the excess emissions be minimized to the maximum extent practicable. These requirements are based on Sections 110(l) and 172(c)(1) and are meant to ensure that the excess emissions provisions do not interfere with attainment, maintenance, or other applicable requirements.

The SCAQMD Staff Report (dated October 30, 1990) that provides the technical basis for Rule 429 fails to establish the technological necessity of the exemptions and, further, does not demonstrate that the exemption periods have been minimized. The source category specific rules from which Rule 429 provides exemption implement RACT for sources in those source categories. Therefore, exemption from those rules is allowable under Section 172(c)(1) only when the otherwise reasonably available control technologies are not reasonably available during start-up and shutdown. Further, in keeping with Section 110(l) of the CAA, EPA may approve into the SIP exemptions such as those provided under Rule 429 only if they do not interfere with attainment or maintenance. If Rule 429 excused only those excess emissions that are technologically unavoidable, then the Rule would be less likely to interfere with attainment. However, Rule 429 fails to include such a limitation.

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

An additional deficiency of Rule 429 is that it contains vague or contradictory language that makes it unclear when otherwise applicable emission limits would apply to a given source. These instances include sections (a)(5) and (b)(3) of the rule and are detailed in the TSD. Section 110(a)(2)(A) of the CAA requires that the emissions limitations included in SIPs be enforceable. Thus, Rule 429 violates Section 110(a)(2)(A) of the CAA and is not an approvable SIP revision.

In conclusion, rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP, and must conform with EPA policy in order to be approved by EPA. As described above, SCAQMD Rule 429 is deficient because it does not maintain or strengthen the SIP, and because its vague or contradictory language renders it unenforceable. SCAQMD Rule 429, if approved, would exempt certain sources from applicable emissions limits contained in the SIP. The CAA and EPA policy, under certain circumstances, allow for such exemptions. However, the exemptions provided by Rule 429 are not sufficiently limited and could result in exempted emissions that might threaten the NAAQS, PSD increments, or other air quality standards. Thus the submitted Rule 429 would, if approved, weaken the SIP. A more detailed discussion of EPA's evaluation of SCAQMD Rule 429 can be found in the TSD.

Because of the identified deficiencies, EPA cannot grant approval of SCAQMD Rule 429 under section 110(k)(3) and part D. Therefore, in order to maintain the SIP, EPA is proposing a disapproval of this rule.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would

constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 12, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–30613 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 612 and 613

RIN 3145–AA31 and –AA32

Revision of Freedom of Information Act and Privacy Act Regulations and Implementation of Electronic Freedom of Information Act Amendments of 1996

AGENCY: National Science Foundation.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed revisions of the Foundation's regulations under the Freedom of Information Act (FOIA) and Privacy Act. The new FOIA provisions implement the Electronic Freedom of Information Act Amendments of 1996, including revised time limit on response, negotiating with the requester, and expedited processing procedures. They make no changes in the figures currently used for calculating and charging fees under the FOIA. The Privacy Act regulations have been restructured for ease of use and outdated information eliminated.

DATES: Submit comments on or before December 27, 1999.

ADDRESSES: Address all comments concerning this proposed rule to D. Matthew Powell, Assistant General Counsel, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: D. Matthew Powell (703) 306–1060.

SUPPLEMENTARY INFORMATION:

Availability of Records and Information (45 CFR part 612) (FOIA Regulations)

This revision of part 612 incorporates changes to the language and structure of the regulations and also adds new provisions to implement the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231). New provisions implementing the amendments are found at § 612.2(b) (electronic reading rooms), § 612.5(b) (timing of responses), § 612.6(b) (deletion marking), § 612.6(c)(1) (volume estimation), § 612.10(b)(3) (format of disclosure), and § 612.10(b)(8) (electronic searches).

Privacy Act Regulations (45 CFR 613)

This revision of part 613 revises the structure of the regulations and makes them more consistent with the FOIA regulations. It applies the FOIA fee schedule for duplication of Privacy records which should eliminate copying fees for nearly all Privacy Act requesters. Verification procedures have been updated to include the use of a statement of identity under 28 U.S.C. 1746 and to allow for release of records to a third party in specified circumstances. The revision includes exemptions to protect from disclosure confidential sources of information compiled for enforcement of the Antarctic Conservation Act, and in investigations of scientific misconduct and personnel security clearances. It also eliminates references to out-of-date system notices.

Regulatory Flexibility Act, Unfunded Mandates Reform Act, Executive Order 12866, and Paperwork Reduction Act

For purposes of the Regulatory Flexibility Act (5 U.S.C. 601), the proposed rule will not have a significant economic effect on a substantial number of small entities; the proposed rule addresses the procedures to be followed when submitting or responding to requests for information under the Freedom of Information Act and Privacy Act. For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more. For purposes of Executive Order 12866, the proposed rule is not a significant regulatory action requiring review by the Office of Management and Budget. For the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 35) it has been determined that this proposed rulemaking does not impose any reporting or recordkeeping requirement on the public.

List of Subjects

45 CFR part 612

Administrative practice and procedure; Freedom of information

45 CFR part 613

Administrative practice and procedure; Privacy.

For the reasons stated in the preamble, the National Science Foundation proposes to amend 45 CFR Chapter VI as follows:

1. By revising Part 612 to read as follows:

PART 612—AVAILABILITY OF RECORDS AND INFORMATION

Sec.

612.1 General provisions.
612.2 Public reading room.
612.3 Requirements for making requests.
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Authority: 5 U.S.C. 552, as amended.

§ 612.1 General provisions

This part contains the rules that the National Science Foundation follows in

processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. Information routinely made available to the public as part of a regular Foundation activity (for example, program announcements and solicitations, summary of awarded proposals, statistical reports on U.S. science, news releases) may be provided to the public without reliance on this part. As a matter of policy, the Foundation also makes discretionary disclosures of records or information otherwise exempt under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. This policy, however, does not create any right enforceable in court. When individuals seek records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, NSF processes those requests under both NSF's Privacy regulations at part 613, and this part.

§ 612.2 Public reading room

(a) The Foundation maintains a public reading room located in the NSF Library at 4201 Wilson Boulevard, Suite 225, Arlington, Virginia, open during regular working hours Monday through Friday. It contains the records that the FOIA requires to be made regularly available for public inspection and copying and has computers and printers available for public use in accessing records. Also available for public inspection and copying are current subject matter indexes of reading room records.

(b) Information about FOIA and Privacy at NSF and copies of frequently requested FOIA releases are available online at <www.nsf.gov/pubinfo/foia.html>. Most NSF policy documents, staff instructions, manuals, and other publications that affect a member of the public, are available in electronic form through the ''Documents'' option on the tool bar on NSF's Home Page on the World Wide Web at <www.nsf.gov>.

§ 612.3 Requirements for making requests.

(a) *Where to send a request.* You may make a FOIA request for records of the National Science Foundation by writing directly to the FOIA Officer, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. For records maintained by the NSF Office of the Inspector General (OIG), you may write directly to the Office of Inspector General, National Science Foundation, 4201 Wilson Boulevard, Suite 1135, Arlington, VA 22230. The FOIA Officer will also forward requests for OIG records to that Office. Requests may also be sent by facsimile to (703) 306–0149 or by e-mail to foia@nsf.gov.

(b) *Form of request.* A FOIA request need not be in any particular format, but it must be in writing, include the requester's name and mailing address, and be clearly identified both on the envelope and in the letter, or in a facsimile or electronic mail message as a Freedom of Information Act or ''FOIA'' request. It must describe the records sought with sufficient specificity to permit identification, and include agreement to pay applicable fees as described in § 612.10. NSF is not obligated to act upon a request until it meets these procedural requirements.

(c)(1) If you are making a request for records about yourself and the records are not contained in a Privacy Act system of records, your request will be processed only under the FOIA, since the Privacy Act does not apply. If the records about you are contained in a Privacy Act system of records, NSF will respond with information on how to make a Privacy Act request (see NSF Privacy Act regulations at 45 CFR 613.2).

(2) If you are making a request for personal information about another individual, either a written authorization signed by that individual in accordance with § 613.2(f) of this chapter permitting disclosure of those records to you, or proof that that individual is deceased (for example, a copy of a death certificate or a published obituary) will help the agency process your request.

(d) *Description of records sought.* Your request must describe the records that you seek in enough detail to enable NSF personnel to locate them with a reasonable amount of effort. A record must have been created or obtained by NSF and under the control of NSF at the time of the request to be subject to the FOIA. NSF has no obligation under the FOIA to create, compile or obtain a record to satisfy a FOIA request. Whenever possible, your request should include specific descriptive information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. As a general rule, the more specific you are about the records or type of records that you want, the more likely the Foundation will be able to locate those records in response to your request, and the more likely fees will be reduced or eliminated. If NSF determines that your request does not reasonably describe records, you will be advised what additional information is needed to perfect your request or why your request is otherwise insufficient.

(e) *Agreement to pay fees.* Your request must state that you will promptly pay the total fees chargeable under this regulation or set a maximum amount you are willing to pay. NSF does not charge if fees total less than $25.00. If you seek a waiver of fees, please see § 612.10(k) for a discussion of the factors you must address. If you place an inadequate limit on the amount you will pay, or have failed to make payments for previous requests, NSF may require advance payment (see § 612.10(i)).

(f) *Receipt date.* A request that meets the requirements of this section will be considered received on the date it is received by the Office of the General Counsel or the Office of the Inspector General. In determining which records are responsive to a FOIA request, the Foundation will include only records in its possession as of the date of receipt.

(g) *Publications excluded.* For the purpose of public requests for records the term ''record'' does not include publications which are available to the public in the **Federal Register**, or by sale or free distribution. Such publications may be obtained from the Government Printing Office, the National Technical Information Service, the NSF Publications Clearinghouse PO Box 218, Jessup, MD 20794–0218, or through NSF's Home Page on the World Wide Web at <www.nsf.gov> ''Documents.'' Requests for such publications will be referred to or the requester informed of the appropriate source.

§ 612.4 Responding to requests.

(a) *Monitoring of requests.* The NSF Office of the General Counsel (OGC), or such other office as may be designated by the Director, will serve as the central office for administering these regulations. For records maintained by the Office of Inspector General, that Office will control incoming requests made directly or referred to it, dispatch response letters, and maintain administrative records. For all other records maintained by NSF, OGC (or such other office as may be designated by the Director) will control incoming requests, assign them to appropriate action offices, monitor compliance, consult with action offices on disclosure, approve necessary extensions, dispatch denial and other letters, and maintain administrative records.

(b) *Consultations and referrals.* When the Foundation receives a request for a record in its possession that originated with another agency or in which another agency has a substantial interest, it may decide that the other agency of the Federal Government is better able to determine whether the

record should or should not be released under the FOIA.

(1) If the Foundation determines that it is the agency best able to process the record in response to the request, then it will do so, after consultation with the other interested agencies where appropriate.

(2) If it determines that it is not the agency best able to process the record, then it will refer the request regarding that record (or portion of the record) to the agency that originated or has a substantial interest in the record in question (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(3) Where the Foundation reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated. Multiple requests involving unrelated matters will not be aggregated.

(c) *Notice of referral.* Whenever the Foundation refers all or any part of the responsibility for responding to a request to another agency, it ordinarily will notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred, unless such notification would disclose information otherwise exempt.

§ 612.5 Timing of responses to requests.

(a) *In general.* NSF ordinarily will initiate processing of requests according to their order of receipt.

(b) *Time for response.* The Foundation will make reasonable effort to act on a request within 20 days of when a request is received or perfected (excluding the date of receipt, weekends, and legal holidays). A request is perfected when you have reasonably described the records sought under § 612.3(d), agreed to pay fees under § 612.3(c), or otherwise met the fee requirements under § 612.10.

(c) *Unusual circumstances.* (1) Where the time limits for processing a request cannot be met because of unusual circumstances, the FOIA Officer will notify the requester as soon as practicable in writing of the unusual circumstances and may extend the response period for up to ten working days.

(2) Where the extension is for more than ten working days, the FOIA Officer will provide the requester with an opportunity either to modify the request so that it may be processed within the ten day extension period or to arrange an agreed upon alternative time period with the FOIA Officer for processing the request or a modified request.

(d) *Expedited processing.* (1) If you want to receive expedited processing you must submit a statement, certified to be true and correct to the best of your knowledge and belief, explaining in detail the basis for requesting expedited processing.

(2) Requests and appeals will be given expedited treatment whenever it is determined that a requester has demonstrated compelling need by presenting:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal government activity, if made by a person primarily engaged in disseminating information.

For example, a requester who is not a full-time member of the news media must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. Such requester also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally, and that the information sought has particular value that would be lost if not disseminated quickly.

(3) Within ten calendar days of receipt of a request for expedited processing, the FOIA Officer or OIG will decide whether to grant it, and will notify the requester of the decision orally or in writing. If a request for expedited treatment is granted, the request will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 612.6 Responses to requests.

(a) *Acknowledgment of requests.* The FOIA Officer will ordinarily send an acknowledgment of a FOIA request only if it is anticipated that a determination on release will not be possible within 20 working days.

(b) *Grants of requests.* Once the Foundation makes a determination to grant a request in whole or in part, it will notify the requester in writing. The Foundation will inform the requester in the notice of any applicable fee and will disclose records to the requester promptly on payment of applicable fees. Records disclosed in part will be marked or annotated to show both the amount and the location of the information deleted where practicable.

(c) *Denials of requests.* (1) Denials of FOIA requests will be made by the Office of the General Counsel, the Office of the Inspector General, or such other office as may be designated by the Director. The response letter will briefly set forth the reasons for the denial, including any FOIA exemption(s) applied by the Foundation in denying the request. It will also provide the name and title or position of the person responsible for the denial, will inform the requester of the right to appeal, and will, where appropriate, include an estimate of the volume of any requested materials withheld. An estimate need not be provided when the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

(2) Requesters can appeal an agency determination to withhold all or part of any requested record; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Act; a disapproval of a fee category claim by a requester; denial of a fee waiver or reduction; or a denial of a request for expedited treatment (see § 612.9).

§ 612.7 Exemptions.

(a) *Exemptions from disclosure.* The following types of records or information may be withheld as exempt in full or in part from mandatory public disclosure:

(1) *Exemption 1—5 U.S.C. 552(b)(1).* Records specifically authorized and properly classified pursuant to Executive Order to be kept secret in the interest of national defense or foreign policy. NSF does not have classifying authority and normally does not deal with classified materials.

(2) *Exemption 2—5 U.S.C. 552(b)(2).* Records related solely to the internal personnel rules and practices of NSF. This exemption primarily protects information that if released would allow the recipient to circumvent a statute or agency regulation. Administrative information such as rules relating to the work hours, leave, and working conditions of NSF personnel, or similar matters, can be disclosed to the extent that no harm would be caused to the functions to which the information pertains. Examples of records exempt from disclosure include, but are not limited to:

(i) Operating rules, guidelines, manuals on internal procedure, schedules and methods utilized by NSF investigators, inspectors, auditors and examiners.

(ii) Negotiating positions or limits at least until the execution of a contract (including a grant or cooperative agreement) or the completion of the action to which the negotiating positions were applicable. They may also be exempt pursuant to other provisions of this section.

(iii) Information relating to position management and manpower utilization, such as internal staffing plans, authorizations or controls, or involved in determination of the qualifications of candidates for employment, advancement, or promotion including examination questions and answers.

(iv) Computer software, the release of which would allow circumvention of a statute or NSF rules, regulations, orders, manuals, directives, instructions, or procedures; or the integrity and security of data systems.

(3) *Exemption 3—5 U.S.C. 552(b)(3).* Records specifically exempted from disclosure by another statute that either requires that the information be withheld in such a way that the agency has no discretion in the matter; or establishes particular criteria for withholding or refers to particular types of information to be withheld. Examples of records exempt from disclosure include, but are not limited to:

(i) Trade secrets, processes, operations, style of work, or apparatus; or the confidential statistical data, type, amount, or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation or association, 18 U.S.C. 1905;

(ii) Records that disclose any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license), 35 U.S.C. 205;

(iii) Contractor proposals not specifically set forth or incorporated by reference into a contract, 41 U.S.C. 253b(m);

(iv) Information protected by the Procurement Integrity Act, 41 U.S.C. 423.

(4) *Exemption 4—5 U.S.C. 552(b)(4).* Trade secrets and commercial or financial information obtained from a person, and privileged or confidential. Information subject to this exemption is that customarily held in confidence by the originator(s), including nonprofit organizations and their employees. Release of such information is likely to cause substantial harm to the competitive position of the originator or submitter, or impair the Foundation's ability to obtain such information in the future. NSF will process information potentially exempted from disclosure by Exemption 4 under section 612.8. Examples of information exempt from disclosure include, but are not limited to:

(i) Information received in confidence, such as grant applications, fellowship applications, and research proposals prior to award;

(ii) Confidential scientific and manufacturing processes or developments, and technical, scientific, statistical data or other information developed by a grantee.

(iii) Technical, scientific, or statistical data, and commercial or financial information privileged or received in confidence from an existing or potential contractor or subcontractor, in connection with bids, proposals, or contracts, concerning contract performance, income, profits, losses, and expenditures, as well as trade secrets, inventions, discoveries, or other proprietary data. When the provisions of 41 U.S.C. 253b(m) or 41 U.S.C. 423 are met, certain proprietary and source selection information may also be withheld under Exemption 3.

(iv) Confidential proprietary information submitted on a voluntary basis.

(v) Statements or information collected in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(5) *Exemption 5—5 U.S.C. 552(b)(5).* Inter-agency or intra-agency memoranda or letters which would not be available by law to a private party in litigation with NSF. Factual material contained in such records will be considered for release if it can be reasonably segregated and is not otherwise exempt. Examples of records exempt from disclosure include, but are not limited to:

(i) Reports, memoranda, correspondence, workpapers, minutes of meetings, and staff papers, containing evaluations, advice, opinions, suggestions, or other deliberative material that are prepared for use within NSF or within the Executive Branch of the Government by agency personnel and others acting in a consultant or advisory capacity;

(ii) Advance information on proposed NSF plans to procure, lease, or otherwise acquire, or dispose of materials, real estate, facilities, services or functions, when such information would provide undue or unfair competitive advantage to private interests or impede legitimate government functions;

(iii) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest;

(iv) Records prepared for use in proceedings before any Federal or State court or administrative body;

(v) Evaluations of and comments on specific grant applications, research projects or proposals, or potential contractors and their products, whether made by NSF personnel or by external reviewers acting either individually or in panels, committees or similar groups;

(vi) Preliminary, draft or unapproved documents, such as opinions, recommendations, evaluations, decisions, or studies conducted or supported by NSF;

(vii) Proposed budget requests, and supporting projections used or arising in the preparation and/or execution of a budget; proposed annual and multi-year policy, priorities, program and financial plan and supporting papers;

(viii) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of NSF, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(6) *Exemption 6—5 U.S.C. 552(b)(6).* Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The exemption applies to living persons and to family members of a deceased person identified in a record. Information in such files which is not otherwise exempt from disclosure pursuant to other provisions of this section will be released to the subject or to his designated legal representative, and may be disclosed to others with the subject's written consent. Examples of records exempt from disclosure include, but are not limited to:

(i) Reports, records, and other materials pertaining to individual cases in which disciplinary or other administrative action has been or may be taken. Opinions and orders resulting from those administrative or disciplinary proceedings shall be disclosed without identifying details if used, cited, or relied upon as precedent.

(ii) Records compiled to evaluate or adjudicate the suitability of candidates for employment, and the eligibility of individuals (civilian or contractor

employees) for security clearances, or for access to classified information.

(iii) Reports and evaluations which reflect upon the qualifications or competence of individuals.

(iv) Personal information such as home addresses and telephone and facsimiles numbers, private e-mail addresses, social security numbers, dates of birth, marital status and the like.

(iv) The exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest.

(7) *Exemption 7—5 U.S.C. 552(b)(7).* Records or information compiled for civil or criminal law enforcement purposes, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may exempt from mandatory disclosure records not originally created, but later gathered, for law enforcement purposes.

(i) This exemption applies only to the extent that the production of such law enforcement records or information:

(A) Could reasonably be expected to interfere with enforcement proceedings;

(B) Would deprive a person of the right to a fair trial or an impartial adjudication;

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, or family members of a deceased person identified in a record;

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Federal Government, or a State, local, or foreign agency or authority, or any private institution, that furnished information on a confidential basis; and information furnished by a confidential source and obtained by a criminal law enforcement authority in a criminal investigation;

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or

(F) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples of records exempt from disclosure include, but are not limited to:

(A) The identity and statements of complainants or witnesses, or other material developed during the course of an investigation and all materials prepared in connection with related government litigation or adjudicative proceedings;

(B) The identity of firms or individuals investigated for alleged irregularities involving NSF grants, contracts or other matters when no indictment has been obtained, no civil action has been filed against them by the United States, or no government-wide public suspension or debarment has occurred.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by the NSF Officer of the Inspector General.

(iii) The exclusions contained in 5 U.S.C. 552(c)(1) and (2) may also apply to these records.

(8) *Exemption 8—5 U.S.C. 552(b)(8).* Records contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Exemption 9—5 U.S.C. 552(b)(9).* Records containing geological and geophysical information and data, including maps, concerning wells.

(b) *Deletion of exempt portions and identifying details.* Any reasonably segregable portion of a record will be provided to requesters after deletion of the portions which are exempt. Whenever any final opinion, order, or other materials required to be made available relates to a private party or parties and the release of the name(s) or other identifying details will constitute a clearly unwarranted invasion of personal privacy, the record shall be published or made available with such identifying details left blank, or shall be published or made available with obviously fictitious substitutes and with a notification such as the following: Names of parties and certain other identifying details have been removed (and fictitious names substituted) in order to prevent a clearly unwarranted invasion of the personal privacy of the individuals involved.

§ 612.8 Business information.

(a) *In general.* Business information obtained by the Foundation from a submitter of that information will be disclosed under the FOIA only under this section's procedures.

(b) *Definitions.* For purposes of this section:

(1) *Business Information* means commercial or financial information obtained by the Foundation from a submitter that may be protected from disclosure under Exemption 4 of the FOIA and § 612.7(a)(4).

(2) *Submitter* means any person or entity from whom the Foundation obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information must use good faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Foundation will provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information wherever required under this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information under paragraph (f) of this section. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information.

(e) *Where notice is required.* Notice will be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Foundation has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* NSF will allow a submitter a reasonable time, consistent with statutory requirements, to respond to the notice described in paragraph (d) of this section. If a submitter has any objection to disclosure, it must submit a detailed written statement. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, must show why the information is a trade secret, or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond within the time specified in the notice, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be a record subject to disclosure under the FOIA.

(g) *Notice of intent to disclose.* The Foundation will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to

disclose business information. Whenever it decides to disclose business information over the objection of a submitter, the Foundation will give the submitter written notice, which will include:

(1) A statement of the reason(s) why the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which will be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (g) of this section will not apply if:

(1) The Foundation determines that the information should not be disclosed (the Foundation protects from disclosure to third parties information about specific unfunded applications, including pending, withdrawn, or declined proposals);

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous, in which case the Foundation will, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, the Foundation will promptly notify the submitter(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Foundation will notify the requester(s).

§ 612.9 Appeals.

(a) *Appeals of denials.* You may appeal a denial of your request to the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the receipt of the denial (weekends, legal holidays, and the date of receipt excluded). Clearly mark your appeal letter and the envelope ''Freedom of Information Act Appeal.'' Your appeal letter must include a copy of your written request and the denial together with any written argument you wish to submit.

(b) *Responses to appeals.* A written decision on your appeal will be made by the General Counsel. A decision affirming an adverse determination in whole or in part will contain a statement of the reason(s) for the affirmance, including any FOIA exemption(s) applied, and will inform you of the FOIA provisions for court review of the decision. If the adverse determination is reversed or modified on appeal, in whole or in part, you will be notified in a written decision and your request will be reprocessed in accordance with that appeal decision.

(c) *When appeal is required.* If you wish to seek review by a court of any denial, you must first appeal it under this section.

§ 612.10 Fees

(a) *In general.* NSF will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (d) of this section or where a waiver or reduction of fees is granted under paragraph (k) of this section. If fees are applicable, NSF will itemize the amounts charged. NSF may collect all applicable fees before sending copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* means a request from or on behalf of a person who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, which can include furthering those interests through litigation. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because NSF has reasonable cause to doubt a requester's stated use, NSF will provide the requester a reasonable opportunity to submit further clarification.

(2) *Direct costs* means those expenses that an agency actually incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating duplication machinery. Not included in direct costs are overhead expenses such as the costs of space and heating or lighting of the facility in which the records are kept.

(3) *Duplication* means the making of a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, microform, audiovisual materials, or electronic records (for example, magnetic tape or disk) among others. NSF will honor a requester's specified preference of form or format of disclosure if the record is readily reproducible by NSF, with reasonable effort, in the requested form or format.

(4) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought to further scholarly research.

(5) *Noncommercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and made under the auspices of a qualifying institution and that the records are not sought for a commercial use or to promote any particular product or industry, but are sought to further scientific research.

(6) *Representative of the news media* or news media requester means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but NSF will also look to the past publication record of a requester in making this determination. To be in this category, a

requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news dissemination function of the requester will not be considered to be for a commercial use.

(7) *Review* means the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. It also includes processing any record for disclosure, for example, doing all that is necessary to redact it and prepare it for disclosure. Review costs are recoverable even if a record ultimately is not disclosed. Review time includes time spent considering any formal objection to disclosure made by a business submitter under § 612.8, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* means the process of looking for and retrieving records or information responsive to a request. It includes page by page or line by line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. NSF will ensure that searches are done in the most efficient and least expensive manner reasonably possible. For example, NSF will not search line by line where duplicating an entire document would be quicker and less expensive.

(c) *Fees.* In responding to FOIA requests, NSF will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section:

(1) *Search.* (i) Search fees will be charged for all requests—other than requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media—subject to the limitations of paragraph (d) of this section. NSF may charge for time spent searching even if responsive records are not located or are withheld entirely as exempt from disclosure.

(ii) Manual searches for records. Whenever feasible, NSF will charge at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) conducting the search. Where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical or all professional/executive), NSF has established an average rate for the range of grades typically involved. Routine search for records by clerical personnel are charged at $2.50 for each quarter hour. When a non-routine, non-clerical search by professional personnel is conducted (for example, where the task of determining which records fall within a request requires professional time) the charge is $7.50 for each quarter hour.

(iii) Computer searches of records. NSF will charge at the actual direct cost of conducting the search. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary (i.e., basic pay plus 16 percent) apportionable to the search. When NSF can establish a reasonable agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, the Foundation will do so and charge accordingly.

(2) *Duplication.* Duplication fees will be charged to all requesters, subject to the limitations of paragraph (d) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee will be 25 cents per page. For copies produced by computer, such as tapes or printouts, NSF will charge the direct costs, including operator time, of producing the copy. For other forms of duplication, NSF will charge the direct costs of that duplication.

(3) *Review.* Review fees will be charged to requesters who make a commercial use request. Review fees will be charged only for the initial record review—in other words, the review done when NSF determines whether an exemption applies to a particular record or record portion at the initial request level. NSF may charge for review even if a record ultimately is not disclosed. No charge will be made for review at the administrative appeal level for an exemption already applied. However, records or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable where it is made necessary by a change of circumstances. Review fees will be charged at the salary rate (basic pay plus 16%) of the employee(s) performing the review.

(d) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media.

(2) Except for requesters seeking records for a commercial use, NSF will provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent); and

(ii) The first two hours of search (or the cost equivalent).

(3) Whenever a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(4) The provisions of paragraphs (d) (2) and (3) of this section work together. This means that noncommercial requesters will be charged no fees unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages totals more than $25.00. Commercial requesters will not be charged unless the costs of search, review, and duplication total more than $25.00.

(e) *Notice of anticipated fees in excess of $25.00.* When NSF determines or estimates that the fees to be charged under this section will exceed $25.00, it will notify the requester of the actual or estimated amount of the fees, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, NSF will advise the requester that the estimated fee may be only a portion of the total fee. In cases in which a requester has been notified that actual or estimated fees exceed $25.00, the request will not be considered perfected and further work will not be done until the requester agrees to pay the anticipated total fee. Any such agreement should be memorialized in writing. A notice under this paragraph will offer the requester an opportunity to discuss the matter with Foundation personnel in order to reformulate the request to meet the requester's needs at a lower cost, if possible. If a requester fails to respond within 60 days of notice of actual or estimated fees with an agreement to pay those fees, NSF may administratively close the request.

(f) *Charges for other services.* Apart from the other provisions of this section, when NSF chooses as a matter of administrative discretion to provide a requested special service-such as certifying that records are true copies or sending them by other than ordinary mail-the direct costs of providing the service will be charged to the requester.

(g) *Charging interest.* NSF may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by NSF. NSF will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(h) *Aggregating requests.* Where NSF reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the agency may aggregate those requests and charge accordingly. NSF may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, NSF will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i) (2) and (3) of this section, NSF will not require the requester to make an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where NSF determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester that has a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged fee to any agency within 30 days of the date of billing, NSF may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before NSF begins to process a new request or continues to process a pending request from that requester.

(4) In cases in which NSF requires advance payment or payment due under paragraph (i)(2) or (3) of this section, the request will not be considered perfected and further work will not be done on it until the required payment is received.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily based fee schedule programs, NSF will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(k) *Waiver or reduction of fees.* (1) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (c) of this section where NSF determines, based on all available information, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) To determine whether the first fee waiver requirement is met, NSF will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government.''* The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed: Whether disclosure is ''likely to contribute'' to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. Disclosure of information already in the public domain, in either duplicative or substantially identical form, is unlikely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding.''* The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. A representative of the news media as defined in paragraph (b)(6) of this section will normally be presumed satisfy this consideration.

(iv) *The significance of the contribution to public understanding: Whether disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities.* The public's understanding of the subject in question must be enhanced by the disclosure to a significant extent as compared to the level of public understanding existing prior to the disclosure. NSF will make no value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is ''important'' enough to be made public.

(3) To determine whether the second fee waiver requirement is met, NSF will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* NSF will consider any commercial interest of the requester (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''* A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. NSF ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the requested records satisfy the requirements for a waiver of fees, a waiver will be granted for those records.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (k) (2) and (3) of this section, insofar as they apply to each request.

§ 612.11 Other rights and services.

Nothing in this part will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

2. By revising part 613 to read as follows:

PART 613—PRIVACY ACT REGULATIONS

Sec.
613.1 General provisions.
613.2 Requesting access to records.
613.3 Responding to requests for access to records.
613.4 Amendment of records.
613.5 Exemptions.
613.6 Other rights and services.

Authority: 5 U.S.C. 552a

§ 613.1 General provisions.

This part sets forth the National Science Foundation procedures under the Privacy Act of 1974. The rules in this part apply to all records in systems of records maintained by NSF that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves and request amendment or correction of those records. All Privacy Act requests for access to records are also processed under the Freedom of Information Act, 5 U.S.C. 552 (as provided in part 612 of this chapter), which gives requesters the benefit of both statutes. Notice of systems of records maintained by the National Science Foundation are published in the **Federal Register**.

§ 613.2 Requesting access to records.

(a) *Where to make a request.* You may make a request for access to NSF records about yourself by appearing in person at the National Science Foundation or by making a written request. If you choose to visit the Foundation, you must contact the NSF Security Desk and ask to speak with the Foundation's Privacy Act Officer in the Office of the General Counsel. Written requests should be sent to the NSF Privacy Act Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, VA 22230. Written requests are recommended, since in many cases it may take several days to determine whether a record exists, and additional time may be required for record(s) retrieval and processing.

(b) *Description of requested records.* You must describe the records that you seek in enough detail to enable NSF personnel to locate the system of records containing them with a reasonable amount of effort. Providing information about the purpose for which the information was collected, applicable time periods, and name or identifying number of each system of records in which you think records about you may be kept, will help speed the processing of your request. NSF publishes notices in the **Federal Register** that describe the systems of records maintained by the Foundation. The Office of the Federal Register publishes a biennial ''Privacy Act Compilation'' that includes NSF system notices. This compilation is available in many large reference and university libraries, and can be accessed electronically at the Government Printing Office's web site at <www.access.gpo.gov/su__docs/aces/PrivacyAct.shtml>.

(c) *Verification of identity.* When requesting access to records about yourself, NSF requires that you verify your identity in an appropriate fashion. Individuals appearing in person should be prepared to show reasonable picture identification such as driver's license, government or other employment identification card, or passport. Written requests must state your full name and current address. You must sign your request and your signature must either be notarized, or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain information about these required elements for requests from the NSF Privacy Act Officer, Suite 1265, 4201 Wilson Blvd, Arlington, VA 22230, or from the NSF Home Page under ''Public & Media Information—FOIA and Privacy Act'' at <http://www.nsf.gov/home/pubinfo/foia.htm≤. In order to help agency personnel in locating and identifying requested records, you may also, at your option, include your social security number, and/or date and place of birth. An individual reviewing his or her record(s) in person may be accompanied by an individual of his or her choice after signing a written statement authorizing that individual's presence. Individuals requesting or authorizing the disclosure of records to a third party must verify their identity and specifically name the third party and identify the information to be disclosed.

(d) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent, for access to records about that individual, you must establish:

(1) The identity of the record subject, by stating individual's name and current address and, at your option, the social security number and/or date and place of birth of the individual;

(2) Your own identity, as required in paragraph (c) of this section;

(3) That you are the parent or guardian of that individual, which you may prove by providing a copy of the individual's birth certificate showing your parentage or by providing a court order establishing your guardianship; and

(4) That you are acting on behalf of that individual in making the request.

(e) The procedures of paragraphs (a) through (d) of this section shall also apply to requests made pursuant to 5 U.S.C. 552a(c)(3).

(f) *Disclosure of records to agencies or persons other than the record subject.* Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except under the following circumstances:

(1) Records required to be made available by the Freedom of Information Act will be released in response to a request formulated in accordance with NSF regulations found at 45 CFR part 612.

(2) Records not required by the Freedom of Information Act to be released may be released, at the discretion of the Foundation, if the written consent of the individual to whom they pertain has been obtained as specified in paragraph (c) of this section, or if such release would be authorized under 5 U.S.C. 552a(b)(1) or (3) through (12).

§ 613.3 Responding to requests for access to records.

(a) *Timing of responses to requests.* The Foundation will make reasonable effort to act on a request for access to records within 20 days of its receipt by the Privacy Act Officer (excluding date of receipt, weekends, and legal holidays) or from the time any required identification is received by the Privacy Act Officer, whichever is later. In determining which records are responsive to a request, the Foundation will include only records in its possession as of the date of receipt. When the agency cannot complete processing of a request within 20 working days, the Foundation will send a letter explaining the delay and notifying the requester of the date by which processing is expected to be completed.

(b) *Authority to grant or deny requests.* The Privacy Act Officer, or his or her designee in the office with responsibility for the requested records, is authorized to grant or deny access to a Foundation record.

(c) *Granting access to records.* When a determination is made to grant a request for access in whole or part, the requester will be notified as soon as possible of the Foundation's decision. Where a requester has previously failed to pay a properly charged fee to any agency within 30 days of the date of

billing, NSF may require the requester to pay the full amount due, plus any applicable interest, and to make an advance payment of the full amount of any anticipated fee, before NSF begins to process a new request or continues to process a pending request from that requester.

(1) *Requests made in person.* When a request is made in person, if the records can be found, and reviewed for access without unreasonable disruption of agency operations, the Foundation may disclose the records to the requester directly upon payment of any applicable fee. A written record should be made documenting the granting of the request. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(2) *Requests made in writing.* The Foundation will send the records to the requester promptly upon payment of any applicable fee.

(d) *Denying access to records.* The requester will be notified in writing of any determination to deny a request for access to records. The notification letter will be signed by the Privacy Act Officer, or his or her designee, as the individual responsible for the denial and will include a brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied in denying the request.

(e) *Fees.* The Foundation will charge for duplication of records requested under the Privacy Act in the same way it charges for duplication under the Freedom of Information Act (see 45 CFR 612.10). No search or review fee may be charged for the record unless the record has been exempted from access under Exemptions (j)(2) or (k)(2) of the Privacy Act.

§ 613.4 Amendment of records.

(a) *Where to make a request.* An individual may request amendment of records pertaining to him or her that are maintained in an NSF Privacy Act system of records, except that certain records described in paragraph (h) of this section are exempt from amendment. Request for amendment of records must be made in writing to the NSF Privacy Act Officer, National Science Foundation, Suite 1265, 4201 Wilson Boulevard, Arlington, VA 22230.

(b) *How to make a request.* Your request should identify each particular record in question, state the amendment you want to take place, and specify why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful. Providing an edited copy of the record(s) showing the desired change will assist the agency in making a determination about your request. If you believe that the same information is maintained in more than one NSF system of records you should include that information in your request. You must sign your request and provide verification of your identity as specified in § 613.2(c).

(c) *Timing of responses to requests.* The Privacy Act Officer, or his or her designee, will acknowledge receipt of request for amendment within 10 working days of receipt. Upon receipt of a proper request the Privacy Act Officer will promptly confer with the NSF Directorate or Office with responsibility for the record to determine if the request should be granted in whole or part.

(d) *Granting request for amendment.* When a determination is made to grant a request for amendment in whole or part, notification to the requester will be made as soon as possible, normally within 30 working days of the Privacy Act Officer receiving the request, describing the amendment made and including a copy of the amended record, in disclosable form.

(e) *Denying request for amendment.* When a determination is made that amendment, in whole or part, is unwarranted, the matter shall be brought to the attention of the Inspector General, if it pertains to records maintained by the Office of the Inspector General, or to the attention of the General Counsel, if it pertains to other NSF records. If the General Counsel or Inspector General or their designee agrees with the determination that amendment is not warranted, the Privacy Act Officer will notify the requester in writing, normally within 30 working days of the Privacy Act Officer receiving the request. The notification letter will be signed by the Privacy Act Officer or his or her designee, and will include a statement of the reason(s) for the denial and how to appeal the decision.

(f) *Appealing a denial.* You may appeal a denial of a request to amend records to the General Counsel, National Science Foundation, 4201 Wilson Blvd, Suite 1265, Arlington, VA 22230. You must make your appeal in writing and it must be received by the Office of the General Counsel within ten days of the receipt of the denial (weekends, legal holidays, and the date of receipt excluded). Clearly mark your appeal letter and envelope ''Privacy Act Appeal.'' Your appeal letter must include a copy of your original request for amendment and the denial letter, along with any additional documentation or argument you wish to submit in favor of amending the records. It must be signed by you or your officially designated representative.

(g) *Responses to appeals.* The General Counsel, or his or her designee, will normally render a decision on the appeal within thirty working days after proper receipt of the written appeal by the General Counsel. If additional time to make a determination is necessary you will be advised in writing of the need for an extension.

(1) *Amendment appeal granted.* If on appeal the General Counsel, or his or her designee, determines that amendment of the record should take place, you will be notified as soon as possible of the Foundation's decision. The notification will describe the amendment made and include a copy of the amended record, in disclosable form.

(2) *Amendment appeal denied—Statement of disagreement.* If on appeal the General Counsel, or his or her designee, upholds a denial of a request for amendment of records, you will be notified in writing of the reasons why the appeal was denied and advised of your right to seek judicial review of the decision. The letter will also notify you of your right to file with the Foundation a concise statement setting forth the reasons for your disagreement with the refusal of the Foundation to amend the record. The statement should be sent to the Privacy Act Officer, who will ensure that a copy of the statement is placed with the disputed record. A copy of the statement will be included with any subsequent disclosure of the record.

(h) *Records not subject to amendment.* The following records are not subject to amendment:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Pre-sentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the **Federal Register**.

§ 613.5 Exemptions.

(a) *Fellowships and other support.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of references of fellowship or other award applicants or nominees, or reviewers of applicants for Federal

contracts (including grants and cooperative agreements) contained in any of the following systems of records:

(1) ''Fellowships and Other Awards,''

(2) ''Principal Investigator/Proposal File and Associated Records,''

(3) ''Reviewer/Proposal File and Associated Records,'' and

(4) ''Reviewer/Fellowship and Other Awards File and Associated Records.''

(b) *OIG files compiled for the purpose of a criminal investigation and for related purposes.* Pursuant to 5 U.S.C. 552a(j)(2), the Foundation hereby exempts the system of records entitled ''Office of Inspector General Investigative Files,'' insofar as it consists of information compiled for the purpose of a criminal investigation or for other purposes within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a, except for subsections (b), (c)(1) and (2), (e)(4) (A) through (F), (e)(6), (7), (9), (10) and (11), and (i).

(c) *OIG and ACA files compiled for other law enforcement purposes.* Pursuant to 5 U.S.C. 552a(k)(2), the Foundation hereby exempts the systems of records entitled ''Office of Inspector General Investigative Files'' and ''Antarctic Conservation Act Files'' insofar as they consist of information compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), from the application of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(d) *Investigations of scientific misconduct.* Pursuant to 5 U.S.C. 552a(k)(2) and (k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of confidential sources of information contained in the following system of records: ''Debarment/Scientific Misconduct Files.''

(e) *Personnel security clearances.* Pursuant to 5 U.S.C. 552a(k)(5), the Foundation hereby exempts from the application of 5 U.S.C. 552a(c)(3) and (d) any materials which would reveal the identity of confidential sources of information contained in the following system of records: ''Personnel Security.''

(f) *Applicants for employment.* Records on applicants for employment at NSF are covered by the Office of Personnel Management (OPM) government-wide system notice ''Recruiting, Examining and Placement Records.'' These records are exempted as claimed in 5 CFR 297.501(b)(7).

(g) *Other records.* The Foundation may also assert exemptions for records received from another agency that could properly be claimed by that agency in responding to a request.

§ 613.6 Other rights and services.

Nothing in this subpart shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Lawrence Rudolph,

General Counsel.

[FR Doc. 99–30575 Filed 11–23–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1039

[Ex Parte No. 346 (Sub–No. 28)]

Rail General Exemption Authority: Export Corn and Export Soybeans

AGENCY: Surface Transportation Board, DOT.

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation Board (Board) is withdrawing the proposed rule and discontinuing the Ex Parte No. 346 (Sub-No. 28) rulemaking proceeding relating to an exemption for the rail transportation of export corn and export soybeans.

DATES: The proposed rule is withdrawn and the rulemaking proceeding is discontinued on November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served July 15, 1992 (published in the **Federal Register** on July 16, 1992, at 57 FR 31489), the Interstate Commerce Commission (Commission) proposed to exempt from the provisions of 49 U.S.C. subtitle IV the rail transportation of export corn and export soybeans (i.e., corn and soybeans that originate at points in the United States and that move from the United States to destinations outside the United States).

The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted with certain changes 49 U.S.C. subtitle IV, and transferred to the Board responsibility for the performance of functions respecting new 49 U.S.C. subtitle IV, part A. *See* ICCTA section 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA section 201(a) (establishment of the Board); new 49 U.S.C. subtitle IV, part A, as enacted by ICCTA section 102(a) (part A of the new subtitle IV contains the post-1995 version, as respects railroads, of the provisions that had been contained in the pre-1996 version of subtitle IV); new 49 U.S.C. 702, as enacted by ICCTA section 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA section 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the Board). In accordance with the mandate of ICCTA section 204(b)(1), the Ex Parte No. 346 (Sub-No. 28) rulemaking proceeding, which had been instituted by the Commission in the 1992 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1992 NPR and to discontinue the Ex Parte No. 346 (Sub-No. 28) rulemaking proceeding. The record compiled in this proceeding does not reflect the changes that have occurred in American agriculture in the past seven years. Under the circumstances, we do not believe it would be wise to consider the merits of the proposal now on this record. Withdrawal of the 1992 proposal would, in any event, allow any interested person who wished to do so the opportunity to file a petition under 49 CFR part 1121 to initiate a new proposal supported by a more current presentation of facts and arguments.

Small Entities

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

Environmental and Energy Considerations

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

Board Releases Available Via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's website at ''WWW.STB.DOT.GOV.''

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–30541 Filed 11–23–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1105 and 1180

[Ex Parte No. 282 (Sub-No. 19)]

New Procedures in Rail Acquisitions, Mergers and Consolidations

AGENCY: Surface Transportation Board.

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation Board (Board) is withdrawing the proposed rule and discontinuing the Ex Parte No. 282 (Sub-No. 19) rulemaking proceeding relating to new procedures in rail acquisitions, mergers and consolidations.

DATES: The proposed rule is withdrawn and the rulemaking proceeding is discontinued on November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) that was served January 26, 1995 (an inadvertently omitted Appendix A was served January 27, 1995), and that was published in the **Federal Register** on January 31, 1995, at 60 FR 5890, the Interstate Commerce Commission (Commission) proposed to revise parts 1105 and 1180 of Title 49, Code of Federal Regulations, in order to establish procedures that might ensure a more expeditious handling of proceedings involving transactions subject to the jurisdiction of the Commission under former 49 U.S.C. 11343, 11344, and 11345. As respects ''major'' transactions (*i.e.,* transactions involving the merger or control of two or more Class I railroads), the Commission proposed a 180-day procedural schedule (*i.e.,* a procedural schedule under which the final decision would be issued 180 days after the date on which the primary application was filed). As respects ''significant'' transactions (*i.e.,* transactions that are of regional or national transportation significance but that do not involve the merger or control of two or more Class I railroads) and ''minor'' transactions (*i.e.,* transactions that are neither major nor significant), the Commission proposed conforming changes to 49 CFR 1180.4 (to ensure that the timetables applicable to significant transactions and minor transactions would be at least as expedited as the timetable applicable to major transactions). The Commission also proposed conforming changes to its 49 CFR part 1105 environmental regulations.

The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted with certain changes the relevant statutory provisions, and transferred to the Board responsibility for the performance of functions respecting those statutory provisions. *See* ICCTA section 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA section 201(a) (establishment of the Board); new 49 U.S.C. 11323, 11324, and 11325, as enacted by ICCTA section 102(a) (these are the post-1995 versions, as respects railroads, of what had been 49 U.S.C. 11343, 11344, and 11345, respectively); new 49 U.S.C. 702, as enacted by ICCTA section 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA section 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the Board). In accordance with the mandate of ICCTA section 204(b)(1), the Ex Parte No. 282 (Sub-No. 19) rulemaking proceeding, which had been instituted by the Commission in the 1995 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1995 NPR and to discontinue the Ex Parte No. 282 (Sub-No. 19) rulemaking proceeding. Our experience with the administration of major transaction cases handled under new 49 U.S.C. 11323–25 has led us to conclude that we should continue the case-by-case approach under which, as respects any particular major transaction, we can adopt a procedural schedule best suited to the full and fair development of the record for that transaction. *See, e.g., CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidation Rail Corporation,* STB Finance Docket No. 33388, Decision No. 6 (STB served May 30, 1997, and published that day in the **Federal Register** at 62 FR 29387) (adopting a 350-day procedural schedule to govern the major transaction at issue in the STB Finance Docket No. 33388 proceeding); *Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company*, STB Finance Docket No. 33556, Decision No. 6 (STB served Aug. 14, 1998, and published that day in the **Federal Register** at 63 FR 43744) (adopting a 300-day procedural schedule to govern the major transaction at issue in the STB Finance Docket No. 33556 proceeding).

Small Entities

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

Environmental and Energy Considerations

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

Board Releases Available Via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's website at ''WWW.STB.DOT.GOV.''

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–30543 Filed 11–23–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 15)]

Railroad Consolidation Procedures: Class Exemption for Transactions Subject to the Statutory Consolidation Provision

AGENCY: Surface Transportation Board.

ACTION: Proposed rule, withdrawal.

SUMMARY: The Surface Transportation Board (Board) is withdrawing the proposed rule and discontinuing the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding relating to a class exemption for railroad transactions subject to the statutory consolidation provision.

DATES: The proposed rule is withdrawn and the rulemaking proceeding is discontinued on November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served July 13, 1992 (published in the **Federal Register** on July 14, 1992, at 57 FR 31165), the Interstate Commerce Commission (Commission) proposed to expand the scope of its 49 CFR 1180.2(d)(2) class exemption. That exemption, as it existed in 1992 and as it continues to exist today, exempts from the otherwise applicable prior approval requirements the acquisition or continuance in control of a nonconnecting railroad or one of its lines where (i) the railroads would not connect with each other or any railroads in their corporate family, (ii) the acquisition or continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family, and (iii) the transaction does not involve a Class I railroad. In the NPR, the Commission proposed to expand the 49 CFR 1180.2(d)(2) exemption so that it would embrace any transaction that required approval and authorization under former 49 U.S.C. 11343, provided that the transaction did not involve (i) the merger or control of at least two Class I railroads, (ii) a reduction in the number of noncommonly-controlled railroads conducting operations between any two points, or (iii) a reduction from three to two in the number of noncommonly-controlled railroads serving any interchange point.

The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), which was signed into law by President Clinton on December 29, 1995, abolished the Commission, established the Board, reenacted (with certain changes not presently of consequence) the relevant statutory provision, and transferred to the Board responsibility for the performance of functions respecting that statutory provision. *See* ICCTA section 101 (abolition of the Commission); new 49 U.S.C. 701(a), as enacted by ICCTA section 201(a) (establishment of the Board); new 49 U.S.C. 11323, as enacted by ICCTA section 102(a) (this is the post-1995 version, as respects railroads, of what had been 49 U.S.C. 11343); new 49 U.S.C. 702, as enacted by ICCTA section 201(a) (except as otherwise provided, the functions previously performed by the Commission shall henceforth be performed by the Board); ICCTA section 204(b)(1) (any proceeding pending before the Commission at the time of the enactment of ICCTA shall be transferred to the Board, insofar as that proceeding concerns functions transferred to the Board). In accordance with the mandate of ICCTA section 204(b)(1), the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding, which had been instituted by the Commission in the 1992 NPR, was transferred to the Board.

We have decided to withdraw the rule proposed by the Commission in the 1992 NPR and to discontinue the Ex Parte No. 282 (Sub-No. 15) rulemaking proceeding. Our experience with the administration of cases handled under new 49 U.S.C. 11323 has led us to conclude that there is no pressing necessity for the expansion of the 49 CFR 1180.2(d)(2) class exemption. Any 49 U.S.C. 11323 transaction that is not embraced by any of the existing 49 CFR 1180.2(d) class exemptions but that would be embraced by the expanded 49 CFR 1180.2(d)(2) class exemption proposed by the Commission can be handled under the individualized exemption procedures now codified at 49 CFR part 1121, and appropriate determinations can be made on a case-by-case basis.

Small Entities

The Board certifies that the action taken in this proceeding will not have a significant economic impact on a substantial number of small entities.

Environmental and Energy Considerations

The action taken in this proceeding will not significantly affect either the quality of the human environment or the conservation of energy resources.

Board Releases Available Via the Internet

Decisions and notices of the Board, including this notice, are available on the Board's website at ''WWW.STB.DOT.GOV.''

Decided: November 17, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–30542 Filed 11–23–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 991118308–9308–01; I.D. 101899C]

RIN 0648–AN33

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Control Date

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

ACTION: Advance notice of proposed rulemaking; notice of control date for the Pacific Coast groundfish fishery; request for comments.

SUMMARY: This document announces a control date of September 16, 1999, after which vessels eligible for benefits under the American Fisheries Act (AFA) may be subject to restrictions on participation in the Pacific Coast groundfish fisheries. The intended effect of announcing this control date is to discourage speculative entry into the Pacific coast groundfish fisheries by AFA-qualified vessels while the Pacific Fishery Management Council (Council) develops recommendations to protect the Pacific Coast groundfish fisheries from adverse impacts caused by the AFA.

DATES: Comments may be submitted in writing by December 27, 1999.

ADDRESSES: Comments may be mailed to Jerry Mallet, Chairman, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: The Pacific Fishery Management Council at 503–326–6352; or Bill Robinson at 206–526–6140; or Svein Fougner at 562–980–4000.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council (Council) established under section 302(a)(1)(F) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(F)) is considering recommendations for approval by NMFS of conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by the AFA (Pub.L. 105-277, Div. C, Title II, October 21, 1998, 112 Stat. 2681-616; 16 U.S.C. 1851 note; 46 U.S.C. 101 note, 12102, 31322; 46 App. 1274 note), or by any

fishery cooperatives in the Alaska pollock fishery, as required by section 211(c)(3)(A) of the AFA. Pursuant to the AFA, the Council's recommendations are due to NMFS not later than July 1, 2000. The AFA at section 211(b)(5) also provides that catcher/processors and motherships eligible under the AFA are prohibited from harvesting or processing fish in any U.S. fishery outside Alaska, except the Pacific whiting fishery, unless harvesting or processing by those catcher-processor motherships is specifically authorized under a fishery management plan. Pacific whiting is a major component of the species aggregate in the Pacific Coast groundfish fisheries.

Conservation and management measures under consideration by the Council to offset adverse impacts of the AFA include possible restrictions on participation in the Pacific coast groundfish fisheries by vessels eligible for benefits under the AFA (AFA-qualified vessels). During its September 13-17, 1999, meeting in Portland, Oregon, the Council adopted September 16, 1999, as a control date to be used in placing restrictions on participation in the Pacific Coast groundfish fisheries by AFA-qualified vessels. In making this announcement, NMFS and the Council intend to prevent speculative entry into the fisheries after the control date by AFA-qualified vessels, while the Council develops and analyzes its recommendations. The control date applies to catcher vessels in the mothership and shore-based sectors of the Pacific whiting fishery, and to all other non-whiting groundfish fisheries in which catch is landed shoreside. The control date provides notice to AFA-qualified vessels that might seek to participate in the Pacific Coast groundfish fisheries that current requirements for accessing these fisheries may change. Vessels entering the fisheries after the control date may be subject to new restrictions that do not currently exist, and they may not receive credit for fishing after the control date.

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982 (47 FR 43964, October 5, 1982), and has been amended 10 times. Implementing regulations for the FMP and its amendments are codified at 50 CFR part 660, Subpart G.

The AFA, enacted in 1998, reduced the harvest capacity in the Alaska pollock fishery by retiring nine Bering Sea catcher/processors. It also redistributed pollock allocations between the inshore and offshore sectors, and defined conditions for creating fishery cooperatives in the pollock fleet. Vessels that participate in such cooperatives are likely to have increased flexibility in arranging their fishing schedules and could consider entering additional fisheries.

At its September 13–17, 1999, meeting, the Council and its Groundfish Advisory Panel heard proposals from West Coast fishers and processors concerned that some AFA-qualified vessels with no previous or low levels of participation in the Pacific groundfish fishery will increase their fishing effort in the Pacific Coast groundfish fishery. A particular problem is posed if AFA-qualified vessels participating in pollock fishing cooperatives rearrange their pollock fishing schedules to allow them time to fish in non-pollock fisheries such as the Pacific Coast groundfish fishery. To participate in most limited entry groundfish fisheries vessels only need to purchase a general limited entry permit. No permit is required to participate in the open access fisheries. Because new permit holders and entrants into the open access fishery currently have access rights that are equal to those who have historically participated in the fishery, speculative entry may be encouraged. Additional effort could exacerbate existing management problems and erode the effectiveness of future measures recommended by the Council.

The Council unanimously voted to establish a control date of September 16, 1999, and to initiate the development of recommendations to restrict AFA-qualified vessels from participating in the Pacific Coast groundfish fishery if, during a qualifying period between January 1, 1994, and September 16, 1999, the vessel: (1) did not harvest at least 50 metric tons (mt) of Pacific whiting in the mothership sector; (2) did not land at least 50 mt of Pacific whiting in the shore-based sector; or (3) did not land groundfish shoreside in the Pacific Coast groundfish fishery (not including fish landed in the Pacific whiting fishery).

Implementation of any management measures for the fishery will require amendment of the regulations implementing the FMP and may also require amendment of the FMP itself. Any action will require Council development of a regulatory proposal with public input and a supporting analysis, NMFS approval, and publication of implementing regulations in the **Federal Register**. If catch history is used as basis for participation, it is likely that AFA-qualified vessel participation in the fishery after the control date will receive little or no credit. Fishers are not guaranteed future participation in the groundfish fishery, regardless of their date of entry or level of participation in the fishery.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*; Pub. L. 105–277, Div. C, Title II, October 21, 1988.

Dated: November 18, 1999.

William Fox,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–30657 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 226
Wednesday, November 24, 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

Submission for OMB Review; Comment Request

November 19, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Natural Resources Conservation Service

Title: Request for State Technical Committee Membership.

OMB Control Number: 0578–0027.

Summary of Collection: Section 1261 of the Food Security Act of 1985, as amended, (the 1985 Act) requires the Secretary to establish a technical advisory committee in each State to assist in making technical considerations related to the implementation of the 1985 Act's conservation provisions. The authority to implement these committees was delegated to the Natural Resources Conservation Service (NRCS). It is the responsibility of each NRCS State Conservationist to chair the State Technical Committee (STC). Non-profit organizations, agricultural producers, other individuals and government agencies may become members if they demonstrate that they have conservation expertise. Individuals desiring membership on the STC are required to submit a written request to NRCS for consideration.

Need and Use of the Information: NRCS will collect information on the names, addresses, telephone numbers, educational background, a detailed description of their conservation expertise, and participation details on any local environmental and/or conservation planning group. the information collected is used by the NRCS State Conservationist to determine STC membership.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 240.

Frequency of Responses: Reporting; On occasion; Other: Once only upon request for participation.

Total Burden Hours: 240.

Foreign Agricultural Service

Title: Sugar to be Imported and Re-exported in Refined Form or in Sugar-containing Products or used in Production of Certain Polyhydric Alcohols.

OMB Control Number: 0551–0015.

Summary of Collection: Regulation 7 CFR Part 1530 Part 1530 authorizes the Foreign Agricultural Service (FAS) to issue import licenses to enter raw cane sugar (exempt from the tariff-rate quota for the raw cane sugar imports and the related requirements) on the condition that an equivalent quantity of refined sugar be: (1) exported as refined sugar; (2) exported as an ingredient in sugar containing products; or (3) used in production of certain polyhydric alcohols. The purpose of the sugar import licensing program is to assist U.S. sugar manufacturers, refiners, and processors in making U.S. products price competitive on the world market; and facilitate the use of domestic refining capacity.

Need and Use of the Information: FAS will collect information to: (1) determine whether applicants for the program meet the Regulation's eligibility criteria; (2) monitor sugar imports, transfers, exports, and use in order to confirm that transactions are conducted and completed within the requirements of the Regulations; (3) audit participants' compliance with the Regulation; and (4) prevent entry of world-priced program sugar from entering the higher-priced domestic commercial sugar market. The information collected is needed by the Sugar Licensing Authority to manage, plan, evaluate, and account for program activities.

Description of Respondents: Business or other for-profit; individuals or households;

Number of Respondents: 250.

Frequency of Responses: Reporting; Quarterly.

Total Burden Hours: 4,590.

Rural Housing Service

Title: 7 CFR 1965–E, ''Prepayment and Displacement Prevention of Multiple Family Housing Loans''.

OMB Control Number: 0575–0155.

Summary of Collection: The Housing and Community Development Act of 1987 required that when Rural Rental Housing borrowers wished to prepay their loans, Rural Development (RD) must first decide if the housing continues to be needed to serve low- and moderate-income tenants, and if so to offer the borrower a fair incentive to prepay the loan. If the borrower rejects the incentive, the housing must be offered for sale to a non profit organization or public agencies. Only if no nonprofit organization or public agencies can be found to purchase the

project at the market value can the loan be prepaid.

Need and Use of the Information: When a request to prepay a rural rental housing loan is received, RD will collect information to determine the need for the housing to remain in the low-income program. RD will also determine the extent of any incentive offer to keep the housing within the Rural Development program. If RD does not have current and appropriate information, the decision to accept or reject the prepayment request and the amount of an incentive offer, would be made inappropriately.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individual or households; Farms; State, Local or Tribal Government.

Number of Respondents: 800.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 687.

Rural Utilities Service

Title: 7 CFR 1717 Subpart D, Mergers and Consolidations of Electric Borrowers.

OMB Control Number: 0572–0114.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture. It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste water facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.,* as amended and as prescribed by the Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-tax Receivable, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance.

Need and Use of the Information: RUS will collect information to streamline procedures and allow borrowers the flexibility to meet new business challenges and opportunities.

Description of Respondents: Business or other for-profit.

Number of Respondents: 18.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 184.

Rural Housing Service

Title: 7 CFR 1944–N, ''Housing Preservation Grant Program''

OMB Control Number: 0575–0115.

Summary of Collection: The Rural Housing Service (RHS) is authorized to make grants to eligible applicants to provide repair and rehabilitation assistance so that very low- and low-income rural residents can obtain adequate housing. Such assistance is made by grantees to very low- and low-income persons, and to co-ops. Grant funds are used by grantees to make loans, grants, or other comparable assistance to eligible homeowners, rental unit owners, and co-ops for repair and rehabilitation of dwellings to bring them up to code or minimum property standards. These grants ere established by Public Law 98–181, the Housing Urban Rural Recovery Act of 1983, which amended the Housing Act of 1949 (Pub. L. 93–383). RHS will collect a ''Statement of Activity'' from the applicant describing their proposed program.

Need and Use of the Information: RHS will collect information to determine eligibility for a grant to justify its selection of the applicant for funding; to report program accomplishments and to justify and support expenditure of grant funds. RHS uses the information to determine if the grantee is complying with its grant agreement and to make decisions regarding continuing with, modifying, or terminating grant assistance. If the information is not collected and presented to RHS, the Agency could not monitor the program or justify disbursement of grant funds.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; State, Local or Tribal Government.

Number of Respondents: 2,050.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly.

Total Burden Hours: 10,814.

National Agricultural Statistics Service

Title: Floriculture Survey.

OMB Control Number: 0535–0093.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Since 1985, Congress has provided funds to conduct an annual Commercial Floriculture Survey which provides basic data on this important and growing industry. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which can be obtained by the collection of statistics * * * and shall distribute them among agriculturists''. The floriculture industry accounts for about 5 percent of agricultural cash receipts at the U.S. level. The survey is conducted in 36 states, which ensures 97 percent coverage of the U.S. value of production. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information to assess alternative agriculture opportunities. Data from the survey will provide statistics for Federal and State agencies to monitor the use of agricultural chemicals. If the information is not collected data users could not keep abreast of changes.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 16,100.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,883.

National Agricultural Statistics Service

Title: Vegetables.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. Vegetable estimates are an integral part of this function. The vegetable program is complex in that some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed the first week of April for their intended acreage of vegetables for processing and the first week of July for acreage contracted. The fresh market vegetable program consists of weekly estimates during the growing season for tomatoes in Florida. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information to estimate acreage planted and harvested, production, and utilization for the various crops. The estimates provide vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 13,906.

Frequency of Responses: Reporting: On occasion; Weekly; Annually.

Total Burden Hours: 2,710.

National Agricultural Statistics Service

Title: Agricultural Resource Management, Chemical Use and Postharvest Chemical Use Survey.

OMB Control Number: 0535–0218.

Summary of Collection: The Agricultural Economics and Land Ownership Survey (AELOS) is a one-time information collection. General

authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists.'' National Agricultural Statistics Service (NASS) received new funding in FY 1997 to start collecting pesticide usage information on chemicals applied after harvest of a commodity. These data are needed to provide accurate information on the type of chemicals and amounts of chemicals applied postharvest. This information collection obtains chemical use and postharvest chemical use data in addition to agricultural resource management survey data. NASS will collect information using a survey.

Need and Use of the Information: NASS will collect information to provide estimates on the extent of residue of chemicals on fruits and vegetables and to produce environmental and economic estimates of the costs of farming. If the information is not collected NASS would not be able to update the Index of Prices Paid by Farmers.

Description of Respondents: Farms.

Number of Respondents: 108,183.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 38,274.

Rural Utilities Service

Title: Accounting Requirements for RUS Electric and Telecommunications Borrowers.

OMB Control Number: 0572–0003.

Summary of Collection: Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended. Currently 800 rural electric and 830 telecommunications systems have outstanding loans from RUS. RUS does not own or operate rural electric facilities. Its function is to provide, through self-liquidating loans and technical assistance, adequate and dependable electric and telecommunications service to rural people under rates and conditions that permit productive use of these utility services. RUS borrowers, as all businesses, need accounting systems for their own internal use as well as external use. Such records are maintained as part of normal business practices. Without systems, no records would exist, for example, or what they own or what they owe. Such records systems provide borrowers with information that is required by the manager and board of directors to operate on a daily basis, to complete their tax returns, and to support requests to state regulatory commissions for rate approvals.

Need and Use of the Information: RUS collects information to evaluate a borrower's financial performance, to determine whether current loans are at risk, and to determine the credit worthiness of future loans. If basic financial records were not maintained, the borrower, its investors, and RUS would be unable to evaluate a borrower's financial performance.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,630.

Frequency of Responses: Recordkeeping.

Total Burden Hours: 45,520.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–30582 Filed 11–23–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–98–305]

United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document gives notice of the availability of revisions to the United States Standards for Grades of Oranges, Grapefruit, Tangerines and Lemons. The changes will provide a minimum 25-count sample to be applied to tolerances for defects, revise the grades to make them uniform and consistent with each other and other recently revised U.S. grade standards, and, delete references to outdated industry practices and terminology.

EFFECTIVE DATE: This notice is effective December 27, 1999.

ADDRESSES: The revised standards are available from Kenneth R. Mizelle, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2065, South Building, STOP 0240, P.O. Box 96456, Washington, DC 20090–6456; or at www.ams.gov/standards/frutmrkt.htm.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Mizelle (202) 720–2185.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices * * *.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and to making copies of official standards available upon request. The United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons no longer appear in the Code of Federal Regulations (CFR); however, they are maintained by USDA.

AMS is revising the United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons using the procedures it published in the August 13, 1997, **Federal Register** and that appear in Part 36 of Title 7 of the CFR.

The notice, with a request for comments on the proposed changes, was published in the **Federal Register** on June 17, 1999 (64 FR 32666–32703).

The petitioner (Sunkist Growers), which represents the majority of citrus growers and packers in California, requested that the standards be revised to provide a minimum 25-count sample applied to tolerances for defects. In addition, AMS proposed several other changes to promote greater uniformity and consistency in application of the standard. These standards have not been changed within the last 34 to 50 years, depending on the commodity. These changes are needed to bring the standards into conformity with current cultural and marketing practices and to promote more uniform application of the U.S. grade standards.

AMS published the notice in the **Federal Register** with an outline of the specific proposed changes and provided for a comment period of 60 days, which ended August 16, 1999. No comments were received on the notice during that time. However, a request from industry to reopen and extend the comment period was received on August 16, 1999. The request was granted, and the comment period was extended through September 20, 1999. A total of 2

comments were received, one from an organization of agricultural product receivers and one from the petitioner.

The receivers comments stated, in summary, that they ''strongly oppose the proposed changes.'' They suggested that ''The Department shall define the terms 'Injury, Damage, Serious Damage and Very Serious Damage' but shall not interfere with the actual areas prescribed for each defect as it is in the current definitions. The Department shall also restrain from changing the terms, 'FREE FROM' to 'FREE FROM INJURY BY BRUISES' in the proposed U.S. Standard for U.S. Fancy Grade of Oranges, (California and Arizona).'' It is the receivers' contention that the changes will allow 100 percent bruising plus 12 percent damage by bruising in lots of U.S. Fancy oranges. AMS disagrees with this assertion and feels that there has been some misunderstanding with regard to the proposed changes. This portion of the proposal was not made at the request of the petitioner, but rather was initiated by AMS as part of its efforts to promote greater uniformity and consistency in application of the standard. The definitions that were included in the proposed standards are the same definitions that are currently used in the instructional manuals to provide inspectors with guidelines as to what constitutes a bruise. Additionally, these definitions are used in other citrus grades. The definitions prevent inspectors from scoring fruit with slight skin indentations as bruises when, in fact, there is no injury to the skin or flesh of the fruit. Accordingly, AMS believes that the proposal should be adopted. The revision also provides language that is consistent with other citrus grades.

The receivers comments stated: ''When one thinks of a 'FANCY FRUIT,' the mind creates a picture of a perfect fruit, without blemishes, free from any injury of any kind and of perfect characteristic color an idea of the ultimate description of excellence and perfection. This is the FANCY GRADE OF CITRUS that we know and we want to keep it that way. Therefore these changes are unnecessary, preposterous, not warranted and bias [sic] against the receiving sector of the produce industry, and the consumer.'' AMS disagrees with the commenter's assertion that Fancy fruit is perfect, without blemishes and free from injury of any kind. Every AMS fruit and vegetable grade standard provides for degrees of defects, as well as defect tolerances, thus allowing for ''less than perfect'' fruit, up to a certain point. The purpose of these standards, established by USDA in cooperation with the citrus industry in 1948, 1950, 1957 and 1964, is to provide attainable grading classifications that can be utilized by the entire fruit and vegetable community, not to regulate difficult, if not impossible, parameters of perfection.

The receivers are also ''vigorously opposed to the change for the DECAY TOLERANCES at shipping point for each grade listed in the notice.'' They note that ''this change would give an extra advantage to the packers and growers.'' AMS disagrees with the receivers. The proposed change would increase the decay tolerance to a total of 1 percent at shipping point, from a previous ½ of 1 percent. The 1 percent shipping point decay tolerance is already widely used in citrus and other fruit and vegetable standards. AMS can foresee no impact on the receivers or the consumers in this regard because the decay tolerance of 3 percent at destination remains unchanged.

Regarding the grapefruit standard, the receivers recommended that allowable skin thickness remain at not more than ⅜ of an inch to meet the ''fairly thin skinned'' requirement and more than 7/16 inch to meet the requirement of ''excessively thick skinned.'' AMS recommended a slight increase for skin thickness (½ inch and ⅝ inch respectively), based on a fruit diameter of 4⅛ inch. Smaller or larger areas would be allowed, proportionately, for smaller or larger fruit. This new scoring guide is consistent with the recently-revised U.S. standards for Florida grapefruit standard and will remain as proposed.

The receivers stated they did not understand a phrase contained in the grapefruit standard on ''Injury, (k),'' pertaining to green spots, which reads, ''Green spots * * * which are green and more that ¼ in number.'' This was a typographical error in the notice and will be changed to read, ''Green spots * * * which are green and more than 4 in number.''

The receivers contend that the proposed scoring guidelines for creasing of tangerines, in all but the U.S. No. 1 grade, are too lenient. AMS, however, believes that there is a distinction between the severity of creasing allowed in each grade in addition to the amount of area affected by creasing of any degree. In the proposed tangerine grade, for each lower grade, a more severe degree of creasing is allowed. This is the standard method of scoring for any defect, regardless of commodity. Additionally, the proposed scoring criteria for creasing also provides that no more than a specified area of any visible creasing be allowed. This scoring guide is consistent with the U.S. standards for Florida tangerines and provides an objective basis for scoring this defect.

Also concerning the tangerine standard, the receivers contended that scoring guidelines in the U.S. No. 3 grade (very serious damage) are too lenient for the following defects: skin breakdown, scale, sprayburn, buckskin, scab and green spots. The receivers recommended an affected area of 20 percent of the surface before scoring. In the proposal, AMS considered an affected area of over 25 percent of the fruit surface for these defects to be scorable. The original standard contained a scoring guide for these defects defined as ''when it very seriously detracts from the appearance.'' However, AMS believes that the receivers recommendation of 20 percent is too restrictive. Further, the new scoring guide, which is consistent with the U.S. standards for Florida tangerines with regard to virtually all defects, provides an objective method for scoring, as opposed to the subjective method contained in the old U.S. standard. Accordingly, AMS is making this change as proposed.

The receivers consider the proposed skin breakdown scoring guide in the lemon standard of allowing ¼ inch as being ''excessive.'' They stated that ¼ inch ''represents 12½% on a fruit 2 inches in diameter.'' They suggested an area not exceeding 3/16 inch for damage and not exceeding ½ inch for serious damage. Their recommendation was mathematically based on their belief that these averages represented 10% and 25%, respectively, of the area of the fruit. These percentages appear to have been based on an ''area'' 2 inches in diameter as opposed to a ''sphere'' of 2 inches in diameter which has a much larger surface area. AMS, when determining areas allowed for defects, considers both the mathematical area and the appearance of the defect for the commodity in question. AMS has concluded that the scoring guideline of ¼ inch for damage, based on a lemon 2 inches in diameter, does not allow an excessive amount of the defect on the fruit, before it is scored as a defect. However, in light of the receivers' concern with the serious damage skin breakdown scoring guide of not exceeding ⅝ inch, AMS has concluded that this could be considered an excessive amount for this defect. Consequently, AMS agrees with the receivers' suggestion of not exceeding ½ inch in diameter for serious damage by skin breakdown.

The receivers agree to the proposed change to create separate shipping point

and en route or at destination tolerances for the commodities appearing in the notice.

The petitioner submitted the only other comment received by AMS. They stated, ''We strongly support proposed changes in the procedures for sampling fruit to measure against defect tolerances. The new standard calling for a minimum 25 count sample promotes greater uniformity and consistency within the standards and affords a fairer and more realistic evaluation of the arrival quality of fruit shipments. Additionally, we view favorably the proposed change in tolerance standard for a grapefruit rind thickness; elimination of the juice content requirement for lemons; and a change of measurement of surface blemishes on fruit as a percentage of the surface area instead of a specific size definition of the blemish, allowing for a more consistent means of measurement relative to the actual size of the fruit. In general, the proposed modifications eliminate many obsolete standards and criteria that are not reflective of modern production conditions and the realities of the modern marketplace.''

AMS also discovered several typographical omissions in the lemon standard. The section pertaining to standard sizing and fill (a) was inadvertently omitted. Also, the letter designations for the defect definition sub-paragraphs relating to bruising and skin breakdown under damage and serious damage (h, i, j and k respectively) were inadvertently omitted. Although the definitions remain unchanged from the original notice, to eliminate any confusion, the letter designations (h, i, and j) will be included in the final U.S. standard. With regard to what should have been designated paragraph ''k'' (serious damage by skin breakdown), the definition is being changed slightly based on the comments received.

Accordingly, further changes to the notice revising the United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons as published in the **Federal Register** at 64 FR 32666–32703 on June 17, 1999, are made as described above.

The revised standards are available either through the above address or by accessing AMS's Home Page on the Internet at www.ams.usda.gov/standards/frutmrkt.htm.

Authority: 7 U.S.C. 1621–1627.

Dated: November 16, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–30420 Filed 11–23–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–051N]

Equivalence Evaluation Process for Foreign Meat and Poultry Food Regulatory Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing a public meeting on December 14, 1999 to (1) report the Pathogen Reduction/HACCP equivalence status of each country that exports meat or poultry to the United States, (2) explain the rationale for acceptance of alternative PR/HACCP sanitary measures, and (3) receive additional public comments on the state of FSIS equivalence activities.

DATES: The public meeting will be held on December 14, 1999, from 1:00 p.m. to 6:00 p.m. No preregistration is necessary.

ADDRESSES: The public meeting will be held in the Federal Room, Washington Plaza Hotel, 10 Thomas Circle NW (at Massachusetts Avenue and 14th Street), Washington, DC 20009, (202) 842–1300. Attendees requiring sign-language interpreters or other special accommodation should contact Mr. Clark Danford (identified below in **FOR FURTHER INFORMATION CONTACT**) by November 30, 1999. Transcripts of the meeting will be available in the FSIS Docket Office, Room 102, 300 12th Street, SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Mr. Clark Danford, Acting Director, International Policy Division; Office of Policy, Program Development, and Evaluation; (202) 720–6400, or by electronic mail to *clark.danford@usda.gov.*

SUPPLEMENTARY INFORMATION: FSIS published a notice in the **Federal Register** of March 12, 1999 (64 FR 12281) announcing the availability of a document that describes the Agency's process for evaluating foreign meat and poultry inspection systems to determine whether they are equivalent to the United States' inspection system. FSIS solicited public comments on this document and held a public meeting on April 14, 1999, to discuss the equivalence evaluation process. The comment period ended May 11, 1999. This notice announces a follow-up public meeting to (1) report the Pathogen Reduction/HACCP equivalence status of each country that exports meat or poultry to the United States, (2) explain the rationale for acceptance of alternative PR/HACCP sanitary measures, and (3) receive additional public comments on the state of FSIS equivalence activities.

Departmental Regulation 4300–4

FSIS has considered, under Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' dated September 1993, the potential civil rights impact of this notice on minorities, women, and persons with disabilities. FSIS anticipates that this notice will not have a negative or disproportionate impact on minorities, women, and persons with disabilities. Notices generally are designed to provide information and increase public awareness of important policy developments. Public involvement in all segments of policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice of a public meeting, FSIS will announce the publication of this **Federal Register** notice in the *FSIS Constituent Update.*

FSIS provides a weekly *FSIS Constituent Update,* which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents. This constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would otherwise be possible. For more information or to be added to the constituent fax list, fax your request to the Agency's Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on November 18, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–30604 Filed 11–23–99; 8:45 am]

BILLING CODE 3460–DM–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: November 30, 1999; 9:30 a.m.–5:00 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: November 22, 1999.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 99–30816 Filed 11–22–99; 3:43 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Final Results of Full Sunset Review: Brass Sheet and Strip From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Brass Sheet and Strip from Canada.

SUMMARY: On August 26, 1999, the Department of Commerce (''the Department'') published a notice of preliminary results of the full sunset review of the antidumping duty order on brass sheet and strip from Canada (64 FR 46642) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). We provided interested parties an opportunity to comment on our preliminary results. We did not receive comments from any interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

EFFECTIVE DATE: November 24, 1999.

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 Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*'') and in 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

Imports covered by this order are shipments of brass sheet and strip, other than leaded or tinned, from Canada. The chemical composition of the subject merchandise is defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000 Series. This order does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this order have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classifiable under item numbers 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

Background

On August 26, 1999, the Department issued the *Preliminary Results of Full Sunset Review: Brass Sheet and Strip from Canada* (64 FR 46642) (''*Preliminary Results*''). In our preliminary results, we found that revocation of the order would likely result in the continuation or recurrence of dumping. In addition, we preliminarily determined that the magnitude of the margin of dumping likely to prevail if the order were revoked was 11.54 percent for Wolverine Tube, Inc. (''Wolverine'') (formerly Noranda Metals, Inc.) and 8.10 for all other producers and/or exporters of the subject merchandise. No interested party commented on our *Preliminary Results.*

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping for the reasons set forth in our *Preliminary Results* of review. Furthermore, for the reasons set forth in our *Preliminary Results* of review, we find that the margins calculated in the original investigation are probative of the behavior of Canadian producers/exporters of the subject merchandise. As such, the Department will report to the Commission the company-specific and all others rates from the original investigation listed below:

Manufacturer/exporter	Margin (percent)
Wolverine	11.54
All Other Producers/Exporters	8.10

This notice 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 19 CFR 351.305 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 five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 18, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30675 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–811]

Continuation of Antidumping Duty Order: Drafting Machines From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Drafting machines from Japan.

SUMMARY: On October 5, 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 drafting machines from Japan is likely to lead to continuation or recurrence of dumping (64 FR 53996). On November 15, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 61937). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty order on drafting machines from Japan.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit 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, DC 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION

Background

On June 1, 1999, the Department initiated, and the Commission instituted, a sunset review (64 FR 29261 and 64 FR 29339, respectively) of the antidumping duty order on drafting machines from Japan 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 Results of Expedited Sunset Review: Drafting Machines From Japan,* 64 FR 53996 (October 5, 1999)).

On November 15, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Drafting Machines From Japan* 64 FR 61937 (November 15, 1999) and USITC Pub. 3252, Investigation No. 731–TA–432 (Review) (November 1999).

Scope

The merchandise subject to this order includes drafting machines that are finished, unfinished, assembled, or unassembled, and drafting machine kits. The term ''drafting machine'' refers to ''track'' or ''elbow-type'' drafting machines used by designers, engineers, architects, layout artists, and others. Drafting machines are devices for aligning scales (or rulers) at a variety of angles anywhere on a drawing surface, generally a drafting board. A protractor head allows angles to be read and set and lines to be drawn. The machine is generally clamped to the board. Also included within the scope are parts of drafting machines. Parts include, but are not limited to, horizontal and vertical tracks, parts of horizontal and vertical tracks, band and pulley mechanisms, protractor heads, and parts of protractor heads, destined for use in drafting machines. Accessories, such as parallel rulers, lamps and scales are not subject to this order. This merchandise is currently classifiable under the Harmonized Tariff Schedule (''HTS'') item numbers 9017.10.00 and 9017.90.00. This merchandise was previously classified under item number 710.8025 of the Tariff Schedule of the United States. The HTS 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 drafting machines from Japan. 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 will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than October 2004.

Dated: November 18, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30673 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Continuation of Antidumping Duty Order: Potassium Permanganate From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Duty Order on Potassium Permanganate from the People's Republic of China.

SUMMARY: On April 7, 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 potassium permanganate from the People's Republic of China would be likely to lead to continuation or recurrence of dumping (64 FR 16907 (April 7, 1999)). On November 4, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on potassium permanganate from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an

industry in the United States within a reasonably foreseeable time (64 FR 60225 (November 4, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty order on potassium permanganate from the People's Republic of China.

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 Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 24, 1999.

Background

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58765, respectively) of the antidumping duty order on potassium permanganate from the People's Republic of China pursuant to section 751(c) of the Act. As a result of this 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 Results of Expedited Sunset Reviews: Potassium Permanganate from the People's Republic of China,* 64 FR 16907 (April 7, 1999)).

On November 4, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on potassium permanganate from the People's Republic of China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Potassium Permanganate from China and Spain,* 64 FR 60225 (November 4, 1999), and USITC Publication 3245, Inv. Nos. 731–TA–125–126 (October 1999)).

Scope

The merchandise subject to this antidumping order is potassium permanganate from the People's Republic of China, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades.[1] Potassium permanganate is classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and customs purposes. 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 potassium permanganate from the People's Republic of China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this antidumping duty order 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) the Department intends to initiate the next five-year review of this order not later than October 2004.

Dated: November 18, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30674 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] On May 19, 1995, the Department determined that plastic ignitor spheres containing potassium permanganate are not within the scope of the order (60 FR 26871).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–007]

Revocation of Antidumping Duty Order: Potassium Permanganate From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Revocation of antidumping duty order on potassium permanganate from Spain.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the International Trade Commission (''the Commission''), determined that revocation of the antidumping duty order on potassium permanganate from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 60225 (November 4, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the revocation of the antidumping duty order on potassium permanganate from Spain. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

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 Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

Background

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58765, respectively) of the antidumping duty order on potassium permanganate from Spain pursuant to section 751(c) of the Act. As a result of this 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 Results of Expedited Sunset Reviews: Potassium Permanganate from Spain,* 64 FR 16907 (April 7, 1999)).

On November 4, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on potassium permanganate from Spain would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Potassium Permanganate from China and Spain,* 64 FR 60225 (November 4, 1999), and USITC Pub. 3245, Inv. Nos. 731–TA–125–126 (October 1999)).

Scope

The merchandise subject to this antidumping order is potassium permanganate from Spain, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades.[1] Potassium permanganate is classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS item number is provided for convenience and customs purposes. The written description remains dispositive.

[1] On May 19, 1995, the Department determined that plastic ignitor spheres containing potassium permanganate are not within the scope of the order (60 FR 26871).

Determination

As a result of this determination by the Commission that revocation of this antidumping duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, is revoking the antidumping duty order on potassium permanganate from Spain. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2), the effective date of revocation is January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 18, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30676 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–851–802, A–485–805, A–201–827]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Small and Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Romania and Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Magd Zalok, DAS Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0984, or (202) 482–4162, respectively.

Postponement of Preliminary Determination

The Department of Commerce (''the Department'') is postponing the preliminary determinations in these antidumping duty investigations of certain small and large diameter carbon and alloy seamless standard, line and pressure pipe from the Czech Republic, Romania, and Mexico. As a result of this extension, the deadline for issuing the preliminary determinations in these investigations is now January 26, 2000.

On July 28, 1999, the Department initiated antidumping investigations of certain small and large diameter carbon and alloy seamless standard, line and pressure pipe from the Czech Republic, Romania, and from Mexico. *See Initiation of Antidumping Duty Investigations: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan and Mexico; and Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From the Czech Republic, Japan, the Republic of South Africa and Romania,* 64 FR 40825. The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation (*i.e.,* December 7, 1999).

Pursuant to 19 CFR 351.205(e), on November 10, 1999, the petitioners filed requests that the Department postpone the small diameter pipe preliminary determinations for the Czech Republic and Romania. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request.

Further, the Department has now concluded, consistent with section 733(c)(1)(B) of the Tariff Act of 1930, as amended (''the Act''), that the Mexican investigation of large diameter pipe is extraordinarily complicated, and that additional time is necessary to issue the preliminary determination, due to (a) the complexity of the issues raised in this case, requiring the issuance of supplemental questionnaires, and (b) the inherent difficulty of coordinating the analysis of cross-cutting issues for several related antidumping investigations (*i.e.,* whether certain merchandise constitutes a separate class or kind of merchandise). Therefore, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing these preliminary determinations until January 26, 2000.

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: November 17, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–30671 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–827]

Static Random Access Memory Semiconductors From Taiwan; Antidumping Duty New Shipper Review and First Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.

ACTION: Notice of extension of time limits of final results of 1997–1998 New Shipper Review and of Preliminary Results of 1997–1999 Administrative Review.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson at (202) 482–1776, or Irina Itkin at (202) 482–0656, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230.

Postponement of Final Results of New Shipper Review and Preliminary Results of Administrative Review

The Department issued the preliminary results of the new shipper review of the antidumping duty order on static random access memory semiconductors from Taiwan on October 4, 1999 (64 FR 55251 (October 12, 1999)). The current deadline for the final results in this review is December 31, 1999. In accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930 (the ''Act''), as amended, and 19 CFR 351.214(i)(2), the Department finds that this new shipper review cannot be completed within the original time frame due to the extraordinarily complicated nature of certain issues in this review. Thus, the Department is extending the time limit for completion of the final results of the new shipper review until March 2, 2000, which is 150 days after the date on which the preliminary results were issued. *See* memorandum to Robert LaRussa, dated November 17, 1999.

Moreover, because it is not practicable to complete the administrative review within the time limits mandated by the Uruguay Round Agreements Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), pursuant to section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for completion of the preliminary results of the administrative review

until April 29, 2000. *See* memorandum to Robert LaRussa, dated November 17, 1999.

These extensions are in accordance with sections 751(a)(2)(B)(iv) and 751(a)(3)(A) of the Act.

Dated: November 17, 1999.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–30672 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841 and A–588–852]

Structural Steel Beams From South Korea and Japan; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of postponement of preliminary determinations for antidumping duty investigations of structural steel beams from South Korea and Japan.

SUMMARY: The Department of Commerce (''the Department'') is postponing the preliminary determinations in the antidumping duty investigations of structural steel beams from South Korea and Japan. These investigations cover nine manufacturers and exporters of the subject merchandise (two from South Korea and seven from Japan) during the period July 1, 1998 through June 30, 1999.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Jim Doyle (Japan), at (202) 482–0159 and Rick Johnson (South Korea), at (202) 482–3818, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Preliminary Determinations

On August 3, 1999, the Department initiated antidumping duty investigations of imports of structural steel beams from Germany, Spain, Japan and South Korea. The notice of initiation stated that we would issue our preliminary determinations by December 14, 1999. *See* 64 FR 42084 (August 3, 1999).

On September 1, 1999, the U.S. International Trade Commission ruled that there was no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and Spain of certain structural steel beams. *See Certain Structural Steel Beams From Germany, Japan, Korea, and Spain,* 64 FR 47866 (September 1, 1999). Hence, in accordance with section 351.207(d) of the Department's regulations, the investigations regarding structural steel beam imports from Germany and Spain are automatically terminated.

On November 2, 1999, petitioners made a timely request pursuant to 19 CFR 351.205(e) for a 50 day postponement, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930 (''the Act''), as amended by the Uruguay Round Agreements Act. Petitioners stated that a postponement of the preliminary determinations is necessary in order to give the Department time to address the complicated issues in the Korean investigations. Also, petitioners requested that the Department postpone the preliminary determination for Japan to keep the investigations aligned.

Therefore, the Department is postponing the preliminary determinations of the Japanese and Korean investigations by 50 days, to February 2, 2000.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f).

Dated: November 16, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 99–30669 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–803]

Titanium Sponge From the Republic of Kazakhstan; Notice of 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 September 9, 1999, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping finding on titanium sponge from the Republic of Kazakhstan (Kazakhstan). This review covers one manufacturer/exporter, Ust-Kamenogorsk Titanium and Magnesium Plant, and an affiliated exporter, Specialty Metals Company. The period of review (POR) is August 1, 1997, through July 31, 1998. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. These final results of review have not changed from those presented in the preliminary results of review.

EFFECTIVE DATE: November 24, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3936.

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, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

Scope of Review

The product covered by this administrative review is titanium sponge from Kazakhstan. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS) subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

Background

On September 8, 1999, we published in the **Federal Register** (64 FR 48793) the preliminary results of the review of this finding. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. In the preliminary results, we determined the weighted-average dumping margin for the period August

1, 1997, through July 31, 1998, to be zero.

The Department has now completed the administrative review in accordance with section 751 of the Act.

Final Results of Review

We have determined that no changes to the preliminary results are warranted for purposes of these final results. The weighted-average dumping margin for the period August 1, 1997, through July 31, 1998, is as follows:

Manufacturer/exporter	Period	Margin (percent)
Ust-Kamenogorsk Titanium and Magnesium Plant/Specialty Metals Company	8/1/97–7/31/98	zero.

The Department will issue appraisement instructions directly to the Customs Service. Pursuant to the International Trade Commission's determination that revocation of the finding covering titanium sponge imports from Kazakhstan is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department revoked this finding on August 31, 1998, with an effective date of August 13, 1998. *See Notice of Revocation of Antidumping Findings and Antidumping Duty Order and Termination of Five-Year (''Sunset'') Reviews: Titanium Sponge from Kazakhstan, Russia, Ukraine, and Japan,* 63 FR 46215 (August 31, 1998). Since the revocation is currently in effect, current and future imports of titanium sponge from Kazakhstan shall be entered into the United States without regard to antidumping duties. Therefore, we will instruct Customs not to suspend future entries and to liquidate all future entries of this product, from Kazakhstan, without regard to antidumping duties.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department'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 19 CFR 351.305(a)(3). 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.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 17, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary, Import Administration.

[FR Doc. 99–30670 Filed 11–23–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Statutory Invention Registration

ACTION: Proposed collection; Comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted January 24, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 or via the Internet at LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Patent and Trademark Office (PTO), Washington, DC 20231, by telephone at (703) 305–9285.

SUPPLEMENTARY INFORMATION

I. Abstract

A statutory invention registration is not a patent. It has the defensive attributes of a patent but does not have the enforceable attributes of a patent. In other words, a person occasionally invents something solely for personal use (not for production or sale) and does not want to go through the effort and expense of obtaining a patent on the invention. At the same time, the inventor wants to prevent someone else from later obtaining a patent on a like invention. In that situation, the inventor can register a statutory invention and have it published. Once published, it cannot be claimed by another person. 37 USC 157 authorizes the Patent and Trademark Office (PTO) to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, providing the patentee meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the PTO, and pays all application, publication and other processing fees.

The PTO administers 35 USC 157 through 37 CFR 1.293–1.297. Under 37 CFR 1.293, an applicant for an original patent may request, at any time during the pendency of the applicant's pending complete application, that the specifications and drawings be published as a statutory invention registration. Any such request must be signed by (1) the applicant and any assignee of record or (2) an attorney or agent of record in the application. The request for publication must also include a waiver of the applicant's right to receive a patent on the invention claimed effective upon the date of publication of the statutory invention registration.

37 CFR 1.294 permits any request for a Statutory Invention Registration to be examined to determine if the requirements of § 1.293 have been met. The examination will also determine if the subject matter of the application is appropriate for publication, and if the requirements for publication are met.

The public may petition the PTO to review rejection decisions within one month or such other time as is set forth in the decision refusing publication under 37 CFR 1.295. The petition may include a request for refund of the petition fee.

Under 37 CFR 1.296, the public may petition the PTO to withdraw a request to publish a statutory invention registration prior to the date of the notice of the intent to publish. The request to withdraw may also include a request for a refund.

If the request for a statutory invention registration is approved, a notice to that

effect will be published in the PTO's Official Gazette, in accordance with 37 CFR 1.297. Each statutory invention registration published will include a statement relating to the attributes of a statutory invention registration.

The public uses form number PTO/SB/94, Request for Statutory Invention Registration, to request and authorize publication of a regularly-filed patent application as a Statutory Invention Registration, to waive the right to receive a United States patent on the same invention claimed in the identified patent application, and to agree that the waiver will be effective upon publication of the Statutory Invention Registration. No forms are associated with the petition for a review of the refusal to publish a statutory invention registration or the petition to withdraw the request for publication of a statutory invention registration.

II. Method of Collection

By mail, facsimile, or hand carry when the applicant or agent files a statutory invention registration with the PTO.

III. Data

OMB Number: 0651–0036.

Form Number: PTO/SB/94.

Type of Review: Renewal without change.

Affected Public: Individuals or households; businesses or other for-profit; not-for-profit institutions; farms; Federal, state, local or tribal government.

Estimated Number of Respondents: 83 responses per year.

Estimated Time Per Response: It is estimated to take approximately 24 minutes each to complete the request for statutory invention registration, the petition to review the rejection decision, and the petition to withdraw the publication request.

Estimated Total Annual Respondent Burden Hours: 33.2 hours per year.

Estimated Total Annual Respondent Cost Burden: $0 (no capital start-up or maintenance expenditures are required). Using the professional hourly rate of $175.00 for associate attorneys in private firms, the PTO estimates $5,810 for salary costs associated with respondents.

Title of form	PTO Form No.(s)	Estimated time for response	Estimated annual burden hours	Estimated annual responses
Statutory Invention Registration	PTO/SB/94	0.4	32.0	80
Petition to Review Rejection Decision	N/A	0.4	0.4	1
Petition to Withdraw Publication Request	N/A	0.4	0.8	2
Totals			33.2	83

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 19, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–30598, Filed 11–23–99; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Comment Request—Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed request for an extension of approval of a collection of information from manufacturers and importers of disposable and novelty cigarette lighters. This collection of information consists of testing and recordkeeping requirements in certification regulations implementing the Safety Standard for Cigarette Lighters (16 CFR part 1210). The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than January 24, 2000.

ADDRESSES: Written comments should be captioned ''Cigarette Lighters'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of approval of the collection of information, or to obtain a copy of 16 CFR part 1210, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION: In 1993, the Commission issued the Safety Standard for Cigarette Lighters (16 CFR part 1210) under provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 *et seq.*) to eliminate or reduce risks of death and burn injury from fires accidentally started by children playing with cigarette lighters. The standard contains performance requirements for disposable and novelty lighters that are intended to make cigarette lighters subject to the standard resist operation by children younger than five years of age.

A. Certification Requirements

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires manufacturers, importers, and private labelers of a

consumer product subject to a consumer product safety standard to issue a certificate stating that the product complies with all applicable consumer product safety standards. Section 14(a) of the CPSA also requires that the certificate of compliance must be based on a test of each product or upon a reasonable testing program.

Section 14(b) of the CPSA authorizes the Commission to issue regulations to prescribe a reasonable testing program to support certificates of compliance with a consumer product safety standard. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules to require that firms ''establish and maintain'' records to permit the Commission to determine compliance with rules issued under the authority of the CPSA.

The Commission has issued regulations prescribing requirements for a reasonable testing program to support certificates of compliance with the standard for cigarette lighters. These regulations require manufacturers and importers to submit a description of each model of lighter, results of prototype qualification tests for compliance with the standard, and other information before the introduction of each model of lighter in commerce. These regulations also require manufacturers, importers, and private labelers of disposable and novelty lighters to establish and maintain records to demonstrate successful completion of all required tests to support the certificates of compliance which they issue. 16 CFR part 1210, subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of disposable and novelty lighters to protect consumers from risks of accidental deaths and burn injuries associated with those lighters. More specifically, the Commission uses this information to determine whether lighters comply with the standard by resisting operation by young children. The Commission also uses this information to obtain corrective actions if disposable or novelty lighters fail to comply with the standard in a manner that creates a substantial risk of injury to the public.

The Office of Management and Budget (OMB) approved the collection of information in the certification regulations for cigarette lighters under control number 3041–0116. OMB's most recent extension of approval will expire on January 31, 2000. The Commission proposes to request an extension of approval without change for these collection of information requirements.

B. Estimated Burden

The cost of the rule's testing, reporting, recordkeeping, and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain and submit records to CPSC. There are an estimated 45 firms involved. Each of the 45 affected firms are expected to test an average of two new models of lighters each year, for a total of 90 responses. Testing of two lighters is expected to take 175 hours, therefore, 45 firms times 175 hours equals 7,875 total hours requested.

The cost of the rule's testing, reporting, recordkeeping and other certification-related provisions is comprised of time spent by testing organizations on behalf of manufacturers and importers, and time spent by firms to prepare, maintain, and submit records to CPSC. Testing costs are estimated to total roughly $5,000 to $10,000 per test series. If each of the 45 affected firms tests an average of one or two new models of lighters each year, total annual testing costs may be $225,000 to $900,000. Records preparation involves a range of both high-cost (executive and legal counsel) time and low-cost (clerical) time in each firm. The Commission staff has estimated charge-out costs for such time at approximately $50 per hour, on the average. For an average of roughly 20 to 40 hours per firm in a typical year, the total records preparation and submission costs for all 45 affected firms is approximately $45,000 to $90,000 per year. The differences between these costs and the March 1996 submission reflect a more accurate burden estimate.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: November 17, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–30561 Filed 11–23–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of certain electrically operated toys and children's articles. The collection of information consists of testing and recordkeeping requirements in regulations entitled ''Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children,'' codified at 16 CFR part 1505.

The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than January 24, 2000.

ADDRESSES: Written comments should be captioned ''Electrically Operated Toys'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR part 1505, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0416, extension 2226.

SUPPLEMENTARY INFORMATION: In 1973, the Commission issued safety requirements for electrically operated toys and children's articles to protect children from unreasonable risks of injury from electric shock, electrical burns, and thermal burns. These regulations are codified at 16 CFR part 1505 and were issued under the authority of sections 2 and 3 of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262).

A. Requirements for Electrically Operated Toys

These regulations are applicable to toys, games, and other articles intended for use by children that are powered by electrical current from a 120 volt circuit. Video games and articles designed primarily for use by adults that may be incidentally used by children are not subject to these regulations.

The regulations prescribe design, construction, performance, and labeling requirements for electrically operated toys and children's articles. The regulations also require manufacturers and importers of those products to develop and maintain a quality assurance program. Additionally, section 1505.4(a)(3) of the regulations requires those firms to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The Office of Management and Budget (OMB) approved the collection of information requirements in the regulations under control number 3041–0035. OMB's most recent extension of approval expires on January 31, 2000. The Commission now proposes to request an extension of approval without change for the information collection requirements in the regulations.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the requirements of the regulations, the records required by section 1505.4(a)(3) can be used by the firm and the Commission: (i) To identify specific lots or production lines of products which fail to comply with applicable requirements, and (ii) to notify distributors and retailers in the event the products are subject to recall.

B. Estimated Burden

The Commission staff estimates that about 40 firms are subject to the testing and recordkeeping requirements of the regulations. Each one may have an average of ten products each year for which testing and recordkeeping would be required. The Commission staff estimates that the tests required by the regulations can be performed on one product in 16 hours and that recordkeeping and maintenance can be performed for one product in four hours. Thus, the total annual burden imposed by the regulations on all manufacturers and importers is about 8,000 hours.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: November 17, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–30562 Filed 11–23–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board will meet in closed session on January 26–27, May 24–25, and September 27–28, 2000, at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board will discuss interim findings and tentative recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: November 18, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–30574 Filed 11–23–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: Monday, November 29, 1999, 1:00 PM–5:30 PM and Tuesday, November 30, 1999, 8:30 AM–4:00 PM.

ADDRESSES: Lawrence Livermore National Laboratory (LLNL), Conference Room A, Building 123, 7000 East Avenue, Livermore, California 94551–0808. Note: For their convenience, members of the public who plan to attend this open meeting are requested to contact Ms. Kathleen Moody of the LLNL Protocol Office in advance of the meeting in order to facilitate access to the meeting site. Ms. Moody may be reached at (925) 423–5948 or via e-mail at moody2@llnl.gov.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the National Ignition Facility Laser System Task Force is to provide independent external advice and

recommendations to the Secretary of Energy Advisory Board on the options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Task Force will focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system. The Task Force's review will cover the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The review will also address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology.

Tentative Agenda

A tentative agenda is currently under development for both Monday, November 29 and Tuesday, November 30, 1999. Times and order are still subject to change, however, topics may include:

Cleanliness Protocols (A Review of the Origin & Evolution of the Requirements, Assembly and Installation Plans and Procedures);
Procurement Planning (A Review of the NIF Laser System Procurement Plan, and Current Status);
NIF Cost Methodology (A Review of NIF Costs, and Revised Cost Estimate Plans);
NIF Project Management (A Review of NIF's Program and Project Management Control and Integration Systems and a Discussion of the Respective Roles and Responsibilities of DOE/DP, DOE/Oakland, UC, LLNL etc.);

The final agenda will be available at the meeting.

Public Participation

In keeping with procedures, members of the public are welcome to observe the business of the NIF Task Force and submit written comments or comment during the scheduled public comment periods. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 19, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–30605 Filed 11–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Secretary of Energy Advisory Board's Laboratory Operations Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: Thursday, December 2, 1999, 8:30 A.M.–3:00 P.M.

ADDRESSES: Lawrence Berkeley National Laboratory, Perseverance Hall, Building 54, Room 130, Berkeley, California 94720.

FOR FURTHER INFORMATION CONTACT: Dr. Mary L. Keaton, Secretary of Energy Advisory Board (AB-1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–7261.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Wednesday, December 2, 1999

8:30–8:45 A.M. Opening Remarks—Co-Chairs: E. Moniz & J. McTague
8:45–9:45 A.M. Briefings & Discussion: Laboratory Directed Research and Development
9:45–10:00 A.M. Break
10:00–12:00 A.M. Briefings & Discussion: Performance Based Management
12:00–1:30 P.M. Lunch Break
1:30–2:00 P.M. Briefings & Discussion: Update on National Ignition Facility
2:00–2:30 P.M. Briefing & Discussion: Remaining Issues
2:30–2:45 P.M. Discussion: Roadmaps and Portfolios
2:45–3:00 P.M. Public Comment Period
3:00 P.M. Adjourn

A final agenda will be available at the meeting.

Public Participation

The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting at Lawrence Berkeley National Laboratory, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes

We will make minutes and a transcript of the meeting available for public review and copying approximately 30 days following the meeting at the Freedom of Information

Public Reading Room, 1E-190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. You can find more information on the Laboratory Operations Board at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 19, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–30606 Filed 11–23–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232]

Duke Power Company; Public Notice Public Information Meetings

November 18, 1999.

The Federal Energy Regulatory Commission (Commission) will hold two public information meetings to familiarize the public with the Commission's hydropower licensing program. The Commission staff will give an overview of the Commission and its licensing procedures. There will be an opportunity for questions and answers. A significant number of hydroelectric projects' licenses will expire between 2000 and 2010, including the Duke Power Company's Catawaba-Wateree Project (Project No. 2232), located in Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawaba, Gaston, and Mecklenburg Counties, North Carolina, and York, Chester, Lancaster, Fairfield and Kershaw Counties, South Carolina. The license for the Catawaba-Wateree Project expires in August 2008.

Interested persons are invited to attend either or both meetings scheduled as follows:

Wednesday, December 8, 1999
7:00 to 9:00 p.m., Auditorium, Rock Hill City Hall, 155 Johnston Street, Rock Hill, SC 29731

Thursday, December 9, 1999
7:00 to 9:00 p.m., Auditorium, Catawaba Valley Community College, 2550 Highway 70, SE., Hickory, NC 28602

Please direct any questions regarding these meeting either to Pennie Lewis-Partee, Commission Staff Outreach Support Coordinator, 888 First Street, NE, Washington, DC 20426, (202) 219–2722; Mike Struve, WPCOG Council of Governments, 736 Fourth Street, SW., Hickory, NC 28602, (828) 322–9191 (Ext. 148); or Mike Vead, Catawaba Regional Council of Governments, 215 Hampton Street, Rock Hill, SC 29731, (803) 327–9041.

David P. Boergers,

Secretary.

[FR Doc. 99–30581 Filed 11–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–2–000]

Lee 8 Storage Partnership; Notice of Petition for Rate Approval

November 18, 1999.

Take notice that on November 16, 1999, Lee 8 Storage Partnership (Lee 8) pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve its rates pursuant to Section 311(a)(2) of the Natural Gas Policy Act of 1978. Lee 8 rates would be a system-wide maximum rate of $2.7723 per Mcf deliverability and $.0576 capacity charge. In addition, Lee 8 states that it will charge .79% of the injected volumes and .79% of the withdrawal volumes as an allowance for compressor fuel and lost-and-unaccounted-for gas on Lee 8's system.

Lee 8's petition states that Lee 8 is a Hinshaw pipeline exempt from Commission regulation under Section 11(c) of the NGA, with facilities located wholly within the state of Michigan.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of Lee 8's Petition, Lee 8's rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must 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 motions must be filed with the Secretary of the Commission on or before December 3, 1999. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed. us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–30578 Filed 11–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–69–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1999.

Take notice that on November 15, 1999 Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Forty-Sixth Revised Sheet No. 5, proposed to be effective January 1, 2000.

Northwest Alaskan states that the instant filing is submitted pursuant to Section 4 of the Natural Gas Act, Section 9 of the Alaskan Natural Gas Transportation Act of 1976 and Part 154 of the Federal Energy Regulatory Commission's Regulations. Northwest Alaskan is submitting this filing pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Pan-Alberta Gas (U.S.), Inc. (PAG–US), and pursuant to Rate Schedules X–1, X–2 and X–3, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 2000 through June 30, 2000) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that included in Appendix B attached to the filing are the workpapers supporting the derivation of the revised demand charge and demand charge adjustment reflected on the tariff sheet included therein.

Northwest Alaskan states that it is serving copies of the instant filing to its affected customers.

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. 99–30577 Filed 11–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2145]

Public Utility District No. 1 of Chelan County, Washington; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

November 18, 1999.

The Commission's regulations at Section 4.34 allow applicants the option of preparing their own Environmental Assessment (EA) for hydropower projects, and filing the EA with their application as part of an alternative licensing procedure. On October 25, 1999, the Commission approved the use of an alternative licensing procedure in the preparation of a new license application for Public Utility District No. 1 of Chelan County's (Chelan PUD), Rocky Reach Project, No. 2145.

The alternative procedures include provisions for the distribution of an initial information package (IIP), and for the cooperative scoping of environmental issues and needed studies. On July 7, 1999, Chelan PUD distributed their IIP. A public meeting on the IIP, and tour of project facilities were held on August 26, 1999.

Chelan PUD intends to distribute Scoping Document 1 (SD1) the week of November 15, 1999. Copies of SD1 can be obtained by calling Rosana Sokolowski at 509–663–8121 or via the Chelan PUD internet web site located at *http://www.chelanpud.org.* Two public meetings will be held to discuss SD1.

Scoping Meetings

Chelan PUD will hold public scoping meetings on December 15 and 16, 1999, pursuant to the National Environmental Policy Act (NEPA) of 1969. At the scoping meetings, Chelan PUD will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although Chelan PUD's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The times and locations of the scoping meeting are:

Evening Scoping Meeting

December 15, 1999, 7:00 pm to 9:00 pm, Chelan PUD Auditorium, 327 North Wenatchee Ave., Wenatchee, WA 98807

Morning Scoping Meeting

December 16, 1999, 9:00 am to 12:00 pm, Chelan PUD Auditorium, 327 North Wenatchee Ave., Wenatchee, WA 98807

All interested individuals, organizations, and agencies are invited and encouraged to attend any or all of the meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

Scoping Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Both scoping meetings will be recorded, and the transcripts will become part of the formal record of the proceedings for this project. Those who choose not to speak during the scoping meetings may instead submit written comments on the project.

Because this meeting will be a NEPA scoping meeting under the APEA process, the Commission does not intend to conduct a NEPA scoping meeting after Chelan PUD's application and EA are filed with the Commission. Instead, Commission staff will attend the meetings on December 15, and 16, 1999.

Commenting Deadline

Written comments should be mailed or e-mailed to: Mr. Gregg Carrington, Public Utility District No. 1 of Chelan County, Washington, P.O. Box 1231, Wenatchee, WA 98807–1231, gregg@chelanpud.org.

All correspondence should be postmarked no later than January 16, 2000. Comments should show the following caption on the first page: Scoping Comments, Rocky Reach Hydroelectric Project, Project No. 2145. Any comments sent to the Commission must include an original and eight copies and be addressed to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please put the docket number, P–2145, on the first page.

For further information please contact Gregg Carrington of Chelan PUD at (509) 663–8121 or Vince Yearick of the Commission at (202) 219–3073.

David P. Boergrs,

Secretary.

[FR Doc. 99–30597 Filed 11–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing, Soliciting Additional Study Requests, and Soliciting Motions To Intervene and Protests

November 18, 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.:* 2866–008.

c. *Date Filed:* November 8, 1999.

d. *Applicant:* Metropolitan Water Reclamation District of Greater Chicago.

e. *Name of Project:* Lockport Hydroelectric Project.

f. *Location:* On the Chicago Sanitary and Ship Canal, in Will County, Illinois. The project utilizes facilities of the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Thomas K. O'Connor, Chief of Maintenance and Operations, or Gregory D. Cargill, Assistant Chief Engineer, General Division, Metropolitan Water Reclamation District of Greater Chicago, 100 East Erie Street, Chicago, IL 60611–5102, Telephone (312) 751–5102.

i. *FERC Contact:* Hector Perez, hector perez@ferc.fed.us, 202–219–2843.

j. *Deadline for filing additional study requests:* January 7, 2000.

Deadline for filing motions to intervene and protests: January 24, 2000.

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 intervener filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener 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. This application is not ready for environmental analysis at this time.

l. The project consists of the following existing facilities: (1) A 385-foot-long powerhouse containing two generating units with a total installed capacity of 13.5 MW; (2) a concrete and masonry dam between the Federal Navigation Lock and the powerhouse including a 22-foot-wide abandoned lock, a 20-foot-wide sluice-gate section for passing debris and ice, and a 12-foot-wide non-overflow concrete section; (3) a fender wall approximately 530 feet long for debris skimming and ice protection; (4) a substation; (5) an access road approximately one mile long; and (6) appurtenant facilities.

The applicant does not propose any modifications to the project features or operation, and no additional capacity is proposed for this project under this new license.

m. 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 http://www.ferc.fed.us/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.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 99–30579 Filed 11–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

November 18, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2290–038.

c. *Date Filed:* October 22, 1999.

d. *Applicant:* Southern California Edison Company (SCE).

e. *Name of Project:* Kern River No. 3 Hydroelectric Project.

f. *Location:* The project is located on the Kern River in Tulare and Kern Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant's Contact:* Terri Loun, 300 N. Lone Hill Ave., San Dimas, CA 91773, (909) 394–8717.

i. *FERC Contact:* Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, or protests:* January 10, 2000.

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 (2290–038) on any comments, protests, or motions filed.

k. *Description of Amendment:* SCE filed an application to remove certain transmission facilities from the project because they are part of SCE's interconnected system and are no longer project features. To reflect as-built conditions, SCE is updating its exhibits to add minor features. Of the 157.57 acres proposed for removal from the project, 87.30 acres are related to the transmission lines; of which, Bureau of Land Management owns 30.08 acres and U.S. Forest Service owns 57.22 acres. The U.S. Forest Service owns the remaining 70.27 acres that are not related to the transmission lines.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC, 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses 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, 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. 99–30580 Filed 11–23–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Proposed Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of proposed implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of $12,660,998.58, including accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of Consent Orders and Remedial Orders entered into with ARGO Petroleum Corp. and 16 other firms, Case Nos. VEF–0031, et al. The OHA has tentatively determined that the funds obtained from these 17 firms plus accrued interest, will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

DATES AND ADDRESSES: Comments must be filed in duplicate within 30 days of publication of this notice in the **Federal Register**, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107. All comments should display a reference to case number VEF–0031, et al.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107 (202) 426–1527.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR § 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants, $12,660,998.58, including interest, obtained by the DOE under the terms of Consent Orders and Remedial Orders entered into with ARGO Petroleum Corp. and 16 other firms. The funds were paid towards the settlement of violations and alleged violations of the DOE price and allocation regulations involving the sale of crude oil during the period August 1973 through January 1981.

The OHA has proposed to distribute the Consent Order funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury. Since the period for filing claims for crude oil overcharge refunds has closed, no new refund applications will be accepted for the funds involved in this Proposed Decision and Order.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, S.W., Washington, D.C. 20585–0107.

Dated: October 29, 1999.

George B. Breznay,

Director, Office of Hearings and Appeals.

Name of Firm: ARGO Petroleum Corp., *et al.*

Date of Filing: October 19, 1999.

Case Number: VEF–0031, *et al.*

In accordance with the procedural regulation of the Department of Energy (DOE), a DOE enforcement official may file a request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 C.F.R. 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the DOE's Office of General Counsel for Federal Litigation (OGC) on October 19, 1999. The funds at issue in this case were obtained from 17 firms that sold crude oil during the period August 1973 through January 1981. These firms remitted moneys to the DOE to settle actual or alleged violations of the DOE's mandatory petroleum price and allocation regulations set forth at 10 CFR Parts 211 and 212. The sums submitted by each firm, including accrued interest are set forth in the Appendix to this Decision. The total amount remitted, including interest through September 30, 1999, is $12,660,998.58. This Decision and Order sets out the OHA's proposed procedures to distribute those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981), and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981). We have considered the OGC's request to

implement Subpart V procedures with respect to the monies received from the 17 firms named in the Appendix and have determined that such procedures are appropriate.

On July 28, 1986, the DOE issued a *Statement of Modified Restitutionary Policy in Crude Oil Cases,* 51 FR 27899 (August 4, 1986) (the SMRP). The SMRP, issued as a result of a court-approved Settlement Agreement In re: *The Department of Energy Stripper Well Exemption Litigation,* M.D.L. No. 378 (D. Kan. 1986), reprinted in 6 Fed. Energy Guidelines ¶ 90,501 (The Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution. Twenty percent of the funds will be used for direct restitution to claimants who were injured by actual or alleged crude oil violations.

The OHA has applied these procedures in numerous cases. *E.g., New York Petroleum, Inc.,* 18 DOE ¶ 85,435 (1988); *Shell Oil Co.,* 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp,* 17 DOE ¶ 85,079 (1988). The procedures have been approved by the United States District Court for the District of Kansas, as well as the Temporary Emergency Court of Appeals. We will not reiterate those procedures here. They are by now well known and, further, the period for filing refund claims for crude oil overcharge funds closed on June 30, 1995. 60 FR 19914–15 (April 21, 1995).

Accordingly, we propose to reserve the full twenty percent of the available alleged crude oil violation amounts, $2,532,199.72, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties. As stated above, no new applications for refund for those monies will be accepted, since the claims period has closed. The funds will be added to the general crude oil overcharge pool available for direct restitution.

Under the terms of the SMRP, we propose that the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or $10,128,798.86, should be disbursed in equal shares to the states and federal government for indirect restitution. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

It Is Therefore Ordered That: The refund amounts remitted to the Department of Energy by the firms listed in the Appendix to this Decision and Order will be distributed in accordance with the foregoing Decision.

APPENDIX—CONSENT ORDER

Name of firm	Tracking		Amount	
	OHA Case No.	System No. (COTS)	Principal	With interest through 9/30/99
ARGO Petroleum Corp.	VEF–0031	940C0089W	$60,835.18	$86,841.36
Don E. Pratt Oil Co.	VEF–0036	740C01204W	235,000.00	394,878.05
Beta Energy Corp.	VEF–0034	6C0X00260W	32,818.34	45,037.34
AWECO, Inc. & Hargis, Billy K.	VEF–0032	6A0X00231W	665,908.68	968,874.23
B.M. Hester	VEF–0033	660C00647W	25,000.00	36,649.53
General Atlantic Petrl. & General Klotz	VEF–0038	650X00359W	107,790.21	123,262.93
Glen A. Martin	VEF–0039	610C000478W	13,583.80	18,560.48
Intercoastal Operating Co. & L.E. Lewis	VEF–0041	600C20082W	95,000.00	159,348.46
Kelly Trading Co. & Reed, M.L.	VEF–0043	650X00350W	182,000.00	265,665.83
Martin Exploration Co.	VEF–0044	640C00406W	3,917.32	5,989.39
Pel-Star Energy	VEF–0047	6A0X00277W	30,263.70	51,178.22
Petro-Thermo	VEF–0048	6A0X00301W	42,772.32	75,698.67
Petroleum Mgmt., Inc.	VEF–0049	422C00066W	71,319.67	117,570.09
Polaris Production Co.	VEF–0050	670C00229W	71,726.16	109,151.96
Road Oil Sales	VEF–0051	N00S98090W	6,950.58	15,485.49
Tomlinson Petrl., Inc.	VEF–0054	650X00318W	7,406,694.87	10,027,185.48
United Independent Oil Co. & Peter Hirshburg	VEF–0055	N00S90461W	75,000.00	159,621.07
Total			9,126,580.83	12,660,998.58

[FR Doc. 99–30607 Filed 11–23–99; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6480–3]

Request for Nominations to the National and Governmental Advisory Committees to the U.S. Represenative to the North American Commission for Environmental Cooperation and to the Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is inviting nominations of qualified candidates to consider for appointment to fill vacancies on the National and Governmental Advisory Committees to the U.S. Representative to the North American Commission for Environmental Cooperation and on the Good Neighbor Environmental Board.

DATES: Nominations will be accepted until 5 p.m. on Friday, December 24, 1999.

ADDRESSES: Submit nominations to: Mark Joyce, Designated Federal Officer,

Office of Cooperative Environmental Management, U.S. Environmental Protection Agency (1601A), 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Officer, U.S. Environmental Protection Agency (1601A), Washington, DC 20460; telephone 202–564–9802; fax 202–501–0661; email joyce.mark@epa.gov.

SUPPLEMENTARY INFORMATION: The National and Governmental Advisory Committees to the U.S. Government Representative to the North American Commission for Environmental Cooperation advise the Administrator of the EPA in the Administrator's capacity as the U.S. Representative to the Council of the North American Commission on Environmental Cooperation. The Committees are authorized under Article 18 of the North American Agreement on Environmental Cooperation, North American Free Trade Agreement Implementation Act, Public Law 103–182 and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The Committees are responsible for providing advice to the United States Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the Agreement. The National Advisory Committee consists of 12 representatives of environmental groups and non-profit entities, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments. Members are appointed by the Administrator of EPA for a term of no less than two years with the possibility of reappointment. The Committees each meet 3 times annually.

The Good Neighbor Environmental Board advises the President and the Congress on environmental and infrastructure issues and needs within the States of the United States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The Board is specifically directed under Section 6 of the Enterprise for the Americas Initiative Act, 7 U.S.C. 5404. The Board consists of representatives from eight U.S. Government agencies; from the governments of the States of Arizona, California, New Mexico and Texas; from Tribal governments in the border region; and from private organizations and other non-governmental entities with experience and expertise on environmental and infrastructure problems along the southwest border. Members are appointed by the Administrator of EPA for a term of two years with the possibility of reappointment. The Board also meets 3 times annually.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee and the nominee's current business address and daytime telephone number.

Dated: November 18, 1999.

Sonia Altieri,

Acting Designated Federal Officer.

[FR Doc. 99–30614 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140281; FRL–6393–6]

Access to Confidential Business Information by Versar Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its subcontractor Versar Incorporated (Versar), of Springfield, Virginia, access to information which has been submitted to EPA under sections 4, 5, 6, and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than December 6, 1999.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to ''those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA).'' Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

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

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/.

III. What Action is the Agency Taking?

Under contract number 68–W9–9085, subcontractor Versar of 6850 Versar Center, Springfield, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) by providing technical support to the development of the Chemical Engineering Branch's computerized models, including models for developing screening level estimates of occupational exposures and environmental releases.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–9085, Versar will require access to CBI submitted to EPA under sections 4, 5, 6, and 8 of TSCA to perform successfully the duties specified under the contract.

Versar personnel will be given access to information submitted to EPA under sections 4, 5, 6, and 8 of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, and 8 of TSCA that EPA may provide Versar access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Versar's Springfield, VA facility.

Versar will be authorized access to TSCA CBI at their facility under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at Versar's site, EPA will perform the required inspection of its facility and ensure that the facility is in compliance with the Manual.

Upon completing review of the CBI materials, Versar will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2004.

Versar personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: November 8, 1999.

Deborah A. Williams,

Acting Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 99–30616 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140282; FRL–6393–7]

Access to Confidential Business Information by Eastern Research Group

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Eastern Research Group (ERG), of 14555 Avion Parkway, Suite 200, Chantilly, Virginia, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data by ERG occurred as a result of an approved waiver dated October 13, 1999, which requested granting ERG immediate access to TSCA CBI. This waiver was necessary to allow ERG to perform engineering analyses including exposure and release assessments, and identification of pollution prevention opportunities in support of all aspects of EPA decision-making.

FOR FURTHER INFORMATION CONTACT: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to ''those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA).'' Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

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/.

III. What Action is the Agency Taking?

Under contract number 68–W9–9085, ERG of 14555 Avion Parkway, Suite 200, Chantilly, VA, will assist the Office of Pollution Prevention and Toxics (OPPTS) in performing engineering analyses including exposure and release assessments, and identification of pollution prevention opportunities in support of all aspects of EPA decision-making under all sections of TSCA.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–9085, ERG will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ERG personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and ERG's Chantilly, VA site.

ERG will be authorized access to TSCA CBI at their facility, provided they comply with the provisions of the EPA *TSCA Confidential Business Information Security Manual.*

Before access to TSCA CBI is authorized at ERG's site, EPA will perform the required inspection of its facility, and ensure that this facility is in compliance with the Manual.

Upon completing review of the CBI materials, ERG will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2004.

ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: November 17, 1999.

Deborah A. Williams,

Acting Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 99–30617 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–904; FRL–6396–4]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–904, must be received on or before December 27, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION:**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–904 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740; e-mail address: giles-parker.cynthia@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 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 PF–904. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–904 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–904. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: November 18, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP1F3955 and PP1H5610

Summary of Petition

EPA has received pesticide petitions (PP1F3955 and PP1H5610) from BASF Corporation, P.O. Box 13528, RTP, NC 27709–3528 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of mepiquat chloride, N,N-dimethylpiperidinium chloride in or on the raw agricultural commodity grapes at 1.0 parts per million (ppm) and raisins at 5.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of mepiquat chloride in plants and animals is well understood. Based on a nature of the residue study in grapes and supported by similar studies in cotton, the residue of concern from mepiquat chloride use in grapes consists only of the parent compound.

2. *Analytical method*. An adequate analytical method for enforcement of the tolerances exists. The analytical method used for quantitative determinations was designed to measure mepiquat chloride residues present as the parent compound.

3. *Magnitude of residues*. Twenty-eight field trials were conducted in grape vineyards with treatments made at the maximum proposed label rate. Trials were established in eight states over a 2–year period. Ten varieties of grapes were studied in these trials. Sixty-four treated samples were obtained and analyzed. The number and geographical distribution of the grape residue studies exceeds the current requirements for grape tolerances on all grape varieties.

Grape samples from eight field trials were processed to either raisins and raisin waste or grape juice, wet pomace, and dry pomace. The processed fractions were analyzed for residues of mepiquat chloride to determine the effects of processing on residue levels. Drying the grapes to raisins concentrated the residues a maximum of 6 fold. Residues did not concentrate in grape juice.

B. Toxicological Profile

1. *Acute toxicity*. Based on the acute toxicity data, mepiquat chloride does not pose any acute toxicity risks. The acute toxicology studies place mepiquat chloride in toxicity category II for acute oral toxicity, category III for acute dermal, and toxicity category IV for acute inhalation toxicity, eye irritation and dermal irritation. Mepiquat chloride is not a skin sensitizer.

2. *Genotoxicty*. The carcinogenic potential of mepiquat chloride was evaluated by the OPP's Reference Dose (RfD)/Peer Review Committee on May 2, 1996. The Committee classified mepiquat chloride into Group E (evidence of noncarcinogenicity for humans), based on a lack of carcinogenicity in acceptable studies with two animal species, rat and mouse.

3. *Reproductive and developmental toxicity*. In a 2-generation reproductive toxicity study, Wistar rats were fed mepiquat chloride in their diets at concentrations of 0, 500, 1,500, or 5,000 ppm for 10 weeks (F_0) or 14 weeks (F_1) before mating, and during mating, gestation, and lactation. The F_0 parents were mated a second time 2 weeks after weaning the first litter. The doses corresponding to the dietary concentrations are 51.2 and 48.6, 153.1 and 146.6, and 499.3 and 574.5 milligrams/kilograms/day (mg/kg/day), respectively for F_0 and F_1 males and 54.0 and 53.3, 163.6 and 162.0, and 530.0 and 626.5 mg/kg/day, respectively for F_0 and F_1 females.

The lowest observed adverse effect level (LOAEL) for systemic toxicity is 5,000 ppm (499 mg/kg/day) for male and female rats based on neurological impairment, decreased body weight and body weight gain in the adults, and retarded growth of F_0 and F_1 pups. The corresponding no observed adverse effect level (NOAEL) is 1,500 ppm (147 mg/kg/day). OPP's Reference Dose (RfD)/Peer Review Committee concluded on May 2, 1996, that, because of the retarded growth of the pups in the 5,000 ppm (499 mg/kg/day) group, the systemic NOAEL of 1,500 ppm (147 mg/kg/day) would also be regarded as the reproductive NOAEL.

4. *Subchronic toxicity*. The NOAEL is 58.4 mg/kg/day and the LOAEL is 95.3 mg/kg/day based on the combined results for two 1 year feeding studies and one 90–day feeding study in dogs. This endpoint is the same as that used for acute dietary and chronic RfD.

5. *Chronic toxicity*. On May 2, 1996, the OPP's Reference Dose (RfD)/Peer Review Committee recommended that the RfD for mepiquat chloride be established at 0.6 mg/kg/day. This value was based on the systemic NOAEL of 1,800 ppm (58.4 mg/kg/day) from the 1 year dog feeding study and the uncertainty factor (UF) of 100.

i. *Chronic feeding—Nonrodent*. In a chronic toxicity study, mepiquat chloride (99.5%) was administered to beagle dogs in the diet at dose levels of 0, 200, 600, or 1,800 ppm (0, 6.3, 19.9 or 58.4 mg/kg/day, respectively) for 12 months. There were no significant treatment-related effects. In order to establish a LOAEL, a second chronic toxicity study was conducted at dose levels of 0 or 6,000 ppm (170 mg/kg/day) for 12 months. Based on the results of the two chronic dog studies, the NOAEL is 1,800 ppm (58.4 mg/kg/day) and the LOAEL is 6,000 ppm (170 mg/kg/day).

ii. *Chronic feeding—Rats*. In a chronic feeding study, mepiquat chloride (58%) was administered for 24 months in the diet to Wistar rats at concentrations of 0, 290, 2,316, or 5,790 ppm (active ingredient), equivalent to doses of 0, 13, 106, 268 mg/kg/day for males and 0, 18, 146, or 371 mg/kg/day for females, respectively. The NOAEL is 2,316 ppm (105 mg/kg/day). The LOAEL is 5790 ppm (268 mg/kg/day).

6. *Animal metabolism*. In a metabolism study, mepiquat chloride, labeled with 14C (radiochemical purity: 98%), was administered to young adult Sprague-Dawley rats either intravenously or orally. Mepiquat chloride was absorbed rapidly from the stomach, distributed evenly in the intra- and extracellular compartments of the blood, demonstrated high bioavailability via the oral route, was excreted mostly in urine, and did not accumulate in tissues. Urine, feces, and bile samples from various treatments were used for studies of the metabolic fate of mepiquat chloride. In all cases, only the unchanged compound could be

detected. Therefore, there was no biotransformation of mepiquat chloride *in vivo*. The potential metabolites, such as 1-methylpiperidine or piperidine, were not detected.

7. *Endocrine disruption*. No specific tests have been conducted with mepiquat chloride to determine whether the chemical may have an endocrine like effect in humans. However, there were no significant findings in other relevant tests (developmental and reproductive toxicity tests) which would suggest that mepiquat chloride produces endocrine like effects.

C. Aggregate Exposure

1. *Dietary exposure*. The mepiquat chloride Registration Eligibility Decision (RED) indicates that EPA has found no dietary risks of concern for mepiquat chloride for the general U.S. population nor any subgroup. Pursuant to the requirements under the Food Quality Protection Act of 1996, the Agency has determined that the use of mepiquat chloride will not pose dietary risks to infants and children due primarily to the chemical's low toxicity and its low usage rate.

i. *Food*—a. *Chronic dietary exposure*. A Dietary Risk Evaluation System (DRES) chronic exposure analysis was conducted by EPA for the RED. The analysis was performed using tolerance level residues (including those that have been revoked and the three expired grape and raisin temporary tolerances previously established for an Experimental Use Permit) and an assumption of 100 percent crop treated to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. No Anticipated Residue (AR) information was used in this analysis. Existing tolerances result in a Theoretical Maximum Residue Contribution (TMRC) which represents less than 1% of the RfD for the U.S. general population and each of the 22 subgroups, including non-nursing infants (<1 year old).

The TMRC calculation results in a significant overestimate of human dietary exposure. The chronic analysis for mepiquat chloride is a worst case estimate of dietary exposure with all residues at tolerance level and 100% of the commodities assumed to be treated with mepiquat chloride. This analysis does not take into account that this use of mepiquat chloride on grapes is restricted to use on Concord and Niagara grapes only. Concord and Niagara grapes represent less than 10% of the total U.S. grape acreage (74,000 versus 763,850). Based on the risk estimates calculated in this analysis, it has been concluded that dietary exposure to mepiquat chloride does not pose any risk concerns.

b. *Acute dietary exposure*. The Margin of Exposure (MOE) is a ratio of the NOAEL to the exposure. Generally, the Agency concludes that there is no dietary concern when the acute dietary margins of exposure are greater than 100. The results of the acute analysis conducted for the RED indicate that mepiquat chloride in the diet represents no serious risk concern for acute exposure. All MOEs were well above the Agency's level of concern for acute dietary risk (ranging from a low of 3,893 for infants to a high of 29,200 for females 13+ years old).

ii. *Drinking water*. Neither a Maximum Contaminant Level (MCL) nor a Hazard Advisory (HA) has been established for mepiquat chloride. According to the EPA's Pesticides in Ground Water Database, there have been no mepiquat chloride detections reported in monitoring wells. Based on its low application rate, relatively rapid degradation rate, and soil binding ability, the Agency does not expect mepiquat chloride to contaminate ground water or surface water. Consequently neither a chronic or acute drinking water assessment was not performed.

2. *Non-dietary exposure*. Mepiquat chloride has no residential or other non-occupational uses that might result in exposures to humans.

D. Cumulative Effects

EPA has addressed the issue of the potential risk from the cumulative effects of mepiquat chloride and other pesticides with a common mechanism of toxicity in the RED document. In assessing the potential risks, the Agency first considered structural similarities and common effects that exist between mepiquat chloride and other related compounds such as paraquat, diquat, and difenzoquat. The Agency then considered other compounds which could potentially result in neurotoxic effects similar to mepiquat chloride.

With one substance, difenzoquat, there appears to be similar neurotoxic effects. The Agency has concluded that the cumulative effects from the combined dietary exposure to mepiquat and difenzoquat would be virtually nil because the chronic dietary exposure for all population subgroups is less than 1% of the RfD for both difenzoquat and mepiquat chloride. The acute dietary MOE range for difenzoquat is 50,000 to 16,000 while the acute dietary MOE range for mepiquat chloride is 3,900 to 29,000.

In evaluating other chemicals with neurotoxic effects similar to mepiquat chloride, the Agency determined that it is unlikely that these other chemicals share a common mode/mechanism of toxicity with mepiquat chloride, or that cumulative risk assessment would be required. Although the mode/mechanism of toxicity of mepiquat chloride has not been well defined, the effects noted on the nervous system appear to be secondary to general systemic toxicity that occurs at high dose levels. Based on available data and structure-activity relationship analyses, mepiquat chloride would be considered to have minimal neurotoxic activity.

E. Safety Determination

1. *U.S. population*. In the mepiquat RED, EPA has determined that the established tolerances for mepiquat chloride meet the safety standards under the FQPA amendments to section 408(b)(2)(D) for the general population. In reaching this determination, EPA has considered the available information on the aggregate exposures (both acute and chronic) from the feed use on cotton, as well as the possibility of cumulative effects from mepiquat chloride and other chemicals with a similar mode/mechanism of toxicity. BASF does not believe that the limited use of mepiquat chloride on Concord and Niagara grapes alters these conclusions

Since there are no residential or lawn uses of mepiquat chloride, no dermal or inhalation exposure is expected in and around the home. No acute toxicity endpoints of concern have been identified for mepiquat chloride.

In assessing chronic dietary risk, EPA estimates that mepiquat chloride residues in food account for <1% of the RfD and residues in drinking water are not expected. Thus, the aggregate exposures from all sources of mepiquat chloride (in this case, only dietary is relevant) account for <1% of the RfD for the general population. Therefore, the Agency concludes that aggregate risks for the general population resulting from mepiquat chloride uses are not of concern.

In evaluating the potential for cumulative effects, EPA compared structural similarities and toxic effects seen in mepiquat chloride studies with other related compounds. With one substance, difenzoquat, there appears to be similar neurotoxic effects. However, the Agency has concluded that the cumulative effects from the combined dietary exposure to mepiquat chloride and difenzoquat would be virtually nil because the chronic dietary exposure for all population subgroups is less than

1% of the RfD for both difenzoquat and mepiquat chloride.

2. *Infants and children*. In the RED EPA has determined that the established tolerances for mepiquat chloride (including the previously established temporary tolerances for grapes) meet the safety standard under the FQPA amendment to section 408(b)(2)(C) for infants and children. The safety determination for infants and children considers the factors noted above for the general population, but also takes into account the possibility of increased dietary exposure due to the specific consumption patterns of infants and children, as well as the possibility of increased susceptibility to the toxic effects of mepiquat chloride residues in this population subgroup.

In the developmental studies, effects were seen in the fetuses only at the same or higher dose levels than effects on the mothers. In the reproduction study, no effects on reproductive performance were seen. Also, because the NOAELs from the developmental and reproduction studies were equal to or greater than the NOAEL used for establishing the reference dose, EPA concludes that it is unlikely that there is additional risk concern for immature or developing organisms. Finally, the Agency has no epidemiological information suggesting special sensitivity of infants and children to mepiquat chloride. Therefore, EPA finds that the uncertainty factor (100x) routinely used in RfD calculations is adequately protective of infants and children, and an additional uncertainty factor is not warranted for mepiquat chloride.

EPA estimates that mepiquat chloride residues in the diet of infants and children account for less than 1% of the RfD and residues in drinking water are not expected. Thus, the chronic aggregate exposure from all sources of mepiquat chloride account for less than 1% for infants and children. The acute dietary MOE for infants and children exposed to mepiquat chloride is 3,893. Therefore, the Agency concludes that aggregate risks for infants and children resulting from mepiquat chloride uses are not of concern.

F. International Tolerances

There are no Codex, Canadian, or Mexican tolerances established for mepiquat chloride on grapes. Thus, international harmonization is not an issue for these tolerances.

[FR Doc. 99–30615 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6480–5]

Sociodemographic Data Used for Identifying Potentially Highly Exposed Populations

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of a final document.

SUMMARY: The notice announces the availability of a final document, Sociodemographic Data Used for Identifying Potentially Highly Exposed Populations (EPA/600/R–99/060, July 1999), prepared by Versar, Inc. for the National Center for Environmental Assessment, within the Office of Research and Development of the U.S. Environmental Protection Agency (EPA). This document assists assessors in identifying and enumerating potentially highly exposed populations. The document presents data relating to factors that potentially impact an individual or group's exposure to environmental contaminants based on activity patterns (how time is spent), microenvironments (locations where time is spent), and other sociodemographic data such as age, gender, race and economic status. Populations potentially more exposed to various chemicals of concern, relative to the general population, are also addressed.

ADDRESSES: The document is being made available electronically from the NCEA web site at *http://www.epa/ncea* under the What's New and Publications menus. Due to technical difficulties, certain tables and appendices could not be electronically reproduced. To obtain copies, please contact the National Center for Environmental Assessment's Technical Information Staff by phone (202–564–3261) or facsimile (202–565–0050). A limited number of paper copies also will be available from EPA's National Service Center for Environmental Publications on or about November 8, 1999. Interested parties may request a copy by telephoning 800–490–9198 and providing the document title and EPA number.

FOR FURTHER INFORMATION CONTACT: Amina Wilkins, National Center for Environmental Assessment-Washington Office (8623D), U.S. Environmental Protection Agency, Washington, DC (20460); telephone: 202–564–3256; facsimile: 202–565–0076; email: *wilkins.amina@epa.gov.*

Dated: November 9, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–30612 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6480–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement concerning the Aurum Etching Superfund Site, with Coltec Industries, Inc.

The settlement requires the settling parties to pay a total of $33,524.76 as payment of past response costs and $15,000 in future costs to the Hazardous Substances Superfund. The settlement includes a covenant not to sue pursuant to section 107 of CERCLA, 42 U.S.C. 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate, The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before December 27, 1999.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Lydia Behn, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8419. Comments should reference the Aurum Etching Superfund

Site, Dallas County, Texas, and EPA Docket Number 06–11–99, and should be addressed to Lydia Behn at the address listed above.

FOR FURTHER INFORMATION CONTACT: Joseph Compton, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–8506.

Dated: November 1, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–30611 Filed 11–23–99; 8:45 am]

BILLING CODE 6560–50–U

OFFICE OF NATIONAL DRUG CONTROL POLICY

Meeting Notice

AGENCY: Office of National Drug Control Policy.

ACTION: Notice of Meeting of the Drug Free Communities Advisory Commission.

SUMMARY: In accordance with the Drug-Free Communities Act, a meeting of the Drug Free Communities Advisory Commission will be held on December 1, 1999 in the 5th floor conference room of the Office of National Drug Control Policy, located at 750 17th Street N.W., Washington, D.C. 20530. The meeting will commence at 8:30 a.m., break for lunch at 12:00 p.m., and resume at 1:15 p.m. for the afternoon session, ending at 5:00 p.m. The agenda will include discussion of ways to promote the creation of new coalitions, and the status of juvenile justice and delinquency prevention; training and technical assistance; program evaluation; and the National Youth Media Campaign. There will be an opportunity for public comment from 2:15 p.m. until 2:45 p.m.

FOR FURTHER INFORMATION: Please direct any questions to Edward Jurith, General Counsel, (202) 395–6709, Office of National Drug Control Policy, Executive Office of the President, Washington, D.C. 20503.

Edward H. Jurith,

General Counsel.

[FR Doc. 99–30636 Filed 11–23–99; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

November 15, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0288.

Title: Special Temporary Authority (Cable Television Relay Stations), Section 78.33.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 35.

Estimated Time Per Response: 4 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 140 hours.

Total Annual Costs: $4,585.

Needs and Uses: 47 CFR section 78.33 permits cable television relay station operators to file informal requests for special temporary authority (STA) to install and operate equipment in a manner different from the way authorized in the station license. STAs may also be requested by cable operators and equipment suppliers to conduct a field surveys to determine necessary data in connection with the preparation of a formal application for installation of a radio system, as well as to conduct equipment, program, service, and path tests. The data submitted will be used by Commission staff to ensure that granting such requests for STA will not cause interference to established stations and that the requests meet the Commission's technical standards.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–30572 Filed 11–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested.

November 16, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 24, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554, or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0589.

Title: Supplementary Information for the **Federal Register**.

Form Number: FCC Form 159(c).

Type of Review: Revision of a currently approved collection to include the FCC registration number.

Respondents: Businesses or other for profit; Individuals or households; Small business or organizations.

Number of Respondents: 685,738.

Estimated Time Per Response: 5 minutes.

Frequency of Response: Reporting, on Occasion.

Total Annual Burden: 342,869.

Needs and Uses: Fees, Fines & Debts. This form is the Commission's remittance advice and should accompany all payments submitted to assure proper credit. The purpose of the form is to provide the identity of the payor and the applicant using, the FCC registration number, the amount being paid, and the reason the payment is being made. Specific identification of the payor or applicant, by the FCC registration number, call sign, or the bill that was rendered, such as invoice number, is also required. This information facilitates the efficient and accurate processing of the Commission's collections by its designate entities, such as a lockbox Bank.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–30573 Filed 11–23–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 12, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0623.

Title: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization.

Form Number: FCC 600.

Type of Review: Revision of a currently approved collection

Respondents: Business or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 55,143.

Estimate Time Per Response: 2.3 hours (avg.).

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 126,846 hours.

Total Annual Costs: $20,244,750.

Needs and Uses: FCC Form 600 may be used by various applicants in accordance with 47 CFR parts 22, 24, 74, 90, and 95. Statutory authority for this collection is contained in 47 U.S.C. 154(I) and 309(j), as amended. The adjustment to FCC Form 600 is a supplemental showing to demonstrate why more than ten trunked channels are required. This form will eventually be replaced by FCC Form 601 upon conversion of all radio service to the Universal Licensing System (ULS) which currently uses FCC Form 600. The Commission uses the information contained in this form to determine whether the applicant is legally, technically, and financially qualified to be licensed. Without such information the Commission could not determine whether to issue the licenses to the applicants that provided telecommunications services to the public, and therefore, fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended. The information will also be used to update the database and provide for proper use of the frequency spectrum.

OMB Control Number: 3060–0690.

Title: Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands.

Form Number(s): 415/415T.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 5,000

Estimated Time Per Response: 0.5 to 20 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 75,625 hours.

Total Annual Cost: $5,000,000.

Needs and Uses: The collection of this information is made necessary by the amendments of the Commission's Ruling regarding the 37.0–38.6 GHz (37 GHz) and 38.6–40.0 GHz (39 GHz) bands in ET Docket No. 95–183 (RM 8553). The rules implemented the use of a channeling plan, and licensing and technical rules for fixed point-to-point microwave operations in the 37 GHz band, while also modifying the rules for the 39 GHz band to make them consistent with the technical rules we

are proposing for the 37 GHz band. The action is authorized by Sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934. Two rules in the Memorandum Opinion and Order, § 101.17—Performance Requirements for the 38.6–40.0 GHZ frequency band, and § 101.103—Frequency coordination, impose information burdens. The FCC uses this information to provide adequate point-to-point microwave spectrum, which will facilitate provision of the communications infrastructure for commercial and private mobile radio operations and competitive wireless local telephone service.

OMB Control Number: 3060–0882.

Title: Section 95.833, Construction Requirements.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households.

Number of Respondents: 1,468.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, at 10 year interval.

Total Annual Burden: 1,468 hours.

Total Annual Cost: None.

Needs and Uses: The requirement contained in Section 95.833 is necessary for 218–219 MHz service system licensees to file a report after ten years of license grant to demonstrate that they provide substantial service to its service areas. The information is used by the Commission to assess compliance with 218–219 MHz service construction requirements, and to provide adequate spectrum for the service. This will facilitate spectrum efficiency and competition by the 218–219 MHz service licensees in the wireless marketplace.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–30592 Filed 11–23–99; 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, N.W., 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.: 217–011512–002.

Title: Hyundai/MSC Agreement.

Parties: Hyundai Merchant Marine Co., Ltd. (Hyundai); Mediterranean Shipping Co., S.A. (MSC).

Synopsis: The proposed modification extends the agreement's term through December 31, 2000 and provides for automatic annual renewal, unless one party provides notice of termination to the other party by September 1 of that year. The modification also deletes eastbound and westbound allocations of the 800 maximum slots Hyundai is authorized to charter from MSC each week.

Dated: November 19, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–30655 Filed 11–23–99; 8:45 am]

BILLING CODE 6730–01–P

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, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

A & A Link, Ltd., 177–25 Rockaway Blvd., Suite 205, Jamaica, NY 11434, Officer: Tal Y. Yo, President (Qualifying Individual)

All World International Shipping, Inc., 2630 NW 97 Avenue, Miami, FL 33172, Officers: Elizabeth Monserrate, Vice President (Qualifying Individual), Alexandra Gayraud, President

Shipping International, 1161 Mission Street, San Francisco, CA 94103, Houssein Bolourchi, Sole Proprietor

Diamond Logistics Corporation, 11155 NW 33rd Street, Miami, FL 33172, Officer: Maria Suzete Dos Santos, President (Qualifying Individual)

Oliveira Marine Shipping, Inc., 1 Water Street, State Pier, Fall River, MA 02721, Officers: Amaldo S. Oliveira, President (Qualifying Individual), Maria Odette Oliveira, Vice President

YKL America Inc. 500 Carson Plaza Drive, Suite 213, Carson, CA 90746, Officer: Jung Ock Yoo, President (Qualifying Individual)

Dated: November 19, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–30656 Filed 11–24–99; 8:45 am]

BILLING CODE 6730–01–U

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 December 8, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Glenn A. Solsrud Revocable Trust Concerning Caprice Corporation and Robert E. Miller as Trustee, Augusta, Wisconsin; to acquire voting shares of Caprice Corporation, Augusta, Wisconsin, and thereby indirectly acquire voting shares of Red Lake County State Bank, Red Lake Falls, Minnesota.

2. Robert E. Miller as Trustee for the following trusts: Glenn A. Solsrud Irrevocable Trust for the Benefit of Brian K. Solsrud, II; Glenn A. Solsrud Irrevocable Trust for the Benefit of Gregory A. Solsrud, II; Glenn A. Solsrud Irrevocable Trust for the Benefit of Corinne E. Solsrud; Glenn A. Solsrud Irrevocable Trust for the Benefit of Rachel A. Solsrud, II; all of Augusta,

Wisconsin; to acquire voting shares of Kimberly Leasing Corporation, Augusta, Wisconsin, and thereby indirectly acquire voting shares of First State Bank of Rush City, Rush City, Minnesota; Security State Bank of Staples, Staples, Minnesota; and The First National Bank of Crosby, Crosby, Minnesota.

3. Glenn A. Solsrud Revocable Trust Concerning Augusta Financial Corporation and Robert E. Miller as Trustee, Augusta, Wisconsin; to acquire voting shares of Augusta Financial Corporation, Augusta, Wisconsin, and thereby indirectly acquire voting shares of Peoples State Bank, Augusta, Wisconsin.

Board of Governors of the Federal Reserve System, November 18, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30564 Filed 11–23–99; 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 December 17, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Banknorth Group, Inc., Burlington, Vermont; to acquire 100 percent of the voting shares of BNG Interim Bank, N.A., Glen Falls, New York.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Peoples Bancshares of Tallassee, Inc., Tallassee, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples Bank, Tallassee, Alabama.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Old Kent Financial Corporation, Grand Rapids, Michigan; to merge with Merchants Bancorp, Inc., Aurora, Illinois, and thereby indirectly acquire The Merchants National Bank of Aurora, Aurora, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to acquire 100 percent of the voting shares of P&W Bancshares, Inc., Little Rock, Arkansas, and thereby indirectly acquire Central Bank & Trust, Little Rock, Arkansas.

2. Farmers Bancshares, Inc., Hardinsburg, Kentucky; to merge with Leitchfield Deposit Bancshares, Inc., Leitchfield, Kentucky, and thereby indirectly acquire Leitchfield Deposit Bank & Trust Company, Leitchfield, Kentucky.

In connection with this application, Applicant also has applied to acquire Leitchfield Bancshares Insurance, Inc., Leitchfield, Kentucky, and thereby engage in the sale, as agent, of credit related insurance, pursuant to § 225.28(b)(11)(i) of Regulation Y.

E. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Dacotah Banks, Inc., Aberdeen, South Dakota; to acquire 100 percent of the voting shares of Rolla Holding Company, Inc., Rolla, North Dakota, and thereby indirectly acquire First State Bank of Rolla, Rolla, North Dakota, and First National Bank of Hettinger, Hettinger, North Dakota.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Sierra Financial, Inc., Houston, Texas, and FSF of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Greenbelt Bancshares, Inc., Quanah, Texas, and thereby indirectly acquire voting shares of Security National Bank in Quanah, Quanah, Texas.

G. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. SouthwestUSA Corporation, Las Vegas, Nevada; to become a bank holding company by acquiring 100 percent of the voting shares of SouthwestUSA Bank (in organization), Las Vegas, Nevada.

Board of Governors of the Federal Reserve System, November 18, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30563 Filed 11–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411

Locust Street, St. Louis, Missouri 63102-2034:

1. Walden Financial Group, Inc., Pocahontas, Arkansas; to engage *de novo* in the activity of extending credit, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30565 Filed 11–23–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 29, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–30699 Filed 11–19–99; 4:43 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Revision of SF 525, Medical Record Radiation Therapy Summary

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is revising the SF 525, Medical Record Radiation Therapy Summary to:

1. Collection information on the sponsor of the patient;

2. Delete ''grade; SSN; rank;'' from ''PATIENT'S IDENTIFICATION'' item and replace with ''ID no. (SSN or other)'';

3. Add standard information fields; and

4. Make the form authorized for local reproduction.

You can obtain the updated form in two ways:

On the internet. Address: http://www.gsa.gov/forms/forms.htm, or;

From Forms-X, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

DATES: Effective November 24, 1999.

Dated: November 15, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–30599 Filed 11–23–99; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR); Automation of Medical Standard Form 525

AGENCY: General Services Administration.

ACTION: Guideline on automating medical standard forms.

BACKGROUND: The Interagency Committee on Medical Records (ICMR) is aware of numerous activities using computer-generated medical forms, many of which are not mirror-like images of the genuine paper Standard/Optional Form. With GSA's approval the ICMR eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The committee proposes to set required fields standards and that activities developing computer-generated versions adhere to the required fields but not necessarily to the image. The ICMR plans to review medical Standard/Optional forms which are commonly used and/or commonly computer-generated. We will identify those fields which are required, those (if any) which are optional, and the required format (if necessary). Activities may not add data elements that would change the meaning of the form. This would require written approval from the ICMR. Using the process by which overprints are approved for paper Standard/Optional forms, activities may add other data entry elements to those required by the committee. With this decision, activities at the local or headquarters level should be able to develop electronic versions which meet the committee's requirements. This guideline controls the ''image'' or required fields but not the actual data entered into the field.

SUMMARY: With GSA's approval, the Interagency Committee on Medical Records (ICMR) eliminated the requirement that every electronic version of a medical Standard/Optional form be reviewed and granted an exception. The following fields must appear on the electronic version of the following form:

ELECTRONIC ELEMENTS FOR SF 525

Item	Placement*
TEXT:	
Title: Radiation Therapy Summary	Bottom right corner of form.
Form ID: Standard Form 525 (Rev. 5–99)	Bottom right corner of form.
Full Figure front and back	
Head—profile—left and right	
DATA ENTRY FIELDS:	
Diagnosis	

ELECTRONIC ELEMENTS FOR SF 525—Continued

Item	Placement*
Sex	
Age	
Date of Consultation	
Narrative Summary—INSTRUCTIONS:	
Include (1) Site of primary and histopathology, (2) Clinical state or class (or exact area if treated for metastasis only), (3) Brief history, (4) Pertinent lab or X-ray findings, (5) Physical findings, (6) Plan of treatment, (7) Dates start and end, (8) Tumor does summary (include special techniques or precautions), (9) Status of tumor at completion of therapy, (10) Tollerance (include medications), (11) Disposition.	
Signature of Physician	
Date (of Signature)	
Relationship to Sponsor	
Sponsor's Name—Last	
Sponsor's Name—First	
Sponsor's Name—MI	
Sponsor's ID Number (SSN or Other)	
Depart./Service	
Organization	
Hospital or Medical Facility	
Records Maintained At	
Patient's Identification	Lower left corner of former.
(Name—last, first, middle; ID No. or SSN; Sex; Date of Birth; Rank/Grade	Lower Left corner of form
Register No.	Lower Left corner of form.
Ward No.	Lower Left corner of form.
Unit Parameters—Field (Allow at least 6 entries)	
Unit Parameters—Unit (Allow at least 6 entries)	
Unit Parameters—Nomenclature (Allow at least 6 entries)	
Unit Parameters—Beam Energy (Allow at least 6 entries)	
Unit Parameters—Calibration Factors (Allow at least 6 entries)	
Unit Parameters—Other Applicable Factors (Allow at least 6 entries)	
Treatment Factors—Field Name (Allow at least 4 entries)	
Treatment Factors—Field Size (Allow at least 4 entries)	
Treatment Factors—SSD/TSD (Allow at least 4 entries)	
Treatment Factors—Angel/ARC (Allow at least 4 entries)	
Treatment Factors—Given Dose (Allow at least 4 entries)	
Time Dose—Point Name (Allow at least 4 entries)	
Time Dose—Dose (Allow at least 4 entries)	
Time Dose—Franctions (Allow at least 4 entries)	
Time Dose—Days (Allow at least 4 entries)	
Time Dose—Inclusive Dates (Allow at least 4 entries)	

*If no placement indicated, items can appear anywhere on the form.

FOR FURTHER INFORMATION CONTACT: CDR Steven S. Kerrick, USN National Naval Medical Center, Department of Ophthalmology, Bethesda, MD 20889–5000 or E-Mail at StevenK966@aol.com.

Dated: November 15, 1999.

Steven S. Kerrick,

Chairperson, Interagency Committee on Medical Records.

[FR Doc. 99–30600 Filed 11–23–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–4718]

Guidance for Industry on In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling.'' This guidance provides recommendations to sponsors of new drug applications (NDA's) and biologics license applications (BLA's) for therapeutic biologics on carrying out in vivo drug metabolism and metabolic drug-drug interaction studies. The guidance reflects the agency's current view that the metabolism of a new drug should be defined during drug development and that its interactions with other drugs should be explored as part of an adequate assessment of the safety and effectiveness of the drug.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike,

Rockville, MD 20852–1448, FAX: 888–CBERFAX or 301–827–3844. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Shiew–Mei Huang, Center for Drug Evaluation and Research (HFD–850), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5671; or David Green, Center for Biologics Evaluation and Research (HFM–579), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling.'' A draft of this guidance was published for comment in the **Federal Register** of November 19, 1998 (63 FR 64269). The guidance has been revised after careful consideration of public comments received between November 1998 and March 1999.

Previous guidance from FDA on the use of in vitro approaches to study metabolism and metabolic drug-drug interactions is available in a document entitled ''Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies In Vitro'' (April 1997). This guidance should be viewed as a companion to this earlier guidance. The earlier guidance addressed techniques and approaches for in vitro studies of drug metabolism and drug interactions and the correlation between in vitro and in vivo studies. This guidance discusses study design, choice of interacting drugs, and data analysis and provides recommendations for dosing and labeling.

This Level 1 guidance document is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on drug metabolism and drug-drug interactions. 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 statutes, regulations, or both.

II. Comments

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm, or http://www.fda.gov/cber/guidelines.htm.

Dated: November 17, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Poilcy.

[FR Doc. 99–30568 Filed 11–23–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes

AGENCY: Department of the Interior—Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes will meet on December 8, 1999 at the Department of the Interior. The purpose of the meeting is to:

(1) Update Committee members on the current activities of the Interagency Task Force (ITF);

(2) Review and discuss the ITF Working Groups' draft products on: (i) Studies, (ii) Collaborative Process Guidelines, and (iii) Economics.

DATES: December 8, 1999; 8:30 a.m.–3 p.m.

ADDRESSES: Department of the Interior, Room 7000, 1849 C St. NW, Washington, DC. Security at the building entrance will issue you a visitor's pass and direct you to Room 7000 upon your arrival.

FOR FURTHER INFORMATION CONTACT: Alex Matthiessen, Office of Secretary, Department of the Interior. 202–208–6291.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior and the Chairman, Federal Energy Regulatory Commission, with the concurrence of ITF members, established the Advisory Committee to provide a forum for non-Federal entities to review and provide comments on the deliberations of the ITF. Interested parties are invited to attend the meeting and will be given an opportunity to provide comments.

Alex Matthiessen,

Special Assistant to the Designated Federal Officer.

[FR Doc. 99–30576 Filed 11–23–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for Designation of Critical Habitat for the Woundfin (*Plagopterus argentissimus*) and Virgin River Chub (*Gila seminuda*) within the Virgin River Basis

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the Final Environmental Assessment and Finding of No Significant Impact for Designation of Critical Habitat for the Woundfin (*Plagopterus argentissimus*) and Virgin River Chub (*Gila seminuda*) within the Virgin River Basin. The proposed Federal action described in the environmental assessment is to formally designate critical habitat for two endangered fishes inhabiting the Virgin River. Both woundfin and Virgin River chub are listed as endangered species under provisions of the Endangered Species Act of 1973, as amended (Act). The designation of critical habitat for woundfin and Virgin River chub is necessary pursuant to the Act and to comply with a court order to make a final determination with regard to these species. On August 27, 1999, in U.S. District Court, District of Colorado, the Court ordered the Service to proceed with the final designation of critical habitat for woundfin and Virgin River chub. Pursuant to that Court Order, we are proceeding with all necessary steps to finalize critical habitat designation for these two species and providing a notice of availability of the Final EA and FONSI. In accordance with Service

procedures to supplement Council on Environmental Quality regulations implementing the National Environmental Policy Act, the FONSI must be available for public review if the proposed action is located in a floodplain or wetland, pursuant to Executive Orders 11988 and 11990, respectively. The designation of critical habitat includes the 100-year floodplain, therefore, the Service will allow 30 days for public review before the final designation of critical habitat can be implemented.

DATES: The 30 day public review period ends on December 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Reed E. Harris, Utah Field Supervisory, Ecological Services Field Office, Lincoln Plaza, 145 East 1300 South, Suite 404, Salt Lake City, Utah 84115, or at (801) 524–5001. Copies of final documents are available from the Field Office. All comments and materials received regarding the proposed designation of critical habitat will be available upon request for public inspection, by appointment, during normal business hours at the above address.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1999, the Service published in the **Federal Register** (64 FR 43026) a notice of availability of the Draft Environmental Assessment of Designation of Critical Habitat for the Woundfin (*Plagopterus argentissimus*) and Virgin River Chub (*Gila seminuda*) within the Virgin River Basin. At that time we also solicited input on the Draft EA from the public, governmental agencies, the scientific community, industry and other interested parties. Comments were accepted from August 9, 1999, through September 8, 1999. All comments received on the Draft EA were given due consideration during the formulation of the Final EA and FONSI.

Author: The primary author of this notice is Keith L. Rose, U.S. Fish and Wildlife Service, 764 Horizon Drive Suite 228, Grant Junction, CO 81506. Mr. Rose may also be reached at (970) 243–4552.

Authority

The authorities for this action are the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and the Endangered Species Act of 1973 (16 U.S.C. 1532 *et seq.*)

Ralph O. Morgenweck,

Regional Director, Region 6, Denver, Colorado.

[FR Doc. 99–30323 Filed 11–23–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Impact Statement (DEIS) for the Wolf Lake Area Natural Gas Project

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Availability.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement (DEIS) for the Wolf Lake Area Natural Gas Project is available for public review. During the 60-day review and comment period, there will be two public hearings on the DEIS as described below. The DEIS evaluates the potential environmental impacts of constructing a natural gas pipeline, related production facilities, and additional anticipated natural gas development in the Wolf Lake area of the Kenai National Wildlife Refuge, Kenai Peninsula, Alaska. This notice is being furnished pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969.

DATES: The public hearing dates are:

1. November 30, 1999, 2:00 p.m. to 4:00 p.m., Washington, DC.

2. December 15, 1999, 7:00 p.m. to 9:00 p.m., Soldotna, Alaska.

Written comments must be received by January 19, 2000.

ADDRESSES: The public hearing locations are:

1. Washington, DC—Main Interior Building, 1849 C Street, NW, Washington, DC.

2. Soldotna—Soldotna Senior Center, 197 W. Park Avenue, Soldotna, Alaska.

Comments should be addressed to: Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Brian L. Anderson (907) 786–3379.

SUPPLEMENTARY INFORMATION: Marathon Oil Company has applied to the U.S. Fish and Wildlife Service (USFWS) for a right-of-way grant to construct a natural gas pipeline and associated production facilities upon lands of the Kenai National Wildlife Refuge, a Conservation System Unit established by the Alaska National Interest Lands Conservation Act (ANILCA) (Sec. 303, Pub. L. 96–487, 16 U.S.C. 668dd). The right-of-way application is being evaluated under regulations (43 CFR 36) implementing Title XI of ANILCA: Transportation and Utility Systems in and Across, and Access into, Conservation System Units in Alaska.

The proposed project would be located in the northwest section of the Kenai Peninsula, generally between Beaver Lake and the Swanson River Road (T7N, R10W and T7N, R9W, Seward Meridian, Alaska). The surface estate within the project area is owned by the United States and is managed by the USFWS. The subsurface oil, gas and coal mineral estate is owned by Cook Inlet Region Incorporated (CIRI), an Alaska Corporation established under the provisions of the Alaska Native Claims Settlement Act (ANCSA) (Sec 7, Pub. L. 92–203, 43 U.S.C. 1601 *et seq.*). Under Title XI, CIRI is entitled to adequate and feasible access to their valid inholding for economic and other purposes, subject to reasonable regulations necessary to protect the natural and other values of the refuge.

As an operator under lease to CIRI, Marathon Oil Company proposes to develop natural gas production from two or more well sites including the existing Wolf Lake #2 well site, and Galena well site. Development would include construction of a gas gathering pipeline connecting the well sites to existing production facilities at Marathon's Beaver Creek gas field. The applicant's proposed pipeline right-of-way is approximately 5.5 miles long, and would include primary and secondary products pipelines, a water disposal pipeline, and communications and electric power lines, all of which would be buried. Pipeline construction would take place during the 2000/2001 winter season and is anticipated to take 30 to 40 days. No maintained roads would be constructed within the pipeline right-of-way, and the area will be allowed to revegetate naturally. Existing roads would be used for access to the well sites. Several small gas conditioning units and process/control buildings would be located at each well site. The DEIS also addresses the potential impacts of anticipated future gas well development in the vicinity that would utilize the proposed pipeline.

The environmental review is being conducted in accordance with the requirements of NEPA (Public Law 91–190, as amended, 42 U.S.C. 4371 *et seq.*) as implemented by the Council on Environmental Quality regulations at 40 CFR 1500–1508, and the pertinent regulations of the USFWS. Concurrently, the U.S. Army Corps of Engineers is evaluating the proposed project under Section 404 of the Clean Water Act (33 U.S.C. 1344), the public

notice of which is included as an appendix to the DEIS.

David B. Allen,

Regional Director.

[FR Doc. 99–30650 Filed 11–23–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–1020–PG]

Call for Nominations for Western Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of nomination.

SUMMARY: The purpose of this notice is to solicit public nominations for a vacant Category 1 position on the Western Montana Resource Advisory Council (RAC). Category 1 includes: holders of Federal grazing permits or leases, transportation/rights-of-way, developed outdoor recreation activities, off-highway vehicle users, commercial recreation activities, commercial timber industry representatives, or energy or mineral development representatives. The term of the position will expire in September of 2001.

The RACs provide advice and recommendations to the Bureau of Land Management (BLM) on land use planning and management of public lands within their geographic areas. Public nominations will be considered for 45 days after publication of this notice. Individuals may nominate themselves or others; nominees must be residents of Montana. Nominees will be evaluated based on their education, training, and experience on issues and knowledge of the geographic area covered by the Western Montana RAC. Nominees should have demonstrated a commitment to collaborative resource decision-making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, and any other information that addresses the nominee's qualifications.

DATE: All nominations must be received by the BLM Western Montana Zone no later than January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Nelson-Dean, Pubic Affairs Specialist, BLM Western Montana Zone, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702; 406–494–5059.

Dated: November 10, 1999.

Merle Good,

Field Manager.

[FR Doc. 99–30635 Filed 11–23–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–KP–00–1310–EJ]

Pinedale Anticline Natural Gas Exploration and Development Project, Sublette County, Wyoming

AGENCY: Lead Agency—Bureau of Land Management, Interior. Cooperating Agencies—US Forest Service, US Department of Agriculture, US Army Corps Of Engineers, State of Wyoming.

ACTION: Notice of Availability (NOA) of Draft Environmental Impact Statement (DEIS).

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Pinedale Anticline Natural Gas Exploration and Development Project DEIS which evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts from continued exploration for, and development of, natural gas resources in the Pinedale Anticline Project Area (PAPA) in Sublette County, Wyoming. The DEIS analyzes a proposal by the Project operators to drill new exploration and development wells in their leased acreage within the PAPA (approximately 197,345 acres) in western Wyoming. The PAPA operators include Alpine Gas Company, Anschutz Exploration Corporation, B-P Amoco Production Company, HS Resources, Inc., Jonah Gas Gathering Company, McMurry Oil Company, Questar Exploration & Production, Ultra Resources, Inc., Western Gas Resources, Inc., Yates Petroleum Corporation, and other companies (collectively referred to as the PAPA Operators). Lands associated with the new drilling program are located between the town of Pinedale, Wyoming, and the Jonah Natural Gas Field located 30 miles south of Pinedale, and between the Green River and Wyoming Highway 191.

DATES: Comments on the DEIS will be accepted for 60 days following the date that the Environmental Protection Agency (EPA) publishes their Notice of Availability of this DEIS in the **Federal Register**. The EPA notice is anticipated to be published on November 26, 1999. The BLM asks that those submitting comments on the DEIS make them as specific as possible. Comments are more helpful if they include suggested changes, sources, or methodologies. Comments that contain only opinions or preferences will not receive a formal response. However, they will be considered and included as part of the BLM decision making process.

A formal public hearing will be held at 7 p.m. on January 12, 2000, at the Pinedale High School Auditorium, 101 E. Hennick, Pinedale, Wyoming. The purpose of the hearing will be to afford the public the opportunity to comment on the proposed natural gas exploration and development DEIS.

ADDRESSES: Comments on the DEIS should be sent to: Bureau of Land Management, Bill McMahan (Project Coordinator), 280 Highway 191 North, Rock Springs, WY 82901, or they can be e-mailed to rock__springs__wymail@blm.gov

A copy of the DEIS has been sent to affected Federal, State, and local government agencies and to those persons who responded to the BLM that they wished to receive a copy of the DEIS. Copies of the DEIS are available for public inspection at the following BLM office locations:

Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009

Bureau of Land Management, Rock Springs Field Office, Highway 191 North, Rock Springs, Wyoming 82901

Bureau of Land Management, Pinedale Field Office, 432 East Mill Street, Pinedale, Wyoming 82941

SUPPLEMENTARY INFORMATION: The DEIS analyzes a proposal by the PAPA Operators to drill new exploration and development wells in their leased acreage within the 197,345 acre PAPA. The PAPA is located within Townships 29 through 33 North, Ranges 107 through 110 West, 6th Principal Meridian. The area is accessed by U.S. Highway 191 and Wyoming Highway 351. Access to the interior of the PAPA is provided by an existing county and BLM road network developed to service homes and ranches located along the Green and New Fork Rivers, livestock operations, recreation use, and past and current drilling and production activities.

Collectively, the Pinedale Anticline Operators' proposal would provide for the continued exploration for natural gas and, where discoveries occur, the development of the gas resource by drilling up to 900 new wells to achieve 700 producing locations over the next 10 to 15 years. Drilling estimates were based on the operators', BLM's, and State of Wyoming's reasonable expectations that the ''tight-gas''

formation in this area could be developed at a spacing of one well every 40 acres or 16 wells per square mile. The DEIS analysis addresses three critical criteria bearing on how and to what extent development in the PAPA could proceed. The criteria include: three exploration/development scenarios which define over what portion of the PAPA (none, all, or just a portion) development could occur; two levels of development which define the number of well pads which could be developed in the next 10 to 15 years; and two mitigation alternatives which define options for reducing impacts to the environment from future development activities. Mitigation alternatives are evaluated based on their application on just Federal lands and minerals, as well as on all lands and minerals in the PAPA (Federal, State and private). The PAPA surface ownership is approximately 80 percent Federal, 15 percent private, and 5 percent State. A small infrastructure of roads and pipelines for natural gas production are already in place within the PAPA. Additional roads and pipelines would be necessary to link the new wells with the existing transportation systems.

The PAPA Operators' plans and drilling schedules would be contingent upon an adequate price for the gas at the wellhead and anticipated increases in gas consumption in the United States. The American Gas Association estimates a 40 percent increase by the year 2015.

Potential impacts of concern from the proposed development (not in priority order) are: sensitive view sheds; economic, social, health, and safety effects to Pinedale and surrounding communities; livestock operations; recreation use associated with the Mesa; crucial big game winter range and antelope migrations; sage grouse and raptor breeding and nesting; special status plant and wildlife species; soil erosion and sediment increases to the New Fork and Green Rivers; groundwater draw down and contamination; Historic Lander Trail condition and view shed; and cumulative effects.

This DEIS, in compliance with Section 7(c) of the Endangered Species Act (as amended), includes the Biological Assessment for the purpose of identifying any endangered, threatened, or proposed species which are likely to be affected by the proposed action.

A Technical Report Document has also been prepared in conjunction with the DEIS. It contains detailed technical information regarding air quality modeling, wildlife habitat modeling, cultural resources, and potential well pad location adjustments due to surface resource restrictions. A limited number of the technical report documents are available upon request or they may be reviewed at the BLM offices listed above.

Comments, including the names and street addresses of respondents, will be made available for review by the public at the addresses listed above during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and will be published as part of the Final EIS. However, individual respondents may request confidentiality. If you wish to withhold your name and/or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: November 18, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–30589 Filed 11–23–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935–4214–ET; COC–23841]

Proposed Extension of Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Agriculture, Forest Service, proposes to extend Public Land Order No. 5718 for another 20-year period. This order withdrew National Forest System land from location and entry under the mining laws to protect the Eisenhower Memorial Tunnel on Interstate Highway 70. The land has been and remains open to Forest management and to mineral leasing. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by February 22, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius at 303–239–3706.

SUPPLEMENTARY INFORMATION: On November 9, 1999, the U.S. Department of Agriculture, Forest Service, requested that Public Land Order No. 5718 be extended for an additional 20-year period. This withdrawal was made to protect public safety and public investment in the Eisenhower/Johnson Memorial Tunnel on Interstate Highway 70. This highway is an important part of the transportation system between the east and west slopes of the Continental Divide in Colorado. Public Land Order 5718 will expire on April 13, 2000.

The withdrawal comprises approximately 1,365 acres of National Forest System land. It is located in T. 4 S., R. 76 W., (unsurveyed) at the West Portal and above the Tunnel, and is described in Public Land Order 5718 and is located in Summit and Clear Creek Counties. A complete description of the lands can be provided by the Colorado State Office at the address shown above.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the Colorado State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with this proposed extension. All interested persons who desire a public meeting for the purpose of being heard on the proposal should submit a written request to the Colorado State Director within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days prior to the scheduled date of the meeting.

This extension will be processed in accordance with regulations set forth in 43 CFR part 2310.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 99–30639 Filed 11–23–99; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF THE INTERIOR

National Park Service

Privacy Act of 1974, as Amended; Systems of Records

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of minor changes to a Privacy Act System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is updating a system of records managed by the National Park Service (NPS). The changes are to the system of records ''U.S. Park Police Personnel Photograph File, Interior, NPS–12,'' which is published in its entirety below.

DATES: These actions will be effective on November 24, 1999.

FOR FURTHER INFORMATION CONTACT: For information regarding these changes, and for general information regarding NPS' Privacy Act programs, contact Ms. Diane Cooke, NPS Privacy Act Officer, at (202) 208–3933.

SUPPLEMENTARY INFORMATION: With the publishing of this notice, the office title of the System Location has changed representing an organizational change; also, the Routine Uses of Records has changed to assist the media in identifying officers involved in all types of incidents.

Diane M. Cooke,

NPS FOIA Officer.

INTERIOR/NPS–12

SYSTEM NAME:

U.S. Park Police Personnel Photograph File—Interior NPS–12.

SYSTEM LOCATION:

Office of Inspectional Services and Personnel Section, United States Park Police Headquarters, 1100 Ohio Drive SW, Washington, DC 20024.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. Park Police Officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 80–447, as amended by Pub. L. 91–282, Section 4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the record is (1) for management to aid in the investigation of personnel complaints and to assist the media in identifying officers involved in all types of incidents. Disclosures outside the Department of the Interior may be made to:

(1) Another Federal agency to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(2) The Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(1) The Department or any component of the Department;

(2) Any Departmental employee acting in his or her official capacity;

(3) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; or

(4) The United States, when the Department determines that the Department is likely to be affected by the proceeding; and

(b) The Department deems the disclosure to be:

(1) Relevant and necessary to the proceedings; and

(2) Compatible with the purpose for which we compiled the information.

(3) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation, order or license, when we become aware of an indication of a violation or potential violation of the statute, rule regulation, order or license.

(4) A congressional office in response to an inquiry to that office by the individual to whom the records pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In a 5×8 Cardex File.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

Maintained with safeguards meeting requirements of 43 CFR 2.51 for manual records.

RETENTION AND DISPOSAL:

After an officer leaves the Park Police, his/her photograph is properly disposed of.

SYSTEM MANAGERS(S) AND ADDRESS:

Chief of Police, United States Park Police (See Location).

NOTIFICATION PROCEDURE:

To determine whether the records are maintained on you in this system, write to the Systems Manager.

RECORD ACCESS PROCEDURE:

To see your records, write the Systems Manager. Describe specifically as possible the records sought. If copies are desired, indicate the maximum you are willing to pay.

CONTESTING RECORD PROCEDURES:

To request corrections or the removal of material from your files, write the Systems Manager.

RECORD SOURCE CATEGORIES:

Personnel files and ID photographs.

[FR Doc. 99–30590 Filed 11–23–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35), requesting extension of a currently approved collection (OMB No.: 3117–0190).

EFFECTIVE DATE: November 15, 1999.

PURPOSE OF INFORMATION COLLECTION: The requested extension of a currently approved collection (USITC DataWeb user registration form) is for use by the Commission. The user registration forms are required to accurately track usage, data reports generated, and costs by user sectors. The forms would appear on the ITC DataWeb internet site (http://dataweb.usitc.gov) and would need to be filled out only once.

PUBLIC COMMENTS REGARDING THE INFORMATION COLLECTION: OMB is required to make a decision concerning extension of this currently approved collection between 30 and 60 days after publication of this notice. To be assured of consideration, comments must be received not later than 30 days after publication of this notice, at OMB by the Desk Officer/USITC.

SUMMARY OF PROPOSAL:

(1) Number of forms submitted: two

(2) Title of forms: ITC Tariff and Trade DataWeb Public Access Project:

''Create New User Account Form'' and ''User Information Form''
(3) Type of request: extension
(4) Frequency of use: single data gathering
(5) Description of respondents: government and private sector users of the on-line ITC DataWeb
(6) Estimated number of respondents: 2,000 annually
(7) Estimated total number of minutes to complete the forms: 2.0 minutes
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the survey and draft Supporting Statement submitted to the Office of Management and Budget will be posted on the Commission's World Wide Web site at http://www.usitc.gov or the agency submissions to OMB in connection with this request may be obtained from Peg MacKnight, Office of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–205–3418). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–3897). Copies of any comments should also be provided to Robert Rogowsky, Director of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal, (telephone no. 202–205–1810).

Issued: November 15, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30646 Filed 11–23–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–314–317 and 731–TA–552–555 (Review)]

Hot-Rolled Lead and Bismuth Carbon Steel Products From Brazil, France, Germany, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in October 1999 to determine whether revocation of the existing countervailing and antidumping duty orders would be likely to lead to continuation or recurrence of subsidization/dumping and of material injury to a domestic industry. On November 15, 1999, the Department of Commerce published notice that it was revoking the orders ''because no domestic party responded to the sunset review notice of initiation by the applicable deadline'' (64 FR 61821). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: November 15, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR § 207.69).

Issued: November 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30648 Filed 11–23–99; 8:45 am]

BILLING CODE 7020–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–812 (Final)]

Live Cattle From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, [2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Canada of live cattle, provided for in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective November 12, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by the Ranchers-Cattlemen Action Legal Foundation (''R-Calf'') (Columbus, MT). The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of live cattle from Canada were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 16, 1999 (64 FR 44538). The hearing was held in Washington, DC, on October 6, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 19, 1999. The views of the Commission are contained in USITC Publication 3255 (November 1999), entitled Live Cattle from Canada: Investigation No. 731–TA–812 (Preliminary).

Issued: November 19, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30649 Filed 11–23–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Lynn M. Bragg dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–825–826 (Final)]

Certain Polyester Staple Fiber From Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–825 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Korea of certain polyester staple fiber, provided for in subheading 5503.20.00 of the Harmonized Tariff Schedule of the United States.[1] Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling for the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that certain polyester staple fiber from Taiwan is not being sold, nor is likely to be sold, in the United States at less than fair value, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of the antidumping investigation No. 731–TA–826 (Final) under section 735(b) of the Act. The Commission is taking this action so that the final phases of the antidumping investigations may proceed concurrently in the event that Commerce makes a final affirmative antidumping determination with respect to Taiwan. If Commerce makes a final negative antidumping determination with respect to Taiwan, the Commission will terminate its antidumping investigation under section 735(c)(2) of the Act (19 U.S.C. 1673d(c)(2)), and section 207.2(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of these investigations is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain polyester staple fiber from Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The final phase of the antidumping investigation with respect to Taiwan is being scheduled, under waiver of section 207.21(b), discussed above, for purposes of efficiency. The investigations were requested in a petition filed on April 2, 1999, by E.I. Dupont de Nemours, Inc., Wilmington, DE; NanYa Plastics Corporation, America, Lake City, SC; KoSa, Spartanburg, SC; Wellman, Inc., Shrewsbury, NJ; and Intercontinental Polymers, Inc., Charlotte, NC.[2]

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 14, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 28, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 20, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 23,

[1] For purposes of these investigations, certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to these investigations may be coated, usually with a silicon or other finish, or not coated. Certain polyester staple fiber is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) is specifically excluded from these investigations. Also specifically excluded from these investigations are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

[2] NanYa is no longer a petitioner in these investigations. DuPont is not a petitioner in the investigation on Taiwan.

2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 21, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 4, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 4, 2000. On April 20, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 24, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 17, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–30647 Filed 11–23–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice Required by the Y2K Act To Establish a Small Business Liaison

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: Pursuant to section 18(b) of the Y2K Act, Public Law 106–37, 106 Stat. 185 (1999), to be published at 15 U.S.C. 6617, the Department of Justice designates Joseph K. Bryan, Director, Office of Small and Disadvantaged Business Utilization (OSDBU), as the point of contact between the Department and small businesses which qualify as small business concerns under the Act, with respect to problems arising out of Y2K failures and resulting violations of Federal rules or regulations. Mr. Bryan can be reached on (202) 616–0521 or 1–800–345–3712.

EFFECTIVE DATE: September 1, 1999 through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph K. Bryan, Director, OSDBU, Department of Justice, 1331 Pennsylvania Ave, NW, Suite 1010, Washington, D.C. 20530; telephone number 1–800–345–3712; fax number (202) 616–1717.

SUPPLEMENTARY INFORMATION: The Y2K Act provides for a suspension of penalties for a ''first-time'' violation of certain Federally enforceable rules or regulations, during the year 2000, where the violation was the result of a year 2000 failure, certain waiver standards are met, and no similar violation occurred during the last three years. Certain exceptions apply. For purposes of this Act, a ''small business concern'' is defined as an unincorporated business, a partnership, corporation, association, or organization, with fewer than 50 full-time employees.

The Y2K Act defines ''Y2K failure'' as failure by any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collections of processing instructions to process, calculate, compare, sequence, display, store, transmit, or receive Year 2000 date-related data. This definition specifically includes failures to:

(1) Deal with or account for transitions or comparisons from, into, and between the years 1999 and 2000 accurately;

(2) Recognize or process accurately any specific date in 1999, 2000, or 2001; or

(3) Account accurately for the year 2000's status as a leap year, including recognition and processing of the correct date of February 29, 2000.

Dated: November 8, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99–30638 Filed 11–23–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

Summary: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2000 for a cooperative agreement to fund the ''Development of a Survival Guide for Newly Appointed Wardens'' project.

Purpose: The National Institute of Corrections (NIC) invites applications for a cooperative agreement to develop a ''survival guide'' for newly appointed Wardens or Superintendents, hereinafter referred to as Wardens. In this usage, a survival guide is defined as ''a tool that contains information that will provide instruction and guidance to newly appointed Wardens before and during their initial months in their new position''. It may include written and/or audiovisual materials containing information concerning training opportunities, suggested early steps in orientation to the new assignment, and potentially important early contacts or actions. It may include written recommendations from experienced Wardens or Directors of state Departments of Correction, reference information concerning where specific information may be found, general management and leadership information, bibliography of helpful reading, information concerning special programs, or information of other types or in other that may be critical to a new Wardens early progress. This project will provide a tool that may be given to the Warden at the time of appointment and provide information that will strengthen the new appointee's entry and approach to the new position and the needs of the facility for which she is responsible.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum total of $50,000 (direct and indirect costs) and project activity must be completed within 9 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Eligibility to Apply: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. Eastern Time on Monday, December 20, 1999. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit, which includes further details on the project's objectives, etc., should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, N.W., Room 5007, Washington, D.C. 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or email; jevens@bop.gov. A copy of this announcement and application forms may also be obtained through the NIC web site: http://www.nicic.org (click on ''What's New'' and ''Cooperative Agreements''). All technical and/or programmatic questions concerning this announcement should be directed to Dick Franklin at the above address or by calling 800–995–6423 or 202–307–1300, ext. 145, or by E-mail via rfranklin@bop.gov.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 00P09 This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

The Catalog of Federal Domestic Assistance number is: 16.601.

Dated: November 15, 1999.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–30567 Filed 11–23–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement

Summary: The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2000 for a cooperative agreement to fund the development of a document: ''Management and Treatment of Violent and Hard-To-Manage Inmates.''

Purpose: The National Institute of Corrections (NIC) invites applications for a cooperative agreement to develop a document concerning the management and treatment of violent and hard-to-manage inmates in state correctional facilities. This document will identify the primary reasons that special housing is viewed by prison managers as mandatory for various groups of inmates in jurisdictions of differing size, resources, and existing options. Such groups may include, but will not be limited to inmates with a violent background or who are violent in prison; security threat group leaders or members; inmates diagnosed as mentally ill, behaviorally disordered, or developmentally disabled; inmates at risk or representing risk because of their age, demeanor, sexual predation, or chronic disruptive behavior; those with a history of escape or escape attempts; or inmates who disrupt or threaten to disrupt the order of the facility and thereby pose a threat to the safety of staff and inmates or the security of the institution. This information will contribute to the understanding of interested observers of the underlying issues and concerns prompting the development of special housing and program for specific groups of inmates. In addition, the document will identify and describe predominate and noteworthy housing alternatives, management techniques, and treatment modalities employed in addressing the needs of these inmates and the problem, risk, or concern they present in the institution(s) of placement. The information provided will be descriptive and factual and will be accompanied by a summary of evaluation or outcome information, if available. Housing alternatives and management techniques will be described with each treatment modality that is discussed. Contact information will be provided for each strategy, technique, or treatment program presented.

Authority: Public Law 93–415.

Funds Available: The award will be limited to a maximum total of $50,000 (direct and indirect costs) and project activity must be completed within 12 months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Eligibility To Apply: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Deadline for Receipt of Applications: Applications must be received by 4 p.m. Eastern time on Friday, January 7, 2000. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Addresses and Further Information: Requests for the application kit, which includes further details on the project's objectives, etc., should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext 159, 202–307–3106, ext. 159, or email: jevens@bop.gov. A copy of this announcement and application forms may also be obtained through the NIC web site: http://www.nicic.org (click on ''What's New'' and ''Cooperative Agreements''). All technical and/or programmatic questions concerning this announcement should be directed to Dick Franklin at the above address or by calling 800–995–6423 or 202–307–1300, ext. 145, or by E-mail via rfranklin@bop.gov.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1).

NIC Application Number: 00P04 This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

(The Catalog of Federal Domestic Assistance number is: 16.601.)

Dated: November 15, 1999.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 99–30566 Filed 11–23–99; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10721, et al.]

Proposed Exemptions; Metropolitan Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions 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).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). 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 requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Metropolitan Life Insurance Company (MetLife) Located in New York, NY

[Application No. D–10721]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I. Proposed Exemptions Involving the Demutualization of METLIFE and the Excess Holding of Consideration By Plans Sponsored By METLIFE and its Affiliates (the MetLife Plans)

If the exemption is granted, the restrictions of section 406(a) 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 (D) of the Code, shall not apply to the receipt, by any eligible policyholder (the Eligible Policyholder) of MetLife that is an employee benefit plan (the Plan), subject to applicable provisions of the Act and/or the Code, including any Eligible Policyholder that is a Plan covering employees of MetLife or its affiliates, of an interest (the Interest) in a trust (the Trust), whose corpus consists of common stock (the Common Stock) issued by MetLife, Inc., (the Holding Company), the parent of MetLife; or (2) the receipt of cash or policy credits by such Plans,[2] in exchange for such Eligible Policyholder's membership interest in MetLife, pursuant to a plan of conversion (the Plan of Reorganization) adopted by MetLife and implemented in accordance with section 7312 of the New York Insurance Law.

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply to the receipt and holding, by a MetLife Plan, of Trust Interests, whose fair market value exceeds 10 percent of the value of the total assets held by such Plan.

The proposed exemptions that are described above are subject to the following conditions:

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New York Insurance Law and is subject to review and approval by the New York Superintendent of Insurance (the Superintendent). The Superintendent reviews the terms of the options that are provided to Eligible Policyholders of MetLife as part of such Superintendent's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that the Plan is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

(b) Each Eligible Policyholder has an opportunity to vote at a special meeting to approve the Plan of Reorganization after receiving full written disclosure from MetLife.

(c) One or more independent fiduciaries of a Plan (the Independent Fiduciary) that is an Eligible Policyholder receives Trust Interests, cash or policy credits pursuant to the terms of the Plan of Reorganization and neither MetLife nor any of its affiliates

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

[2] Unless otherwise noted, the terms ''Plan'' and ''MetLife Plan'' are referred to collectively as the ''Plans.''

exercises any discretion or provides ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisition.

(d) In the case of a MetLife Plan, the Independent Fiduciary—

(1) Votes at the special meeting of Eligible Policyholders to approve the Plan of Reorganization;

(2) Makes any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan;

(3) Monitors, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received;

(4) Makes determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan.

(5) Withdraws shares of Holding Company Common Stock that are held in Trust which are equivalent to Trust Interests allocated to a MetLife Plan and disposes of such Trust Interests.

(i) Not exceeding the limits of section 407(a) of the Act in a prudent manner.

(ii) Exceeding the limits of section 407(a) of the Act within six months of the initial public offering (the IPO); and

(6) Provides the Department with a complete and detailed final report as it relates to the MetLife Plans prior to the effective date of the demutualization.

(e) After each Eligible Policyholder entitled to receive Trust Interests is allocated at least ten shares of Holding Company Common Stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MetLife, which formulas have been reviewed by the Superintendent.

(f) All Eligible Policyholders that are Plans participate in the demutualization transaction on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with the receipt of consideration.

(h) All of MetLife's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

(i) The terms of the transactions are at least as favorable to the Plans as an arm's length transaction with an unrelated party.

Section II. Proposed Exemptions Involving Sales or Withdrawals Occurring in Connection With the Operation or Termination of the Trust

If the exemption is granted, the restrictions of section 406(a) 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 (D) of the Code, shall not apply to the proposed (1) sale by a Plan to the Holding Company of Holding Company Common Stock, which is held in the Trust for the benefit of such participating Plan and is evidenced by Trust Interests, following the effective date of the demutualization or upon the termination of the Trust; and (2) the withdrawal by a Plan of Holding Company Common Stock, as evidenced by Trust Interests, beginning on the first anniversary of the effective date of the demutualization until the termination of the Trust.

The proposed exemptions are subject to the following conditions:

(a) The decision by a Plan to arrange for the sale of Holding Company Common Stock to the Holding Company or to withdraw Holding Company Common Stock is made by a Plan fiduciary which is independent of MetLife and its affiliates.

(b) No Plan pays any fees or commissions in connection with either transaction.

(c) The terms of the transactions are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(d) Any sale of shares of Holding Company Common Stock held in the Trust for the benefit of a Plan to the Holding Company is at a price reflecting the fair market value of the Common Stock as determined by averaging the high and low trading prices as reported on the New York Stock Exchange on the day of sale, except that if such sale is pursuant to the termination of the Trust, such fair market value is determined as the average of the closing price for a share of such Holding Company Common Stock for the twenty consecutive trading days ending on the third calendar day immediately prior to the date of the sale.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''MetLife'' means The Metropolitan Life Insurance Company and any affiliate of MetLife as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of MetLife includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MetLife. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder whose name appears on MetLife's records as the owner of a policy on the adoption date of MetLife's Plan of Reorganization by MetLife's Board of Directors and, which is in full force for its full basic benefits and has not matured by death or otherwise been surrendered or terminated and which remains in force on the effective date of MetLife's demutualization.

(d) The term ''policy credit'' means (1) a dividend deposit or dividend addition; (2) an increase in accumulation value (to which no sales or surrender or similar charges shall be applied); (3) additional coverage or benefits; (d) an extension of the expiry date; or (4) a reduction in premium payments.

Summary of Facts and Representations

1. MetLife is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent. It is the second largest insurance company in the United States. As of December 31, 1998, MetLife and its subsidiaries had total assets under management of approximately $357.7 billion and approximately $1.7 trillion of life insurance in force.

MetLife and its subsidiaries and affiliates provide funding, asset management and other services for approximately 59,700 employee pension and welfare benefit plans that are subject to the provisions of Title I of the Act as well as applicable provisions of the Code. In addition, MetLife maintains pooled and single plan separate accounts in which Title I pension, profit sharing and thrift plans invest, and MetLife or its affiliates manage assets in such separate accounts. Moreover, MetLife has a number of subsidiaries and affiliates that provide a variety of financial services, including investment management and brokerage services.

MetLife represents that it is not a ''party in interest'' with respect to any of its Plan policyholders merely because it has issued an insurance policy to the Plan. However, because of the variety of fiduciary and other services it and its affiliates provide to Plans that are also policyholders, MetLife believes that it is a party in interest with respect to such Plans under sections 3(14)(A) and (B) of

the Act or the other related ''derivative'' provisions of section 3(14) of the Act.

As a mutual life insurance company, MetLife has no stockholders. Instead, policyholders of MetLife are ''members'' of the company, and in that capacity, they are entitled to vote to elect directors of MetLife. If MetLife is liquidated, the policyholders will be entitled to share in any assets of MetLife which remain after all claims against MetLife have been satisfied in full.

2. MetLife and its affiliates sponsor several pension and welfare plans for the benefit of their employees. The MetLife Plans, their asset and participant totals as of December 31, 1998, the decisionmakers with respect to MetLife Plan investments, and the employees covered by the MetLife Plans are set forth in the following tables:

Plan name	Assets $1M 12/98	Participants or number of lives	Investment decision makers	Employees covered
MetLife Retirement Plan for U.S. Employees.	$3,974	81,000	Investment Advisory Committee	Sal. and comm. employees.
• VRSA	86	3,900		
• 401(h)	24			
Savings & Investments Plan for Employees of MetLife and Part. Affils.	2,559	36,000	MetLife	Sal. and comm. employees.
MetLife Options and MetLife Choices Plan.	(1)			
Welfare (Post-Ret.)		27,500	MetLife	Sal. and comm. employees.
• Life Ins. & Survivor	406		MetLife	Sal. and comm. employees.
• Health (VEBA TOLI)	179		VEBA Trustees	Sal. and comm. employees.
• Health (HIFA)	500		MetLife	Sal. and comm. employees.
Welfare (Active)	388	29,400	MetLife	Sal. and comm. employees.
Welfare Plan for Employees of MetLife and Particip. Affils.	[2] 0	56,900	MetLife	Sal. and comm. employees.
Benefit Services Corp. Pre-Tax Premium Plan.	0	30	MetLife	Active.
Cross & Brown Co. Your Group Ins. Plan.	0	11	MetLife	Active and Retired.
Farmers National Company Ins. Programs.	0	135	MetLife	Active.
Farmers National Co. Travel Accident Ins. Plan.	0	135	MetLife	Active.
Hyatt Legal Benefit Plans	0	44	MetLife	Active.
SSR Realty Advisors, Inc. Life Benefits, Long-Term Dis.	0	532	MetLife	Active.
State Street Res. & Mgt. Co. Life, Dental & Long Term Dis. Plan.	0	465	MetLife	Active.

[1] Reserves $M.
[2] Benefits provided through insurance contracts.

3. On November 24, 1998, Metlife's Board of Directors authorized the company's management to develop a plan of demutualization pursuant to which MetLife would be converted from a mutual life insurance company to a stock life insurance company. The principal purpose of the Plan of Reorganization is to create a corporate structure that will allow MetLife to position itself for long-term growth and increased financial strength. MetLife believes that as a result of the flexibility offered by the stock company structure and the access to capital markets, it will be in a position to enhance its market leadership, financial strength and strategic position and aggressively pursue opportunities for growth, thereby providing greater protection to policyholders. In addition, MetLife believes that the change in business structure will enable it to remain a leader in helping people become financially secure.

4. As a result of the Plan of Reorganization, MetLife will become a stock insurer that is a subsidiary of MetLife, Inc., a newly-formed holding company incorporated under the laws of the State of Delaware. Consequently, MetLife and the Holding Company will have greater ability to make acquisitions and the ability to raise investor capital in a more efficient manner. The reorganization will provide economic value to Eligible Policyholders in the form of shares of Holding Company Common Stock, cash or policy credits, in exchange for such Eligible Policyholders' respective membership interests in MetLife.

5. In addition to the formation of the Holding Company, MetLife will establish the Trust to hold shares of Holding Company Common Stock that are received by millions of policyholders under its Plan of Reorganization. It is not anticipated that the Trust will be a ''plan assets'' investment vehicle because 25 percent or more of the value of the Trust Interests will not be held by Plans. MetLife notes that the primary purpose of the Trust is to assist the Holding Company in the administration of beneficiary accounts and the costs associated with managing such a large number of policyholders. In addition, MetLife states that a secondary purpose of the Trust is to promote a more orderly market for Holding Company Common Stock. It is anticipated that the trustee of the Trust (the Trustee) will be Wilmington Trust Company, an entity which is independent of MetLife and one of the nation's leading wealth management companies.

6. Thus, to resolve potential issues for Plans that may arise in connection with its Plan of Reorganization, MetLife requests an individual exemption from the Department that will cover the receipt of Trust Interests,[3] cash or policy credits by Eligible Policyholders that are

[3] Although Holding Company Common Stock will not be issued directly to an Eligible Policyholder, MetLife represents that it wishes to ensure that the exemption will cover the indirect acquisition by a Plan of an interest in the Holding Company Common Stock owned by the Trust.

Plans, including the MetLife Plans identified above, in exchange for such Plans' existing membership interests in MetLife.

MetLife is also requesting an exemption for the receipt and holding of Trust Interests by the MetLife Plans for their own employees with respect to transactions that may violate sections 406(a)(1)(E), (a)(2), and 407(a)(2) of the Act. These sections of the Act prohibit the acquisition by a plan of any employer securities that are not qualifying employer securities if immediately after the acquisition, the aggregate fair market value of employer securities held by the plan exceeds 10 percent of the fair market value of the assets of the plan.[4] MetLife represents that the Trust Interests may be considered ''employer securities'' for purposes of the foregoing restrictions. Because some of the MetLife Plans may receive a substantial number of Trust Interests exceeding 10 percent of the fair market value of the assets of such Plans, MetLife believes there will be a violation of section 407(a)(2) of the Act. To safeguard the interests of the MetLife Plans under these circumstances, MetLife and each of its affiliates have appointed State Street Bank and Trust Company (State Street), to serve as an Independent Fiduciary.

Finally, the proposed exemption is intended to cover transactions that will occur subsequent to the initial demutualization event, *i.e.,* during the operation or termination of the Trust described herein. These transactions include (a) the sale to the Holding Company by a Plan of Holding Company Common Stock that is held in the Trust for the benefit of such participating Plan and which is evidenced by Trust Interests; and (b) the withdrawal by a Plan of Holding Company Common Stock that is held in Trust and which is evidenced by Trust Interests.

The proposed exemption is conditioned on a number of requirements. Specifically, distributions that are made to Plans under the Plan of Reorganization must be on terms that are no less favorable to such Plans than an arm's length transaction between unrelated parties. In this regard, Plans to which MetLife is a party in interest will not by reason of that relationship be treated differently from policyholders as to which MetLife is not a party interest.

7. Section 7312 of the New York Insurance Law establishes an approval process for the demutualization of a life insurance company. Under Section 7312, the conversion of a mutual life insurance company to a stock company is initiated by the board of directors of the mutual company. A plan of demutualization may be approved by a vote of at least 75 percent of the entire board of directors. The approval process must include a finding that the plan is fair and equitable to policyholders.

After approval by the mutual insurance company's board of directors, a plan of demutualization is then required to be submitted to the Superintendent for his or her review.

In order for a plan of demutualization to become effective, the Superintendent must determine that the plan of demutualization does not violate the requirements imposed by Section 7312, including the requirement that the plan is fair and equitable to the policyholders, that it is not detrimental to the public, and that, following the demutualization, the insurer will have an amount of capital and surplus which the Superintendent deems to be reasonably necessary for its future solvency.

In order to assist the Superintendent in discharging his or her duties, Section 7312 permits the Superintendent to appoint an actuary to review actuarial aspects of the plan. In addition, Section 7312 permits the Superintendent to appoint other qualified disinterested persons or institutions to act as consultants to the Superintendent. In the case of the MetLife demutualization, the Superintendent has hired the law firm of Fried, Frank, Harris, Shriver & Jacobson as legal adviser; the actuarial firm of Miliman & Robertson to conduct the required actuarial review; and The Blackstone Group as the investment banking consultant.

8. Section 7312 also requires the Superintendent to hold a public hearing on a plan of demutualization at which policyholders and other interested persons may express views on the plan. Notice of the public hearing must be provided to each policyholder of the insurance company whose policy or contract is in force on the date of adoption of the plan of demutualization, and must be published in three newspapers of general circulation. The purpose of the public hearing is to allow interested persons the right to comment on the fairness of the terms and conditions of the demutualization and the reasons and purposes for the demutualization of the insurer, and to consider whether the demutualization is in the interest of the insurer and its policyholders and is not detrimental to the public.

After the public hearing, the Superintendent must determine whether or not to approve the demutualization plan. Under Section 7312, the Superintendent approves the plan if he or she finds that it does not violate the insurance law, that it is fair and equitable to policyholders, that it is not detrimental to the public, and that, after giving effect to the demutualization, the insurer will have an amount of capital and surplus that the Superintendent deems to be reasonably necessary for MetLife's future solvency.

The Superintendent must also determine that the plan does not fail to meet the requirements of Section 7312(c). In other words, the plan must (a) demonstrate a purpose and specific reasons for the proposed demutualization; (b) be in the best interest of the mutual insurer and its policyholders; (c) be fair and equitable to the policyholders; (d) provide for the enhancement of the operations of the reorganized insurer; and (e) not substantially lessen competition in any line of insurance business.

The policyholders of the mutual insurance company must also be provided with notice of the plan and an opportunity to vote whether to approve the plan. Each policyholder (approximately 16 million in the case of MetLife) is entitled to one vote, regardless of the number of policies that are actually owned. In addition, the plan must be approved by a vote of at least two-thirds of all votes cast by policyholders entitled to vote.

A decision by the Superintendent to approve a demutualization plan pursuant to Section 7312 of the New York Insurance Law is subject to judicial review in the New York courts.

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[4] Specifically, section 406(a)(1)(E) of the Act prohibits the acquisition by a plan of any employer security which would be in violation section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1) of the Act prohibits the acquisition by a plan of any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act provides that a plan may not acquire any qualifying employer security, if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

In addition to the above, section 407(f) of the Act, which is applicable to the holding of a qualifying employer security by a plan other than an eligible individual account plan, requires that (a) immediately following its acquisition by a plan, no more than 25 percent of the aggregate amount of stock of the same class issued and outstanding at the time of acquisition is held by the plan; and (b) at least 50 percent of the stock be held by persons who are independent of the issuer. MetLife notes, however, that the holding of Holding Company Common Stock by the MetLife Plans will not violate the provisions of section 407(f) of the Act.

9. Although the Board of Directors of MetLife has not yet adopted the Plan of Reorganization,[5] MetLife anticipates that the Plan will provide for the formation of the Holding Company under the laws of the State of Delaware and the creation of the Trust which will be governed by New York law. It is presently anticipated that, under the Plan of Reorganization, the following steps will occur on the effective date:

(a) *Issuance of MetLife Common Stock.* MetLife will issue 100 percent of its Common Stock to the Trust, on behalf of the Trust Eligible Policyholders, to be held for the benefit of the Trust Eligible Policyholders (who will be issued Trust Interests reflecting their ownership of the shares held in the Trust).

(b) *Exchange by Trust of MetLife Common Stock.* Immediately after receipt, the Trust will exchange its shares of MetLife Common Stock for shares of Holding Company Common Stock. The Holding Company Common Stock will be held in Trust for the exclusive benefit of the Trust Eligible Policyholders.

(c) *Surrender and Cancellation of Holding Company Common Stock.* MetLife will surrender to the Holding Company, and the Holding Company will cancel, all of the remaining shares of Holding Company Common Stock held by MetLife prior to the effective date.

(d) *Calculation of Policyholder Consideration.* MetLife will establish an amount reflecting the aggregate amount that the Board anticipates will be credited to policyholders who are required to receive Trust Interests, cash or policy credits as compensation under the terms of the Plan. In other words, for purposes of calculating the amount of consideration that will be received, an Eligible Policyholder will be allocated shares of MetLife Common Stock consisting of (1) a fixed component of consideration equal to ten shares of MetLife Common Stock, which may be subject to proportional adjustment, plus (2) a variable component of consideration reflecting the contributions to the surplus made by each such policyholder's in force participating policy.

10. Under the terms of MetLife's Plan of Reorganization, the Holding Company will sell shares of Holding Company Common Stock to the public through an IPO on the same day as the effective date of the Plan of Reorganization. (Subsequent to the effective date, MetLife anticipates that the Holding Company Common Stock will be actively traded on the New York Stock Exchange.) The proceeds of the IPO will be used to fund cash payments and policy credits to policyholders which are required to receive cash or policy credits under the terms of the Plan.

In general, an Eligible Policyholder is entitled to receive consideration in the form of cash if (a) the policyholder's mailing address is located outside of the United States; or (b) the policyholder is the owner of a policy transferred to the Metropolitan Life Insurance Company of Canada, regardless of the mailing address; or (c) MetLife determines in good faith and to the satisfaction of the Superintendent that it is not reasonably feasible or appropriate to provide consideration in the form such Eligible Policyholder or class of Eligible Policyholders would otherwise receive. In addition, an Eligible Policyholder who holds an individual retirement annuity, an individual annuity contract, an individual life insurance policy or a long-term health care insurance product will be entitled to receive policy credits from MetLife.

The amount of cash that will be paid,[6] or the value of the policy credits to each policyholder required to receive cash or policy credits will be determined at the time of the IPO and will be based (a) on the number of shares of Holding Company Common Stock that the policyholder would have received on the effective date if the policyholder had been entitled to receive compensation in the form of Holding Company Common Stock and (b) the IPO price per share.

In addition, prior to the effective date, policyholders who are entitled to receive compensation in the form of Holding Company Common Stock will be asked to elect whether they would like their allocable portion of the shares held in Trust to be purchased by the Holding Company, at the IPO price. Based on these elections, the Holding Company will purchase shares of Holding Company Common Stock from the Trust at the IPO offering price, and the cash will be distributed to the Trust beneficiaries who have elected to be cashed out, in cancellation of their interests.

In the case of an Eligible Policyholder that is a Plan, the decision to receive consideration in the form of Trust Interests, cash or policy credits will be made by one or more fiduciaries of such Plan which is independent of MetLife. In addition, neither MetLife nor any of its affiliates will exercise any discretion or provide ''investment advice,'' within the meaning of 29 CFR 2510.3–21(c), with respect to each such acquisition.[7]

[5] On September 28, 1999, MetLife's Board of Directors approved the Plan of Reorganization whose effective date is projected for early February 2000. In early January 2000, MetLife anticipates that the hearing will be convened. Moreover, at sometime before the end of the first quarter of 2000, MetLife expects that the Superintendent will approve the Plan of Reorganization.

[6] MetLife represents that there may be a limit on the amount of funds available to pay cash compensation to Eligible Policyholders that elect to receive cash. In this regard, the Plan of Reorganization provides that the IPO and any other capital raising transactions that are completed on the effective date must raise proceeds, net of underwriting commissions and related expenses, in an amount at least equal to the amount paid by MetLife to fund mandatory cash payments pursuant to the Plan of Reorganization and to pay fees and expenses incurred by MetLife related to the demutualization, as well as to reimburse MetLife for amounts to be paid by MetLife's Canadian branch to certain former Canadian policyholders. If the IPO and any other capital raising transactions are not sufficient to fund the payment of cash to all Eligible Policyholders entitled to receive cash, MetLife explains that although the Plan of Reorganization will become effective, the cash will not be paid to all Eligible Policyholders electing to receive cash. If this event occurs, MetLife states that cash will be paid as follows:

- Each individual Eligible Policyholder that elects to receive cash will receive compensation in the form of cash;
- Each group Eligible Policyholder that elects to receive cash and is allocated not more than 250,000 shares will receive compensation in the form of—
- Cash, with respect to the first 25,000 shares allocated to the Eligible Policyholder, and
- Either shares of Holding Company Common Stock (which is to be held in the Trust) or a combination of cash and shares of Holding Company Common Stock (which also will be held in the Trust), with respect to the remaining shares allocated to the Eligible Policyholder. Such cash will be allocated to each Eligible Policyholder pro rata basis in the proportion that the total number of shares in excess of 25,000 shares allocated to such Eligible Policyholder bears to the total number of shares in excess of 25,000 shares allocated to all such Eligible Policyholders allocated more than 25,000 shares that have elected to receive cash.

[7] Consistent with sections 7312(a)(2), 7312(e) and 4210 of New York Insurance Law, the Plan of Reorganization generally provides that the policyholder eligible to participate in the distribution of Trust Interests, cash or policy credits resulting from the Plan of Reorganization is ''the person whose name appears * * * on the insurer's records as owner'' of the policy. MetLife further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, MetLife represents that it is normally required under the foregoing provisions of New York Law and the Plan of Reorganization to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided in a plan of reorganization approved by the Superintendent.

Notwithstanding the foregoing, MetLife's Plan of Reorganization provides a special rule applicable to an insurance policy issued to a trust established by MetLife. This rule applies whether or not the trust, or any arrangement established by any employer participating in the trust, constitutes an employee benefit plan subject to the Act. Under this special rule, the holder of each individual ''certificate'' issued in connection with the insurance policy is treated as the policyholder and owner for all

Continued

Further, no Eligible Policyholder will pay any brokerage commissions or fees in connection with their receipt of any form of consideration. Finally, all of MetLife's insurance policies will remain in force, and all policyholders will be entitled to receive all benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

11. As noted above, all of the shares of MetLife Common Stock will be issued to the Trust on the effective date and immediately exchanged by the Trust for Holding Company Stock to be held for the benefit of a policyholder that is a beneficiary of the Trust (the Trust Beneficiary). Each Trust Beneficiary will be issued a number of Trust Interests equal to the number of shares of Holding Company Common Stock initially allocated to such Trust Beneficiary under the terms of the Plan.

All Trust Interests will be held in the name of ChaseMellon Shareholder Services, L.L.C. (ChaseMellon), the custodian, which has been appointed by the Trustee under the Trust Agreement and which is unrelated to MetLife and its affiliates. ChaseMellon will keep records of all beneficiaries' Trust Interests. The Trust Beneficiaries will be permitted to assign, pledge or dispose of their Trust Interests only in certain limited circumstances.[8] Even if the policy of a Trust Beneficiary lapses, terminates or matures after the effective date, shares allocated to the Trust Beneficiary will continue to be held in the Trust until such Trust Beneficiary decides to withdraw allocable shares of Holding Company Common Stock for sale. All Trust-related fees and expenses will be paid by the Holding Company.

12. Trust Beneficiaries will be able to sell shares of Holding Company Common Stock, as evidenced by Trust Interests, at prevailing market prices through a purchase and sale program (the Purchase and Sale Program) which will be established by the Holding Company following the completion of the IPO. The Purchase and Sale Program will continue for the term of the Trust and will be effected through an independent agent selected by the Holding Company. The Purchase and Sale Program will be subject to certain volume and timing limitations on Trust Beneficiaries. For example,

- If a Trust Beneficiary holds 199 or fewer Trust Interests, all of such Trust Beneficiary's Trust Interests must be withdrawn for sale. The Trust Beneficiary will not be permitted to make a partial withdrawal for sale.
- If a Trust Beneficiary holds more than 199 Trust Interests, such Trust Beneficiary may make a full or partial withdrawal for sale. However, partial withdrawals for sale may only be in 100 share increments. (In this regard, the Trust Beneficiary may have 200 shares withdrawn for sale but not 250.) Following any partial withdrawal for sale, the Trust Beneficiary may still hold at least 100 Trust Interests. If the Trust Beneficiary holds fewer than 100 Trust Interests after the partial withdrawal for sale, such Trust Beneficiary must make a full withdrawal for sale.
- For the first 300 days following the effective date of the Plan of Reorganization, if a Trust Beneficiary holds more than 25,000 Trust Interests, such Trust Beneficiary may make a full or partial withdrawal for sale, subject to the volume limitations set forth in the Purchase and Sale Program procedures. These volume restrictions are designed to limit daily sales to a number of shares which is the lessor of (a) 1/20 of 1 percent of the number of shares outstanding or (b) 25 percent of the average daily trading volume for the 20 trading days preceding the trade date. Sales in excess of those amounts will either be made on the same day, in a block trade or through an investment bank acting as agent, or deferred to the next trading day. After the first 300 days, these limitations will no longer apply and withdrawals for sale may be made as otherwise permitted by these rules.
- Until the second year after the effective date of the Plan of Reorganization, if there is an underwritten public offering of Holding Company Common Stock, the Holding Company will offer each Trust Beneficiary holding at the time more than 25,000 Trust Interests and whose cash election has not been fully satisfied, the opportunity to include a number of Trust Shares equal to all of the Trust Beneficiary's Trust Interests in the offering.

Holding Company Common Stock that is held in Trust will be sold through the Purchase and Sale Program on the open market or it may be purchased for cash directly from the Trust at market prices as of the date of the sale. If sold to the Holding Company, the fair market value of Holding Company Common Stock allocated to the Trust Beneficiary will be determined by averaging the high and low trading prices of the shares of Holding Company Common Stock as reported on the New York Stock Exchange on the date of the sale. (Accordingly, the Trust Beneficiary will receive the same consideration for its shares whether they are purchased by the Holding Company or by an unrelated party on the open market.) However, if the sale is being made pursuant to the termination of the Trust, the fair market value will be determined as the average of the closing price for a share of Holding Company Common Stock for the twenty consecutive trading days ending on the third calendar day immediately prior to the sale.[9]

The Holding Company will pay the commissions and related charges of all beneficiaries, including Plans, which sell shares of allocable Holding Company Common Stock through the Purchase and Sale Program. Further, if the Trust Beneficiary is a Plan, a Plan fiduciary which is independent of MetLife and its affiliates will determine whether it is appropriate to sell shares of allocable Holding Company Common Stock to MetLife or on the open market through the Purchase and Sale Program.

13. The Purchase and Sale Program will also include a ''round-up'' feature. In general, each Trust Beneficiary holding less than 1,000 Trust Interests, which are not equal to a multiple of 100, may instruct the Trustee to arrange for the purchase of additional shares of Holding Company Common Stock. Such Stock will be deposited in the Trust and allocated to the Trust Beneficiary so that the Trust Beneficiary's Trust Interests will be increased to the next nearest multiple of 100. Further, each Trust Beneficiary which is allocated a number of Trust Interests that is equal to a multiple of 100 and less than 1,000 may

purposes under the Plan of Reorganization, including voting rights and the distribution of consideration. The trustee of any such trust established by MetLife for the benefit of Eligible Policyholders that are Plans will be ignored, and the Plan will be considered a policyholder or owner and will be eligible to vote or receive consideration.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when MetLife incurs the obligation to distribute Trust Interests, cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[8] For example, Section 3.4(b) of the Trust Agreement provides that a Trust Beneficiary may transfer Trust Interests (a) from the estate of a deceased beneficiary to one or more heirs; (b) to the spouse, children or grandchildren of the beneficiary; (c) in the event the beneficiary is not a natural person, to the surviving entity upon a merger or consolidation of such beneficiary into another entity; (d) as a consequence of the bankruptcy of the beneficiary; or (e) from a trust holding a policy on behalf of the insured person under such policy.

[9] MetLife represents that the twenty day average formula has been designed to eliminate any possibility of manipulation and to prevent single day trading anomalies that might influence a Trust Beneficiary's proceeds.

instruct the Trustee to arrange for the purchase of additional shares of Holding Company Common Stock in lots of 100. The Stock will be deposited in the Trust and allocated to the Trust Beneficiary so that the Trust Beneficiary's Trust Interests will be increased to any multiple of 100 that is less than or equal to 1,000.

A Trust Beneficiary desiring to utilize the round-up feature of the Purchase and Sale Program, will acquire additional shares of Holding Company Common Stock for the fair market value of such Stock as determined on the open market on the date of the acquisition.

14. In addition to the Purchase and Sale Program, beginning on the first anniversary of the effective date of the demutualization and lasting until the termination of the Trust, each Trust Beneficiary will have the right to withdraw shares of Holding Company Common Stock being held for such Trust Beneficiary under the Trust.[10] A Trust Beneficiary will not pay any fees or commissions in connection with the withdrawal of shares of allocable Holding Company Common Stock. In the case of a Trust Beneficiary that is a Plan, the decision to withdraw shares of Holding Company Common Stock from the Trust will be made by a Plan fiduciary which is independent of MetLife.

15. Under the Plan of Reorganization, regular cash dividends that are received by the Trust on shares of Holding Company Common Stock during any six month period ending on June 30 or December 31 will be distributed to Trust Beneficiaries, in proportion to their Trust Interests, on the following June 30 or July 31, respectively. The Holding Company will set a payment date for the dividends so that they are distributed to the Trust Beneficiaries within 90 days after the Trustee has received them. Pending these semiannual distributions, dividends received by the Trust will be invested by the Trustee in short-term obligations of, or guaranteed by, the United States or any agency or instrumentality thereof, and in certificates of deposit of any bank or trust company having a combined capital and surplus of at least $500 million. If there is a distribution of shares of Holding Company Stock (*i.e.*, a stock dividend), the additional shares will be deposited in the Trust and held under the terms of the Trust Agreement.

Similarly, if the Holding Company Common Stock is exchanged for common stock of another entity in connection with the merger or consolidation of the Holding Company with another entity, the new common stock will continue to be held in the Trust in accordance with the Trust Agreement. In all other cases, if shares of Holding Company Common Stock are exchanged for securities or other property of an entity other than MetLife, the Trust will distribute the property received to the Trust Beneficiaries based on their respective Trust Interests.

16. Trust Beneficiaries will be able to instruct the Trustee how to vote shares of Holding Company Common Stock that are held in Trust for elections of Holding Company directors with competing candidates, any merger, consolidation or recapitalization of the Holding Company, or any other event that could result in an exchange of Holding Company Common Stock for other property which would require a vote under applicable Delaware law, exchange or NASDAQ rules. The Trustee will generally vote all shares of Holding Company Common Stock that is held in Trust in proportion to the instructions received from Trust Beneficiaries which give such instructions. However, there is one exception. If the issue is a choice of competing candidates for director positions, and Trust Beneficiaries representing 20 percent or fewer of the Trust Interests provide instructions, the Trustee will vote only the shares of Holding Company Common Stock that are held in Trust that are equal in number to the number of Trust Interests held by Trust Beneficiaries which provide instructions. On all routine matters other than those described above, the Trustee will vote shares of Holding Company Common Stock that are held in Trust as recommended or directed by the Holding Company's Board of Directors.

The Holding Company's Board of Directors may terminate the Trust if the number of shares of Holding Company Common Stock held in Trust falls below 25 percent of all outstanding shares of Holding Company Common Stock. In any event, the Trust will be terminated when all shares of Holding Company Common Stock held in Trust are withdrawn from such Trust or the number of such shares is less than 10 percent of the outstanding Holding Company Common Stock. The Trust can also be terminated sooner by the Holding Company's Board of Directors because of changes in the law or changes in facts or circumstances relating to the Trust.

Upon termination of the Trust, a Trust Beneficiary will have the option of receiving shares of allocable Holding Company Common Stock in-kind or receiving cash as the result of the sale of such Stock to the Holding Company, using the twenty day average formula described above.

To ensure that the assets of the Trust will not be characterized as ''plan assets'' under the Act, the Holding Company may require certain Trust Beneficiaries that are Plans to be cashed out during the term of the Trust. If a Plan investor is ''cashed out'' by MetLife, such Trust Beneficiary will receive the fair market value of allocable shares of Holding Company Common Stock at the time of such termination. Alternatively, MetLife will give the Trust Beneficiary the option of receiving an in-kind distribution of allocable Holding Company Common Stock.

17. As stated above, State Street has agreed to serve as the Independent Fiduciary and investment manager for the MetLife Plans in connection with certain aspects of the MetLife demutualization, particularly with respect to the vote and potential receipt of consideration by such Plans. State Street represents that it is qualified to serve as the Independent Fiduciary and investment manager for the MetLife Plans. In support of this representation, State Street asserts that it is one of the largest trust companies in the United States with over $525 billion in assets under management, a significant portion of which consists of the assets of plans covered under the provisions of the Act. State Street also represents that it served as the Independent Fiduciary for the State Mutual Life Assurance Company of America during its demutualization. Further, State Street represents that it has served as a trustee or an independent fiduciary for numerous retirement plans that acquire or hold employer securities. Currently, State Street states that it manages over $72 billion in employer securities held by various retirement plans. In managing such investments, State Street explains that it has supervised numerous transactions involving the acquisition, retention and disposition of employer securities. On a continuing basis, State Street indicates that it monitors the performance of the employer securities.

State Street represents that it is independent of MetLife and has no business relationships with MetLife other than—

[10] MetLife projects that the initial number of shareholders of the Holding Company may exceed 10 million. Because of this factor, MetLife has restricted withdrawals of Holding Company Stock by Trust Beneficiaries during the first year of the Trust's existence in order to facilitate the efficient and orderly conduct of shareholder accounts and costs associated with serving a large number of shareholders. If Trust Beneficiaries were permitted to withdraw their shares during the first year of the Trust's existence, MetLife does not believe that these goals would be achieved.

• Providing various products and services to MetLife, including (a) custodial services for all of MetLife's and State Street Research's (a subsidiary of MetLife) mutual funds; (b) participating in State Street's securities lending program; (c) global cash management; (d) managing a sweep account; (e) providing credit facilities for MetLife's Retained Asset Program; and (e) providing foreign exchange securities to State Street Research. State Street represents that all revenues and fees associated with MetLife represents less than one percent of State Street's total revenues.

• Offering MetLife's auto, homeowners and umbrella liability coverage to employees of State Street.

• Providing services as an investment manager for defined contribution fixed income funds. Currently, State Street states that it manages approximately $9 billion in fixed income securities. Approximately $650 million of this amount is invested on behalf of various clients in guaranteed investment contracts issued by MetLife. However, State Street explains that it derives no revenue from MetLife for investment in these contracts.

• Providing master trust and custody services to various pension plans, some of which may invest in MetLife guaranteed investment contracts. State Street explains that it serves only as a directed trustee/custodian to these plans and has no discretion related to plan investments. State Street again asserts that it receives no revenue from investment in these contracts. However, irrespective of the investment, State Street receives a trust/custody fee based on the total value of the plan.

State Street also states that MetLife holds, on behalf certain MetLife customers, approximately 96,000 shares of State Street stock in various separate accounts. These shares are currently worth approximately $7 million and represent approximately .005962 of the total outstanding shares of State Street stock.

Further, State Street asserts that no officer or director or State Street is an officer or director of MetLife or vice versa and that MetLife does not have an ownership interest in State Street nor does State Street have an ownership interest in MetLife.

18. State Street represents that it understands and acknowledges its ERISA duties, responsibilities and liabilities as a fiduciary with respect to the MetLife Plans and agrees to undertake such duties. Specifically, State Street will (a) vote at the special meeting of Eligible Policyholders to approve the Plan of Reorganization; (b) make any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan; (c) monitor, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received; (d) make determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan; (e) withdraw shares of Holding Company Common Stock that is held in Trust which are equivalent to Trust Interests allocated to a MetLife Plan and disposes of such Trust Interests (i) not exceeding the limits of section 407(a) of the Act in a prudent manner; (ii) exceeding the limits of section 407(a) of the Act within six months of the IPO; and (f) provide the Department with a complete and detailed final report as it relates to the MetLife Plans prior to the effective date of the demutualization. Further, MetLife represents that it has conducted a preliminary review of the Plan of Reorganization and it sees nothing in the Plan that would preclude the Department of Labor from proposing the requested exemption.

19. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Reorganization, which is being implemented pursuant to stringent procedural and substantive safeguards imposed under New York law and supervised by the Superintendent, will not require any ongoing involvement by the Department.

(b) One or more independent fiduciaries of Plans that are MetLife policyholders will have an opportunity to determine whether to vote to approve the Plan of Reorganization and will be solely responsible for all such decisions after receiving full and complete disclosure of the terms of such reorganization.

(c) The exemption will allow Eligible Policyholders that are Plans to acquire Trust Interests, cash or policy credits in exchange for their membership interests in MetLife and neither MetLife nor its affiliates will exercise any discretion or provide investment advice with respect to such acquisition.

(d) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of consideration from MetLife or with respect to the operation of the Purchase and Sale Program.

(e) The Superintendent will make an independent determination that the Plan of Reorganization is in the best interest of all MetLife policyholders, including Plans.

(f) All of MetLife's policyholder obligations will remain in force and will not be affected by the Plan of Reorganization.

(g) In the case of the MetLife Plans, an Independent Fiduciary will (1) vote at the special meeting of Eligible Policyholders to approve the Plan of Reorganization; (2) make any election, to the extent available under the Plan of Reorganization, to receive Trust Interests or cash on behalf of the MetLife Plan; (3) monitor, on behalf of the MetLife Plan, the acquisition and holding of any Trust Interests received; (4) make determinations on behalf of the MetLife Plan with respect to the voting and the continued holding of Trust Interests by such Plan; and (5) dispose, in a prudent manner, allocable shares of Holding Company Common Stock in respect of Trust Interests which exceed the limits of section 407(a) of the Act within six months of the IPO.

Notice to Interested Persons

MetLife will give notice of the proposed exemption to Eligible Policyholders that are Plans within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on the proposed exemption. Therefore, comments with respect to the proposed exemption will be due 60 days after the date of publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Les Olson Company, Inc. Money Purchase Plan (M/P Plan) and Les Olson Company, Inc. Profit Sharing Plan (P/S Plan, Collectively; the Plans) Located in Salt Lake City, Utah

[Application Nos. D–10810 and D–10811]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, 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 proposed series of loans (the Loans), originated within a five-year period, by the Plans to Les Olson Company, Inc. (the Employer), a party in interest with respect to the Plans, provided that the following conditions are met:

(1) The total amount of the outstanding Loans does not exceed 20 percent (20%) of the Plans' total assets at any time during the transactions and each of the Plan's allocable portion of such Loans does not exceed 20 percent (20%) of such Plan's total assets;

(2) Each Loan entered into by the Plans is made pursuant to the terms and conditions of the Loan Agreement (the Loan Agreement) executed by the parties and signed on behalf of the Plans by the Plans' duly appointed independent, qualified fiduciary (the Independent Fiduciary);

(3) All terms and conditions of the Loans are at least as favorable to the Plans as those the Plans could obtain in an arms-length transaction with an unrelated third party;

(4) Each Loan is: (i) For a maximum term of five years pursuant to terms and conditions of the Loan Agreement; (ii) fully amortized and payable in equal monthly installments of principal and interest; (iii) used exclusively by the Employer to purchase office equipment (the Equipment) which will be leased by the Employer in the ordinary course of its business to unrelated parties; and (iv) secured by duly perfected security interests in the new and used Equipment, and by certain leases of Equipment (Equipment Leases) where such Equipment Leases are assigned and pledged as collateral for the Loans, which is at all times equal to 200% of the outstanding principal balance of such Loan;

(5) New Equipment is valued for collateralization purposes at 80 percent (80%) of the invoice price paid by the Employer to purchase such Equipment less taxes and transportation expenses. Used Equipment and any Equipment Lease pledged as collateral for the Loans is valued by an independent qualified appraiser;

(6) Prior to the approval of each Loan, the Independent Fiduciary determines, on behalf of the Plans, that each Loan is prudent and in the best interests of the Plans, and protective of the Plans and its participants and beneficiaries;

(7) The Independent Fiduciary conducts a review of all terms and conditions of the exemption, if granted, and the Loans, including the applicable interest rate; the sufficiency of the collateral pledged for each Loan; the financial condition of the Employer; and the compliance with the 20% limitation for the Plans (and each Plan's) maximum total Loan amount prior to approving each disbursement under the Loan Agreement; and

(8) The Independent Fiduciary is authorized to take whatever action is necessary to protect the Plans' interests throughout the duration of the exemption, if granted, and throughout the duration of any Loan entered into under this exemption, if granted.

Temporary Nature of Exemption, if Granted

The exemption, if granted, will be temporary and will expire five (5) years from the date of publication in the **Federal Register** of the final grant of this proposed exemption. Subsequent to the expiration of the exemption, if granted, the Plans may hold any Loans originating during this five-year period until the Loans are repaid or otherwise terminated.

Summary of Facts and Representations

1. The Plans are the M/P Plan and the P/S Plan, which were established in 1978 and 1979, respectively. As of December 31, 1998, the Plans had 97 participants and total combined assets of $7,147,199. The Plans are trusteed by R. Scott Olson, Thomas P. Olson, James R. Olson and L. Ray Olson, all of whom are owners and officers of the Employer, which is the Plan sponsor. The Employer is a closely-held corporation organized under the laws of the State of Utah. The Employer is engaged in the sale, leasing and maintenance of copiers, fax machines and digital and analog dictation equipment. The shareholders of the Employer are all members of the Olson family.

The Employer has facilities in the major metropolitan areas of Utah, which are Salt Lake City, Ogden, Provo and St. George. The Employer is in the business of purchasing office equipment and leasing such equipment to its customers. The Employer generally has not used outside financing in its operations and has supported itself from the revenues it generates.

2. The applicant desires that the Plans make a series of Loans to the Employer over a period of 5 years. The proceeds from the Loans will be used by the Employer to purchase new office equipment (*i.e.*, Equipment). Each Loan will be collateralized by a promissory note and a security agreement, duly perfected and properly recorded under applicable state law, which will provide that the Plans have a first lien on the Equipment. In addition, the Loan may be collateralized by leases of used Equipment (*i.e.*, Equipment Leases) of the Employer if necessary to adequately secure such Loans. At all times the collateral for the Loans will be at least equal to 200% of the outstanding balance of such Loans. New Equipment will be valued at 80% of the invoice price paid by the Employer upon purchasing the Equipment, less taxes and transportation expenses. Used Equipment and Equipment Leases pledged as collateral for the Loans will be valued in each case by an independent qualified appraiser.

3. Mr. Jack S. Emery (Mr. Emery) will serve as the independent qualified appraiser for the Loan transactions described herein.

Mr. Emery is a qualified appraiser of office equipment who is currently a businessman and an investor in various business ventures. Mr. Emery has over 25 years of experience in the business of leasing office equipment. In this regard, Mr. Emery was one of the founders of the Matrix Funding Corporation (Matrix). Matrix was a major office equipment leasing business from 1978 until 1998. In 1998, Matrix was sold and consolidated with 12 other leasing companies to form Unicapital, an office equipment leasing company whose stock is publicly-traded on the New York Stock Exchange.

Mr. Emery states that he will appraise all of the collateral used for the Loans on an annual basis. Mr. Emery states further that during his 25 year career in the office equipment leasing business he has valued numerous pieces of office equipment of the same type as the Equipment which will be used as collateral for the Loans. Mr. Emery further represents that in his career he has used office equipment for sale, leasing and financing. Mr. Emery states that he is very familiar with the useful life of this type of equipment, the rate at which it depreciates, and the market factors that may affect its value. In conducting appraisals of the Equipment, Mr. Emery will take into consideration all the relevant factors relating to the valuation of the Equipment and the market-place for such Equipment.

4. The maximum length of any Loan will be 5 years under the terms and conditions of the Loan Agreement. The interest rate on the Loans will be equal to the prime rate as of the date of closing, as quoted under ''Money Rates'' in the Wall Street Journal (WSJ Prime) plus two percentage points, and will be adjusted quarterly. Additionally, the interest rate of any Loan will be set at a higher rate if such higher rate represents the prevailing market rate for similar loans as determined by the

Independent Fiduciary, as discussed further below. In no event will any Loan bear an interest rate lower than the WSJ Prime plus two percentage points.

The outstanding balance of the Loans will never exceed 20% of the fair market value of the Plans' aggregate assets (or fair market value of each of the Plan's assets).

5. Mr. Emery will also serve as the Independent Fiduciary for the Plans with respect to the proposed Loans pursuant to the terms and conditions of a written independent fiduciary agreement (the I/F Agreement). Mr. Emery represents that he is qualified to act as an independent qualified fiduciary with respect to the Loans, and that he understands his duties and responsibilities under the Act. In this regard, Mr. Emery states that he has not previously served as an independent fiduciary for a pension plan. However, Mr. Emery states that he has been, and will continue to be, advised by a qualified ERISA attorney regarding his duties and responsibilities as an independent fiduciary for the Plans. The income received by Mr. Emery from the Plans, for functioning as the Independent Fiduciary, will not exceed 1% of his gross annual income. In addition, Mr. Emery represents that he has no pre-existing relationship with the Employer or with any of the shareholders of the Employer.

6. Mr. Emery, as the Independent Fiduciary, represents that he will determine the appropriateness and suitability of each Loan for the Plan(s) prior to the consummation of the Loan transaction. Mr. Emery will review the value of the Equipment and the assets pledged to secure the Loans and confirm the sufficiency of the value of the collateral for each Loan.

Mr. Emery represents that he will ensure that the Loans are appropriate investments for the Plans and are in the best interests of the Plans' participants and beneficiaries, and protective of their interests. Mr. Emery states further that the terms of the Loans will be at least as favorable to the Plans as the terms obtainable by the Plans in an arm's-length transaction with an unrelated party. Mr. Emery also states that he will enforce the terms of each Loan including, but not limited to, making demand for timely payments from the Employer, bringing suit or other appropriate action against the Employer in the event of default, and monitoring the performance of each Loan and taking whatever actions are necessary to protect the interests of the Plans.

7. Mr. Emery, as the Independent Fiduciary, also reserves the right under the I/F Agreement to hire independent advisors, as necessary to perform his duties as the Plans' Independent Fiduciary. For example, Mr. Emery states that it could become necessary in the event of a foreclosure on the Equipment, for him to require advice from an independent, experienced and qualified legal counsel on the mechanics of such foreclosure.

8. With respect to the terms and conditions of the Loans, Wells Fargo Bank in Salt Lake City, Utah (the Bank), in a letter dated October 4, 1999, has stated that it would enter into similar loan transactions with the Employer, provided it determined at the time of transaction that the Employer would be a creditworthy borrower. The Bank has examined the terms of the Loans and concluded that such terms are at least as favorable to the Plans as those terms which would be obtainable in an arm's-length transaction with an unrelated party.

9. In summary, the applicant represents that the transactions will meet the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The interest rates paid to the Plans on the Loans will be at least as favorable to the Plans as the current market rate of interest for similar loans;

(b) The Plans' interests with respect to the Loans will be represented by Mr. Emery, as the Independent Fiduciary, who will monitor the Loans and the terms and conditions of the exemption, if granted, and will take all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries;

(c) Mr. Emery will determine that each Loan is in the best interests of the Plans' participants and beneficiaries at the time of the transaction;

(d) Mr. Emery will review and approve each Loan prior to making any disbursements of the Loan amount to the Employer;

(e) The Loans will be secured at all times by the Equipment or Equipment Leases, which will be valued at not less than 200% of the outstanding principal balance of each Loan; and (f) the aggregate balance of the outstanding Loans will not exceed 20% of the aggregate value of the Plans' assets, or 20% of each of the Plan's total assets.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883 (This is not a toll-free number).

TMI Systems Design Corporation 401(k) Profit Sharing Plan (the Plan) Located in Dickinson, North Dakota

[Application No. D–10821]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, 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 proposed sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for $185,316 in cash, provided the following conditions are satisfied: (a) the sale is a one-time transaction for cash; (b) no commissions are charged in connection with the transaction; (c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and (d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

Summary of Facts and Representations

1. The Plan is a 401(k) profit sharing plan which is sponsored by TMI Systems Design Corporation (the Employer) of Dickinson, North Dakota. The Plan currently has 292 participants and had assets of $5,109,439 as of August 31, 1999. The trustee of the Plan is Northern, a trust company located at 203 10th Street North, Fargo, North Dakota. Northern has investment discretion for the Plan's assets.

2. In August 1993, the Plan purchased the Interests as an investment from an unrelated party (as discussed below). The Interests consist of an 8.4674% interest in the Courtyard Limited Partnership (the Partnership). The Partnership's sole asset is an apartment building known as ''Courtyard Apartments'' in St. Louis Park, Minnesota. The Plan paid $108,467.40 for the Interests in the Partnership. The investment was presented to Northern, as Plan trustee, by Regan Wieland Investment Co., whose name was later changed to Goldmark Investment Company (Goldmark), on behalf of the Partnership. Goldmark and the Partnership are independent of, and

unrelated to, the Employer and Northern.

3. The Employer would like to permit employee directed investments and the use of a 24-hour telephone service to accommodate daily transfers by Plan participants of assets held in their individual accounts in the Plan. In order to be able to participate in the new daily valuation and transfer system, the Plan needs to divest itself of the Interests to ensure proper liquidity for all of the Plan's assets. In this regard, the applicant represents that it is necessary to transfer the Interests out of the Plan because the Interests cannot be valued on a daily basis.

4. Northern as Plan trustee has contacted Goldmark, the Managing Partner of the Partnership, to inform them that the Plan wishes to sell its Interests. Mr. Kenneth P. Regan of Goldmark has represented that the fair market value of the Plan's Interests would be approximately $177,815, if all of the partners were to sell their Partnership interests at the present time. However, in the event only one partner, such as the Plan, were to dispose its Interests, there would be discounts from the $177,815 value to reflect the lack of marketability and minority ownership in addition to sales costs. Goldmark estimates that these expenses would be approximately $8,000. Thus, Goldmark states that the value of the Plan's Interests, if it were to sell such Interests alone, would be approximately $170,000. Goldmark based its valuation of the Partnership on a September 4, 1998 appraisal of the Courtyard Apartments that was conducted by Everett D. Strand, MAI, (Strand) of Kramer, Geisler, Strand & Goff, Inc., an independent real estate appraiser in Minneapolis, Minnesota.

5. The applicant has requested an exemption that would permit the Plan to sell the Interests to Northern for cash. No commissions or other fees would be charged in connection with the sale. Northern has represented that they are willing to pay the Plan $185,316 for the Interests, an amount which reflects the book value of the Interests carried by Northern on the Plan's balance sheet as of August 31, 1999 (based upon the net asset value of the Courtyard Apartments as the Partnership's only asset). This amount is more than the current fair market value of the Interests (*i.e.,* $170,000) as determined by Goldmark.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) no commissions or other fees will be charged in connection with the transaction; (c) the sales price for the Interests will be an amount, based on the book value of the Interests, which reflects more than the fair market value of the Interests as determined by Goldmark, the Managing Partner for the Partnership; and (d) Goldmark based its valuation of the Partnership on an appraisal of the Courtyard Apartments performed by Strand, an independent qualified real estate appraiser.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (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 of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption 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) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional 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

(4) The proposed exemptions, if granted, will be 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 18th day of November, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–30560 Filed 11–23–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences (BIO) (1110).

Date and Time: December 2, 1999, 8:45 a.m.–5:00 p.m.; December 3, 1999, 8:45 a.m.–3:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 1235.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, Room 605, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Tel No.: (703) 306–1400.

Minutes: May be obtained from the contract person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: GPRA Performance Evaluation and Planning Discussion.

Dated: November 19, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–30618 Filed 11–23–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences (66); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting.

Name: Portfolio Allocation Review Committee, a Subcommittee of the Advisory Committee for Mathematical and Physical Sciences.

Date and Time: November 29, 1999, 7 p.m.–10 p.m.; November 30 & December 1, 1999, 9 a.m.–7 p.m.; December 2, 1999, 9 a.m.–12 noon.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Hugh M. Van Horn, Director, Division of Astronomical Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: 703/306–1820.

Purpose of Meeting: Given the science opportunities available to the U.S. Astronomical community, the subcommittee is asked to Provide guidance as to the most effective way to utilize Available NSF resources to ensure a world-leading program of research and education in astronomy and astrophysics.

Agenda: To receive briefings on (1) Current support for research and education in astronomy and astrophysics provided by the Division of Astronomical Sciences and by other organizations; (2) The Division's Strategic Plan; and, (3) Various options for reallocating support. In this context, to provide guidance as to the most effective utilization of available NSF resources.

Dated: November 19, 1999.

Karen York,

Committee Management Officer.

[FR Doc. 99–30619 Filed 11–23–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: December 13–15, 1999; 8:30 A.M. until 5:00 p.m.

Place: Room 310, 380, 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Keith N. Crank, James Rosenberger, and William B. Smith Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice to Program Officers concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Statistics & Probability Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 19, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–30620 Filed 11–23–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Wilkinson, Jr., at the above address or (703) 306–1180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Joseph Bordogna, Deputy Director, Chairperson

Mary E. Clutter, Assistant Director for Biological Sciences

Karl A. Erb, Director, Office of Polar Programs

Linda P. Massaro, Director, Office of Information and Resource Management

Nathaniel Pitts, Director, Office of Integrative Activities

Dated: November 15, 1999.

John F. Wilkinson, Jr.,

Director, Division of Human Resource Management.

[FR Doc. 99–30621 Filed 11–23–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of membership of the National Science Foundation's Performance Review Board for Office of Inspector General Senior Executive Service positions.

SUMMARY: This announcement of the membership of the National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Wilkinson, Jr. at the above address or (703) 306–1180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Office of Inspector General Senior Executive Service Performance Review Board is as follows:

Stanley V. Jaskolski, Chairman, Audit and Oversight Committee, National Science Board, Chairperson

Linda P. Massaro, Director, Office of Information and Resource Management, Executive Secretary

Bruce L. Umminger, Senior Scientist, Office of Integrative Activities

Dated: November 15, 1999.

John F. Wilkinson, Jr.,

Director, Division of Human Resource Management.

[FR Doc. 99–30622 Filed 11–23–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

Duquesne Light Co., Ohio Edison Co., The Cleveland Electric Illuminating Co., The Toledo Edison Co.; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duquesne Light Company (the licensee) to withdraw a portion of its January 29, 1998, application for a proposed amendment to Facility Operating License No. NPF–73 for the Beaver Valley Power Station,

Unit No. 2 (BVPS–2), located in Shippingport, PA.

The withdrawn portion of the proposed amendment would have revised the BVPS–2 Updated Final Safety Analysis Report (UFSAR) description of the small-break loss-of-coolant accident (SBLOCA) radiological dose consequences. The licensee completed an analysis which demonstrated that the SBLOCA results are bounded by the results of the large-break loss-of-coolant accident analysis. Therefore, the requested UFSAR changes pertaining to the SBLOCA are not needed, and these requested changes are being withdrawn.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on March 11, 1998 (63 FR 11919). However, by letter dated June 14, 1999, the licensee withdrew this portion of the proposed change as discussed above.

For further details with respect to this action, see the application for amendment dated January 29, 1998, as supplemented November 9, 1998, and the licensee's letter dated June 14, 1999, which withdrew a portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room and will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, MD, this 18th day of November 1999.

For the Nuclear Regulatory Commission.

Daniel S. Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–30643 Filed 11–23–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Revised Criteria for Post Accident Sampling Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering modifying its criteria for post accident sampling systems (PASS). The NRC has received two industry-developed topical reports which provide justification for removal of PASS from the licensing basis for nuclear power plants designed by Westinghouse and Combustion Engineering. The NRC generally agrees with the conclusions in these reports and is considering approving these reports. If the NRC approves these reports, nuclear power plant licensees will be able to reference the reports to support changes to their PASS, including the elimination of the system. The NRC is requesting public comment on this pending action. In particular, the NRC is seeking comment on whether the elimination of information obtained from radionuclide sampling from PASS may affect offsite emergency response organizations ability to respond to an accident.

DATES: The comment period expires January 10, 2000. Comments received from after this date will be considered if it practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: David L. Meyer, Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Rulemakings and Adjucations Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

The publications cited in this document, including the industry-developed topical reports, are available for inspection and copying, for a fee, through the NRC Public Document Room, 2120 L Street, Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James O'Brien, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001, telephone (301) 415–2919; e-mail jbo@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background
II. Description of Proposed Action
III. Evaluation of Proposed Action
IV. Request for Comment

I. Background

Following the accident at Three Mile Island Unit 2 (TMI–2) on March 28, 1979, the NRC formed a lessons-learned Task Force to identify and evaluate safety concerns originating with the TMI–2 accident. NUREG–0578, ''TMI–2 Lessons Learned Task Force Status report and Short-term Recommendations,'' documents the results of the task force effort. One of the recommendations of the task force was for licensees to upgrade the capability to obtain samples from the reactor coolant system and containment atmosphere under high radioactivity conditions and to provide the capability for chemical and spectral analyses of high-level samples on site. NUREG–0737, ''Clarification of TMI Action Plan Requirements,'' which was issued to licenses in Generic Letter 80–90 on October 31, 1980, contains the details of the TMI recommendations that were to be implemented by the licensees. Additional criteria for post accident sampling systems were issued by Regulatory Guide 1.97, ''Instrumentation for Light-water-cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.''

Specific criteria for PASS capability delineated in NUREG–0737 and Regulatory Guide 1.97 are:

Sample location	Measurement
1. Reactor Coolant	Dissolved gases, Boron, Chlorides, pH, Radionuclides
2. Containment Atmosphere	Hydrogen, Oxygen, Radionuclides
3. Containment Sump	Boron, Chlorides, pH, Radionuclides

All samples and measurements were to be taken and analyzed within 3 hours of the decision to do so except for chlorides which were to be taken and analyzed within 24 hours.

In the mid 1980's, the NRC sponsored an assessment of selected regulatory requirements that may have marginal importance to risk. One of the issues reviewed was the PASS criteria. This assessment, documented in NUREG/CR–4330, concluded that the PASS had marginal benefits, but that the cost of maintaining the PASS was minimal.

On October 26, 1998, the Westinghouse Owners Group submitted a topical report, WCAP–14986–P which provided justification for elimination of the PASS from the licensing basis. By eliminating PASS from the licensing basis, there would no longer be a licensee commitment to maintain the system. On May 5, 1999, the Combustion Engineering Owners Group

submitted a related topical report, CE NPSD–1157, which also provided justification for elimination of PASS. Both of these topical reports indicated that the cost of maintaining the PASS was high and justified elimination of PASS based upon there being no benefit in the information obtained via PASS. The topical reports conclude that the sampling systems are not useful in supporting post accident mitigative and emergency response actions and that most of the information, which would be obtained from sampling, can be inferred from other indications which will be available earlier in an event that the sample results. In addition, the topical reports state that the samples are subject to inaccuracies due to physical phenomena (e.g., deposition of fission products in sample lines) involved in taking the samples.

II. Description of Proposed Action

The NRC is proposing to endorse the industry topical reports for referencing in site-specific licensing actions to remove commitments for maintaining PASS. This action, if taken, would allow nuclear power plants to remove their commitments for maintaining PASS.

III. Justification for Proposed Action

The NRC concludes from its review of the topical reports that the information to be obtained from PASS can be inferred to a large degree from other indications which will be available earlier in an event than the PASS samples due to the time needed to obtain and analyze the PASS sample. In addition, the PASS samples are difficult to obtain and are subject to inaccuracies due to physical phenomena (e.g., deposition of fission products in sample lines) involved in taking the samples. However, PASS can provide a measurement of radionuclides in reactor coolant system, containment sump and containment atmosphere which may be used in supporting emergency response decision making. This information may be used to modify the assumed source term used in offsite dose calculations which are considered in formulating Protective Action Recommendations (PARs) during an accident. This information is not needed to formulate initial PARs (which are most likely based on plant conditions, e.g., reactor water level, core temperatures, and containment radiation levels). Furthermore, other information, such as area, process, and effluent radiation monitor readings and field team data, can be used to support modification to the initial PAR. The PASS information would potentially be most useful in situations where an accident results in release of radioactive material to the reactor coolant or containment, but a breach of either of these systems/volumes does not occur within the first several hours of the accident or occurs through an unmonitored release path. However, even in these situations, PASS sample measurement information would not be a real-time indication of the concentration of radionuclides within the sampled volume (due to the time needed to analyze the samples) and would be subject to the inaccuracies discussed above.

IV. Request for Comment

Before completing its review of the industry topical reports, the NRC is seeking public comment from its stockholders. In particular, the NRC is seeking comment from offsite emergency response organizations who may have an interest in information regarding radionuclide concentrations in the reactor coolant, containment sump or containment atmosphere to support their emergency response activities (in particular protective action decision making). Specifically, the NRC is seeking comment on whether elimination of information obtained from radionuclide sampling using the PASS may have an adverse effect on offsite emergency response organizations' ability to respond to an accident in view of (1) the availability of information provided by plant conditions, plant radiation monitor readings and field monitoring teams and (2) the limitations associated with the accuracy and timeliness of information provided by the PASS.

Dated at Rockville, Maryland, this 18 day of November, 1999.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Deputy Director, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc 99–30645 Filed 11–23–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Licenses Authorizing Distribution to General Licensees

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability and request for comments.

SUMMARY: The NRC is announcing the availability of, and requesting comments on, draft NUREG–1556, Volume 16, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Licenses Authorizing Distribution to General Licensees,'' dated September 1999. This draft NUREG report is the 16th program-specific guidance document developed to support an improved material licensing process. The NRC is using Business Process Redesign techniques to redesign its material licensing process, as described in NUREG–1539, ''Methodology and Findings of the NRC's Materials Licensing Process Redesign.'' A critical element of the new process is consolidating and updating numerous guidance documents into a NUREG-series of reports.

This draft guide has been developed in parallel with the proposed rulemaking on 10 CFR Parts 30, 31, 32, 170, and 171, ''Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material.'' The proposed rule was published in the **Federal Register** on July 26, 1999 (64 FR 40295). Comments received in response to publication of this draft guidance will be considered in developing the final guide. Finalization of the guidance will continue to parallel the rulemaking, resulting in a guidance document that is consistent with the final rule. It is intended for use by applicants, licensees, NRC license reviewers, and other NRC personnel.

NRC is requesting comments such as whether a risk-informed, performance-based approach to licensing is valid, as well as comments on the information provided. Note that this document is strictly for public comment and is not for use in preparing or reviewing applications, until it is published in final form.

DATES: The comment period ends January 24, 2000. Comments received after that time will be considered if practicable.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand-deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to dlm1@nrc.gov.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 16, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001.

Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 16, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing,'' directed that the Federal Government's writing be in plain language. The NRC specifically requests comments on this licensing guidance NUREG about the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

FOR FURTHER INFORMATION, CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: *slm2@nrc.gov.*

Electronic Access

Draft NUREG–1556, Vol. 16 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 12th day of November 1999.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 99–30644 Filed 11–23–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, December 6, 1999; 8:30 a.m., Tuesday, December 7, 1999.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, in the Benjamin Franklin Room.

STATUS: December 6 (Closed); December 7 (Open).

MATTERS TO BE CONSIDERED:

Monday, December 6—1:00 p.m. (Closed)

1. Rate Case Filing.
2. Audit Committee Report and Review of Year-End Financial Statements.
3. Personnel Matters.
4. Compensation Issues.

Tuesday, December 7—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 1–2, 1999.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Consideration of Fiscal Year 1999 Audited Financial Statements.
4. Consideration of Fiscal Year 1999 Annual Report.
5. Diversity Report.
6. Capital Investment.
   a. St. Paul, Minnesota—Twin Cities Airport Mail Center.
7. Tentative Agenda for the January 10–11, 2000, 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, SW, Washington, DC 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 99–30771 Filed 11–22–99; 2:53 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:
Form F–9, SEC File No. 270–333, OMB Control No. 3235–0377
Form F–10, SEC File No. 270–334, OMB Control No. 3235–0380
Form 10, SEC File No. 270–51, OMB Control No. 3235–0064

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval of extension on the following:

Form F–9 is a registration Statement under the Securities Act of 1933 (Securities Act) used by certain investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer and either non convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in paragraph (e), are thereafter only convertible into security of another class of the issuer.

The information required by Form F–9 is useful for persons considering investment in securities issued by Canadian companies. Form F–9 takes approximately 25 hours to prepare and is filed by 12 respondents. It is estimated that 25% of the 300 hours (75 hours) would be prepared by the company.

Form F–10 is a Registration Statement used by Canadian ''substantial issuers,'' those issuers with at least thirty-six calendar months of reporting history with a securities commission in Canada and a market value of common stock of at least $360 million (Canadian) and an aggregate market value of common stock held by non-affiliates of at least $75 million (Canadian).

The information required under the cover of Form F–10 can be used by security holders and investors in evaluating securities and making investment decisions. Form F–10 takes approximately 25 hours to prepare and is filed by 45 respondents. It is estimated that 25% of the 1,125 hours (281) would be prepared by the company.

Form 10 is used by the Commission to register securities pursuant to Sections 12(b) and 12(g) of the Securities Exchange Act of 1934 (Exchange Act). Form 10 requires financial and other information about such matters as the registrant's business, properties, identify and remuneration of management, outstanding securities and securities to be registered and financial condition.

The information provided by Form 10 is intend to ensure the adequacy of information available to investors about the company. Form 10 takes approximately 24 hours to prepare and is filed by 124 respondents. It is estimated that 25% of the 2,977 hours (744 hours) would be prepared by the company.

Written 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 will have practical utility; (b) The accuracy of the agency's estimate of burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: November 5, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30583 Filed 11–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension:

Rule 2a–7, SEC File No. 270–258; OMB Control No. 3235–0268

Notice is hereby given that under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501], the Securities and Exchange Commission (the ''Commission'') is soliciting public comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget.

Rule 2a–7 [17 CFR 270.2a–7] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Act'') governs money market funds. Money market funds are open-end management investment companies that differ from other open-end management investment companies in that they seek to maintain a stable price per share, usually $1.00. The rule exempts money market funds from the valuation requirements of the Act, and, subject to certain risk-limiting conditions, permits money market funds to use the ''amortized cost method'' of asset valuation or the ''penny-rounding method'' of share pricing.

Rule 2a–7 imposes certain recordkeeping and reporting obligations on money market funds. The board of directors of a money market fund, in supervising the fund's operations, must establish written procedures designed to stabilize the fund's net asset value (''NAV''). The board also must adopt guidelines and procedures relating to certain responsibilities it delegates to the fund's investment adviser. These procedures typically address various aspects of the fund's operations. The fund must maintain and preserve for six years a written copy of both these procedures and guidelines. The fund also must maintain and preserve for six years a written record of the board's considerations and actions taken in connection with the discharge of its responsibilities, to be included in the board's minutes. In addition, the fund must maintain and preserve for three years written records of certain credit risk analyses, evaluations with respect to securities subject to demand features or guarantees, and determinations with respect to adjustable rate securities and asset backed securities. If the board takes action with respect to defaulted securities, events of insolvency, or deviations in share price, the fund must file with the Commission an exhibit to Form N–SAR describing the nature and circumstances of the action. If any portfolio security fails to meet certain eligibility standards under the rule, the fund also must identify those securities in an exhibit to Form N–SAR. After certain events of default or insolvency relating to a portfolio security, the fund must notify the Commission of the event and the actions the fund intends to take in response to the situation.

The recordkeeping requirements in rule 2a–7 are designed to enable Commission staff in its examinations of money market funds to determine compliance with the rule, as well as to ensure that money market funds have established procedures for collecting the information necessary to make adequate credit reviews of securities in their portfolios. The reporting requirements of rule 2a–7 are intended to assist Commission staff in overseeing money market funds.

Commission staff estimates that approximately 949 money market funds are subject to the rule each year. The staff estimates that each of these funds spends an average of 336 hours each year to document credit risk analyses, and determinations regarding adjustable rate securities, asset backed securities, and securities subject to a demand feature or guarantee.[1] In addition, each year an estimated average of 10 money market funds each spends approximately 2.5 hours to record (in the board minutes) board determinations and actions in response to certain events of default or insolvency, and to notify the Commission of the event.[2] Finally, Commission staff estimates that in the first year of operation, the board of directors of an average of 46 new money market fund each spends 7 hours to formulate and establish written procedures for stabilizing the fund's NAV and guidelines for delegating certain of the board's responsibilities to the fund's adviser. Based on these estimates, Commission staff estimates the total burden of the rule's paperwork requirements for money market funds to be 319,211 hours.[3] This is an increase from the previous estimate of 196,371 hours. The increase is attributable to updated information from money market funds regarding hourly burdens, and to a more accurate calculation of the component parts of some information collection burdens.

These estimates of burden hours are made solely for the purposes of the Paperwork Reduction Act. The estimates are not derived from a comprehensive or even a representative survey or study of Commission rules.

In addition to the burden hours, Commission staff estimates that money market funds will incur costs to preserve records required under rule 2a–7. These costs will vary significantly for individual funds, depending on the amount of assets under fund management and whether the fund preserves its records in a storage facility in hard copy of has developed and maintains a computer system to create and preserve compliance records.[4] Commission staff estimates that the amount an individual fund may spend ranges from $100 per year to $2 million. Based on an average cost of $.0000052 per dollar of assets under management for small and medium-sized funds to $0.000039 per dollar of assets under management for large funds,[5] the staff estimates compliance with rule 2a–7 costs the fund industry approximately $51.6 million per year.[6] Based on

[1] This average is based on discussions with individuals at money market funds and their advisers. The amount of time may vary significantly for individual money market funds.

[2] This number may vary significantly from year to year.

[3] This estimate is based on the following calculation: $((949 \times 336) + (10 \times 2.5) + (46 \times 7) = 319{,}211$.

[4] The amount of assets under management in money market funds ranges from approximately $100,000 to $60.9 billion.

[5] For purpose of this PRA submission, Commission staff used the following categories for fund sizes: (i) small—money market funds with $50 million or less in assets under management, (ii) medium—money market funds with more than $50 million up to and including $1 billion in assets under management, and (iii) large—money market funds with more than $1 billion in assets under management.

[6] The staff estimated the annual cost of preserving the required books and records by identifying the annual costs incurred by several funds and then relating this total cost to the average net assets of these funds during the year. With a total of $204 billion under management in small and medium funds, and $1,292.6 billion under management in large funds, the total amount was estimated as

responses from individuals in the money market fund industry, the staff estimates that some of the largest fund complexes have created computer programs for maintaining and preserving compliance records for rule 2a–7. Based on a cost of $0.000068 per dollar of assets under management for large funds, the staff estimates that the total annualized capital/startup costs range from $0 for small funds to $88.4 million for all large funds. Commission staff further estimates, however, that even absent the requirements of rule 2a–7, money market funds would spend at least half of the amount for capital costs ($44.2 million) and for record preservation ($25.8 million) to establish and maintain these records and the systems for preserving them as a part of sound business practices to ensure diversification and minimal credit risk in a portfolio for a fund that seeks to maintain a stable price per share.

The collections of information required by rule 2a–7 are necessary to obtain the benefits described above. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: November 17, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30651 Filed 11–23–99; 8:45 am]

BILLING CODE 8010–01–M

follows: ($0.0000052 × $204 billion) + ($0.000039 × $1,292.6 billion) = $51.6 million.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24143; 812–11152]

Corporate Income Fund, et al., Notice of Application.

November 18, 1999.

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(c) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit transactions in certain securities between series of certain registered unit investment trusts. The requested order would supersede a prior order.

APPLICANTS: Corporate Income Fund and Equity Investor Fund, (the ''Funds''), together with their present and future series (''Series''), and Merrill Lynch, Pierce, Fenner & Smith Incorporated (''Merrill Lynch''), Salomon Smith Barney Inc., Paine Webber Incorporated and Dean Witter Reynolds Inc. (together, the ''Sponsors'').

FILING DATES: The application was filed on August 11, 1998 and amended on October 1, 1998, March 25, 1999, July 23, 1999, and November 12, 1999.

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 December 13, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o Merrill Lynch, P.O. Box 9051, Princeton, New Jersey 08543–9051.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

Applicant's Representations

1. Each Fund is registered under the Act as a unit investment trust (''UIT'') and is comprised of multiple Series. Each Series is created by a trust indenture (an ''Indenture'') among the Sponsors, a banking institution satisfying the criteria of section 26(a) of the Act that is unaffiliated with any Sponsor (''Trustee'') and, in certain cases, an independent evaluator that will be a ''qualified evaluator'' as defined in Rule 22–1(b)(2) under the Act (''Independent Evaluator''). Applicants also request relief for any future UIT sponsored by one or more of the Sponsors that becomes a party to an Indenture, and any future sponsor of one of more of the Series that becomes a party to an Indenture and for which Merrill Lynch acts as agent.[1]

2. Series may hold equity securities, preferred stocks, corporate bonds, and/or U.S. Treasury securities (''Treasuries''). As UITs, the Series are not actively managed. A Series generally holds securities until the Series terminates or, in the case of a Series holding preferred stocks or bonds, until the securities mature. A Series may sell portfolio securities (''Selling Series'') in connection with termination of the Series, to refund redemptions of its units, or under certain extraordinary circumstances specified in the Series' Indenture.[2] At the same time, another Series (''Purchasing Series'') holding

[1] Pursuant to powers of attorney executed by each of the other Sponsors, Merrill Lynch acts as agent for the Sponsors. The Sponsors agree that any such future UIT and any future sponsor will rely on the requested order only in accordance with the terms and conditions of the application.

[2] The Sponsors expect Selling Series to sell securities principally in connection with the termination of the Series and redemptions of their units. The Sponsors maintain a secondary market for the units and applicants state that as a practical matter redemptions are initiated only by the Sponsors because, with the exception of redemptions in kind, the Indenture requires the Trustee to sell units tendered for redemption to the Sponsors as long as they maintain a secondary market for the units.

Securities also may be sold by a Series (a) to pay deferred sales charges, (b) to comply with subchapter M of the Internal Revenue Code or to avoid an excise tax on a Series that elected to be taxed as a regulated investment company, (c) if a security is not consistent with the Series' investment objective (e.g., if a security is received in exchange for a bond in a workout), and (d) if a right to redeem arises under the terms for the applicable credit support. The Indenture also authorizes sales under certain other circumstances but any sale made under those circumstances will not be made in reliance on the requested relief.

one or more of the same securities as the Selling Series may be issuing additional units and may need to purchase the same securities that are being sold by the Selling Series. In addition, when certain Selling Series holding Treasuries terminate, the Sponsors may offer successor Series (''New Series'') that will hold the same Treasuries.

3. Applicants request relief to permit a Selling Series to sell Qualified Securities, as defined below, to a Purchasing Series and to allow the Purchasing Series to buy Qualified Securities.[3] Applicants also seek relief to allow a teminating Selling Series (''Rollover Series'') holding Treasuries to sell Treasuries to a New Series.

4. Qualified Securities are limited to those securities that are: (a) actively traded (*i.e.* having an average daily trading volume during the preceding six months of at least 500 shares equal in value to at least $25,000) on a Qualified Exchange (as defined below) and (b) included in a published index. A Qualified Exchange is either: (a) a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934, (b) the Nasdaq-NMS, or (c) a ''qualified foreign exchange'' as set forth in the proposed amendments to rule 12d3–1(d)(6) under the Act and that releases daily closing prices.[4]

5. Purchases and sales of securities are effected under the direction of the Buying Department of Merrill Lynch's Defined Asset Funds division (''Buying Department''). Pursuant to procedures to be adopted by the Sponsors and the Trustee upon the granting of an order requested by the application, the Buying Department will make an initial determination that two Series are on opposite sides of a transaction in Qualified Securities. Merrill Lynch, as agent for the Sponsors, will certify in writing to the Trustee of each affected Series, no later than the close of business on the business day following each sale pursuant to the requested order: (a) that the transaction is consistent with the investment objective and policies of each Series as stated in their respective registration statements and reports filed under the Act, (b) the reason that the Selling Series is selling the Qualified Securities, (c) the date of the transaction, (d) how the securities being sold meet the definition of Qualified Securities set forth in the requested order, and (e) the closing sale price of the Qualified Securities on the Qualified Exchange for the date the Qualified Securities are sold. The certification will be forwarded to the Trustee of each Series for its approval. The Trustee will then countersign the certificate, unless, in the event that the trustee disagrees with the price listed on the certificate, the Trustee immediately informs the agent for the Sponsors orally of any such disagreement and returns the certificate within five days with corrections duly noted. Upon receipt by the agent for the Sponsors can verify the correct price by reference to any independently published list of prices for the date of transaction, the agent for the Sponsors will ensure that the price of units of each of the Purchasing Series and the Selling Series accurately reflects the corrected price. To the extent that the agent for the Sponsors disagrees with the Trustee's corrected price, the agent for the Sponsors and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of prices for the date of the transaction.

6. In connection with the purchase of Treasuries by a New Series from a Rollover Series, sales would be effected at the offer-side evaluation of the Treasuries, as determined by the Independent Evaluator. In order to minimize the potential for overreaching in these situations, the agent for the Sponsors will certify in writing to the Trustee of both the Rollover and the New Series, within five days of each sale of Treasuries from a Rollover Series to a New Series: (a) that the transaction is consistent with the policies of both the Rollover Series and the New Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the price determined by the Independent Evaluator for the sale date of the Treasuries. The Trustee will then countersign the certificate unless, in the event the Trustee disagrees with the price listed on the certificate, the Trustee immediately informs the agent for the Sponsors orally of any such disagreement and returns the certificate within five days with corrections duly noted. Upon the agent's receipt of a corrected certificate, the agent and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, published list of prices for the date of the transaction.

Applicants' Legal Analysis

1. Section 17(a) of the Act 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, in pertinent part, any person directly or indirectly controlled, controlled by a under common control with, such other person. Each Series will have a common Sponsor. Since the Sponsor of a Series may be deemed to control the Series, all of the Series may be deemed to be under common control and, thus, affiliated persons of each other.

2. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliated persons solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraphs (b) and (e).

3. Paragraph (e) of rule 17a–7 requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a UIT does not have a board of directors, the Series would be unable to comply with this requirement. Paragraph (b) of rule 17a–7 requires that the transactions be effected at the independent current market price of the security. The Treasuries would fall within the paragraph (b)(4) category of ''all other securities,'' for which the current market price under rule 17a–7(b) is the average of the highest current independent bid and lowest current independent offer determined on the basis on reasonable inquiry.

4. Section 17(b) of the Act provides that the Commission shall exempt a proposed transaction from section 17(a) of the Act if the evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching, (b) the proposed transaction is consistent with the investment objectives and policies of the registered investment company involved, and (c) the proposed transaction is consistent with the

[3] The requested order would supersede a prior order that permitted a terminating Series to sell certain securities to a new Series. *See* Defined Asset Funds-Equity Income Fund, *et al.,* Investment Company Act Release No. 20447 (Aug. 5, 1994) (Notice) and Release No. 20517 (Aug. 31, 1994) (Order).

[4] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a ''Qualified Foreign Exchange'' to mean a stock exchange in a country other than the United States where: (1) trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of acquiring companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (4) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term ''Qualified Foreign Exchange.''

general purposes of the Act. Under section 6(c) of the Act, the Commission may exempt classes of transactions if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the proposed transactions satisfy the requirements of sections 6(c) and 17(b).

5. Applicants state that a sale of Qualified Securities by a Selling Series to a Purchasing Series will satisfy each of the requirements of rule 17a–7 other than paragraph (e). Applicants note that the requirement in rule 17a–7(e) that the board of directors adopt and monitor certain procedures was adopted, among other things, because transactions permitted by rule 17a–7 may involve entities that are not registered investment companies. Applicants state that their requested relief would extend only to transactions between registered UITs. Applicants submit that a Selling Series will sell its Qualified Securities to a Purchasing Series at the last sales price on the applicable Qualified Exchange on the sale date, without any brokerage charges or other remuneration except customary transfer fees. Applicants note that the agent for the Sponsors will represent that the transactions are consistent with the investment objectives of each Selling Series and each Purchasing Series. Applicants state that the requirement that the securities be Qualified Securities assures that only transactions in large active issues, which comprise a portion of a published index, will be authorized and therefore will ensure the availability of accurate prices. Applicants also state that the current practice by buying and selling on the open market leads to unnecessary brokerage fees, and that the requested relief will result in savings to investors.

6. With respect to Treasuries, applicants state that sales by a Rollover Series to a New Series will comply with all of the provisions of rule 17a–7 other than paragraphs (b) and (e). Applicants state that the Treasuries would be sold by a Rollover Series to a New Series at the Treasuries' offer-side evaluation as determined by the Independent Evaluator. Other Treasuries acquired by the New Series will be acquired at the offer-side evaluation and the New Series would be valued during its initial offering period based on the Treasuries' offer-side evaluation. Applicants state that all unitholders of the New Series, both unitholders from a Rollover Series and new unitholders, will acquire units with a value based on the offer-side evaluation of the Treasuries. Applicants state that the sales of Treasuries between Series will reduce transaction costs to unitholders of the Selling Series. In addition, applicants state that the transactions will be consistent with the policy of each Series.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each sale of Qualified Securities between the Series will be effect at the closing price of the Qualified Securities sold on the applicable Qualified Exchange on the sale date. Each sale of Treasuries between the Series will be effected at the Treasuries' offer-side evaluation as determined by an Independent Evaluator as of the evaluation time on the sale date. Sales of Qualified Securities and Treasuries will be effected without any brokerage charges or other remuneration except customary transfer, fees, if any.

2. The nature and conditions of such transactions will be fully disclosed to investors of each participating Series.

3. The Trustee of each Series will (a) review the procedures relating to the sale of Qualified Securities and Treasuries from one Series to another and (b) make any changes to those procedures at the Trustee considers necessary as reasonably to comply with paragraphs (a), (b) (except for transactions in Treasuries), (c) and (d) and Rule 17a–7.

4. A written copy of these procedures and a written record of each transaction pursuant to the requested order will be maintained as provided in Rule 17a–7(f).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30652 Filed 11–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC– 24142; File No. 812–11586]

Great-West Life & Annuity Insurance Company, et al.; Notice of Application

November 18, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for approval under Section 26(b) of the Investment Company Act of 1940, as amended (the ''1940 Act'').

SUMMARY OF APPLICATION: Applicants seek an order approving the substitutions of shares of the Maxim INVESCO ADR Portfolio for shares of the Foreign Equity Portfolio of the Maxim Series Fund, Inc.

APPLICANTS: Great-West Life & Annuity Insurance Company (''GWL&A''), Retirement Plan Series Account of GWL&A (the ''Separate Account'') and One Orchard Equities, Inc. (''Orchard'') (hereinafter all parties are collectively referred to as the ''Applicants'').

FILING DATE: The application was filed on April 20, 1999, and amended and restated on July 9, 1999.

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 Secretary of the Commission 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 December 13, 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 Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Jorden Burt Boros Cicchetti Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC 20007–0805; Attention: Thomas C. Mira, Esq.

FOR FURTHER INFORMATION CONTACT: Michael Pappas, Senior Counsel, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. GWL&A is a stock life insurance company organized under the laws of the State of Colorado. GWL&A is wholly owned by The Great-West Life Assurance Company, which is a subsidiary of Great-West Lifeco, Inc., an insurance holding company ultimately controlled by Power Corporation of Canada. GWL&A is principally engaged

in offering life insurance, annuity contracts, and accident and health insurance and is admitted to do business in the District of Columbia, Puerto Rico, Guam and in all states of the United States, except New York.

2. The Separate Account has fourteen investment divisions each of which invests exclusively in one of the corresponding portfolios of Maxim Series Fund, Inc. (''Maxim Series Fund'' or ''Maxim'') an open-end management investment company. The assets of the Separate Account are kept separate from the other assets of GWL&A. The income, gains, and losses of the Separate Account, whether or not realized, are credited to or charged against the Separate Account without regard to other income, gains, or losses of any other Separate Account or arising out of any other business GWL&A may conduct.

3. The Separate Account is a unit investment trust (''UIT'') and has filed a registration statement on Form N–4 (Registration Nos. 33–83928 and 811–8762) for the purpose of registering the Separate Account under the 1940 Act and the Contracts as securities under the Securities Act of 1933, as amended (the ''1933 Act'').

4. Orchard is the principal underwriter and distributor of the Contracts. Orchard is registered with the Commission under the Securities Exchange Act of 1934, as amended, as a broker/dealer and is a member of the National Association of Securities Dealers, Inc.

5. The Contracts are individual, flexible premium, variable annuity contracts designed for Individual Retirement Annuity (''IRA'') programs. The Contracts can be purchased only in connection with IRA programs in one of three ways: with rollover proceeds from qualified plans, such as 401(k) plans; with rollover proceeds from other eligible rollover sources; or with earned income.

6. The Contracts have no front-end or contingent deferred sales load. If the Contract is surrendered in part or whole within the first twelve months, the Contracts have an administrative surrender fee. There are no limits on the number of transfers that a Contract owner can make and there are no transfer charges for transfers among the investment divisions offered in the Contract.

7. The Contracts expressly reserve GWL&A's right, both on its own behalf and on behalf of the Separate Account, to eliminate investment divisions, combine two or more investment divisions, or substitute one or more underlying portfolios for other in which its investment divisions are invested or for a new underlying portfolio.

8. GWL&A, on its own behalf and on behalf of the Separate Account, purposes to exercise its contractual right to eliminate the Foreign Equity Portfolio (''Foreign Equity Portfolio'' or the ''Eliminated Portfolio'') as a funding option under the Contracts. GWL&A proposes to substitute shares of the Maxim INVESCO ADR Portfolio (''ADR Portfolio'' or the ''Substituted Portfolio'') for the Foreign Equity Portfolio. The proposed transaction will be referred to as the ''Substitution.''

9. Maxim Series Fund, the underlying fund, is affiliated with GWL&A and the Separate Account. No other underlying fund is used in connection with the Contracts.

10. Applicants believe the Substitution will benefit the Contract owners by eliminating a portfolio which, in the Applicants' view, has had poor historical performance returns. The Applicants also believe the Substitution will benefit Contract owners by replacing the Eliminated Portfolio with a portfolio having comparable investment objectives and policies and better historical performance returns, and which the Applicants believe is more likely to provide Contract owners with favorable investment performance in the future. The Substitution will not result in a reduction of variable investment options available under the Contracts. Fourteen options would remain in the Contracts.

11. GWL&A will schedule the Substitution to occur on the Automatic Selection Date. Such date will be as soon as practicable following the issuance of an order by the Commission granting the relief requested in the Application. By way of sticker, the prospectus will disclose the proposed Substitution for several months prior to the Automatic Selection Date. After the Order is issued, a second notification will be provided to all Contract owners who have amounts allocated to the Eliminated Portfolio again advising them of the pending Substitution and of their ability to transfer free of charge to the remaining investment division(s) of their choice (or remain in the Eliminated Portfolio until the automatic substitution on the Automatic Selection Date).

12. The affected Contract owners will also receive a confirmation of the Substitution transaction that will be mailed within five days of the Automatic Selection Date. The confirmation will contain a remainder that the Contract owner may effect transfers from the investment division corresponding to the Substituted Portfolio, to any other investment division without incurring any charges.

13. In an effort to provide continuity of investment choice to Contract owners after the Substitution, GWL&A has determined to replace the Eliminated Portfolio with an underlying portfolio that has investment objectives and policies that are comparable with those of the Eliminated Portfolio. After thoroughly comparing and contrasting all other Maxim profolios with the Eliminated Portfolio, GWL&A represents that it has determined the ADR Portfolio is the most appropriate replacement for the Foreign Equity Portfolio within the Maxim family of funds.

14. The investment objective of the Foreign Equity Portfolio is to seek total return from long-term growth of capital and dividend income by investing its assets primarily in equity securities of issuers headquartered outside the United States. The ADR Portfolio's investment objective is to seek a high total return through capital appreciation and current income, while reducing risk through diversification. This portfolio invests primarily in foreign securities that are issued in the form of American Depository Receipts (''ADRs'') or foreign stocks that are registered with the Commission and traded in the United States. Therefore, after the Substitution, Contract owners who have allocated value to an investment division which invests in the Foreign Equity Portfolio will continue to have their value allocated to an investment division which invests in an underlying portfolio that invests primarily in foreign securities.

15. Applicants represent that, for the most recent fiscal year of the Eliminated and Substituted Portfolios, the comparative total expenses (after waivers and reimbursements) of the ADR Portfolio were 1.30%, which were the same as the 1.30% current total expenses (after waivers and reimbursements) of the Foreign Equity Portfolio. The total expenses before waiver or reimbursement for the 1998 fiscal year were 1.32% for the ADR Portfolio and 1.31% for the Foreign Equity Portfolio. Applicants state that the ADR Portfolio's expenses are capped at 1.30% while the Foreign Equity Portfolio expenses are capped at 1.50%. The average annual total returns for the one year and since inception periods ending December 31, 1998 for the ADR Portfolio were 10.64% and 13.82%, respectively, compared to the Foreign Equity Portfolio, which had returns of 7.67% and 2.13% for the same periods. Both Portfolios commenced operations on November 1, 1994. Based on the foregoing historical performance data,

Applicants submit that the ADR Portfolio has substantially outperformed the Foreign Equity Portfolio. Moreover, the total expenses of the Substituted Portfolio will not rise above the current level of 1.30% as can the Foreign Equity Portfolio's expenses. Should Contract owners with current allocations in the Eliminated Portfolio determine that another investment is more appropriate, they will be able to transfer their Contract value to any of the remaining investment divisions available under the Contract without incurring any charges.

16. The Substitution (1) Will be effected by redeeming shares of the Eliminated Portfolio on the Automatic Selection Date at net asset value and using the proceeds to purchase shares of the Substituted Portfolio as net asset value on the same date: (2) Contract owners will not incur any fees or charges as a result of the transfer of account values from the Eliminated Portfolio; (3) All Contract values will remain unchanged and fully invested; (4) The Substitution will not increase Contract or Separate Account fees and charges after the Substitution; (5) Contract owners' rights and GWL&A's obligations under the Contracts will not be altered in any way; and (6) All expenses incurred in connection with the Substitution, including legal, according and other expenses, will not be borne by Contract owners as they will be paid by either GWL&A or GW Capital Management, LLC. The Substitution will be effected as net asset value in conformity with section 22 of the 1940 Act and Rule 22c–1 thereunder. In addition, as of the date of filing this amended and restated Application, Applicants represent that to the best of their knowledge, the Substitution will not result in any adverse federal income tax consequences to Contract owners.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of securities.

3. Applicants represent that the purposes, terms and conditions of the Substitution are consistent with the protections for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent.

4. Any Contract owner who does not want his or her assets allocated to the Substituted Portfolio would be able to transfer assets to any one of the other investment divisions available under his/her Contract without charge. Such transfers could be made prior to or after the Automatic Selection Date.

Conclusion

In light of the foregoing facts and representations, Applicants believe that the request to allow the Substitution meets the applicable standards of an order under Section 26(b) of the 2940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30584 Filed 11–23–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42152; File No. SR–OPRA–99–02]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Revising Certain of its Subscriber Fees

November 17, 1999.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Act''), notice is hereby given that on October 27, 1999, the Options Price Reporting Authority (''OPRA''),[1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment revises or eliminates certain of the facilities and access fees charged by OPRA in respect of its Basic Service. Fee revisions consist of proposed reductions in usage-based fees for access to OPRA's dial-up market data service, voice-synthesized market data service and radio paging service, a proposed reduction in the nonprofessional subscriber fee, and a proposed increase in OPRA's device-based information fee payable by professional subscribers. In addition, OPRA proposes to eliminate its port-based dial-up market data service utilization fee.

OPRA has designated this proposal as concerned solely with establishing or changing a fee or other charge collected on behalf of all of the OPRA participants in connection with access to or use of OPRA facilities, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(i) under the Act.[2] The Commission is publishing this notice to solicit comments from interested persons on the proposed amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to revise certain of the fees payable to OPRA by professional and nonprofessional subscribers and vendors for access to OPRA's Basic Service, which consists of market data and related information pertaining to equity and index options (''OPRA Data'').[3] The revisions reflect significant decreases in various usage-based vendor fees and in the nonprofessional subscriber fee, and a modest increase in the professional subscriber fee. In addition, OPRA proposes to eliminate its port-based dial-up market data service utilization fee.

Specifically, OPRA proposes to decrease the three usage-based fees which apply to vendors who provide a dial-up market data service (which may include an Internet service) or a radio paging service, and to vendors or subscribers who provide a voice-synthesized market data service. Currently, usage-based fees for these three services range from two cents to one cent ($.02–$.01) per quote packet, depending on total usage. OPRA proposes to reduce all three usage-based fees to a flat rate fee of one-half cent ($.005) per quote packet, and to institute new usage-based fees for access to these services of two cents ($.02) per ''options chain,'' which may be elected as an alternative to the per quote packet fee.

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. Securities Exchange Act Release No. 17638 (Mar. 18 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[2] 17 CFR 240.11Aa3–2(c)(3)(i).

[3] No changes are proposed at this time for fees charged to vendors and subscribers for access to information pertaining to foreign currency options provided through OPRA's FCO Service.

An ''options chain'' may include quotes on all series of options on the same underlying interest. Since a single options chain may include many separate quote packets covering different series of put and call options on a single underlying interest, this alternative usage-based fee will generally result in lower fees as compared with straight quote-based pricing.

In addition, OPRA is proposing to cap total usage-based fees payable by a vendor in any month for the use of its dial-up service by any individual nonprofessional subscriber so that such fees will not exceed an amount equal to the monthly nonprofessional subscriber fee, which is proposed to be reduced to $1.00 per month. Under the proposed change to usage-based fees, a vendor who provides a dial-up service to its customers will still be able to choose whether to pay information fees on account of this service on the basis of the number of requests for quotes actually made by its customers, or by paying a flat-rate nonprofessional subscriber fee of $1.00 per month for each of its customers who qualify as nonprofessional subscribers. However, if a vendor elects to pay usage-based fees, the monthly fee for each nonprofessional subscriber will not exceed the flat-rate nonprofessional subscriber fee.

OPRA also proposes to reduce the monthly nonprofessional subscriber fee from the current rate of $2.50 per nonprofessional subscriber to a rate of $1.00 per nonprofessional subscriber. This will substantially lower the cost of access to real time options market information for those nonprofessional investors who subscribe to this information by paying a flat monthly fee. Also, because as described above, the monthly nonprofessional subscriber fee is proposed to serve as a cap on usage-based fees for dial-up services provided to nonprofessional subscribers, reducing this fee will result in lower costs for vendors who provide dial-up (or Internet) services to this category of investors.

OPRA proposes to increase device-based professional subscriber [4] fees by amounts ranging from 5.00% to 6.25% of the existing fees. Professional subscriber fees charged to members will continue to be discounted by 2% for members who preauthorize payment by electronic funds transfer through an automated clearinghouse system. OPRA estimates that the overall effect of the proposed increase in professional subscriber fees will be to increase revenues derived from device-based professional subscriber fees by approximately 5.15%. As an alternative to device-based fees, professional subscribers may pay an enterprise rate fee based on the number of their U.S. registered representatives. No changes are proposed to be made to the enterprise rate fee.

The proposed increase in the amount of the professional subscriber fee is intended to increase OPRA revenues derived from device-based subscriber fees in order to offset revenues lost as a result of the reductions in usage-based fees and nonprofessional subscriber fees described above. It is also intended to generate additional revenue to cover actual and anticipated increases in the costs of collecting, consolidating, processing, and transmitting options market information necessitated by the continued expansion of the listed options business, including major improvements and upgrades in the OPRA system to enable it to handle that expansion.

Finally, OPRA is proposing to eliminate its port-based fee currently imposed on vendors who offer a dial-up market data utilization service. The port-based fee has been an alternative to the usage-based fee, which is proposed to be reduced as described above, for vendors who provide a dial-up service to customers who may not all be professional or nonprofessional subscribers. The elimination of this port-based fee reflects that in recent years, as communications technology has continued to improve, a single high-capacity port may now be used by a vendor to provide a dial-up service to the same number of customers that once required tens or even hundreds of ports. As a result, the number of ports used by a vendor no longer serves as a meaningful measure of the extent of the vendor's total service. Thus a port-based fee no longer provides a fair and equitable way to allocate among vendors the fees imposed by OPRA on providers of a dail-up service, which is why OPRA proposes to eliminate it.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3),[5] because the amendment is concerned solely with changing fees charged on behalf of OPRA, the amendment is effective upon filing with the Commission. To give persons subject to these fees advance notice of the changes, OPRA proposes to put the revised fees into effect commencing January 1, 2000. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2),[6] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C., 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, 450 Fifth Street, N.W., Washington, D.C., 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–99–02 and should be submitted by December 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30653 Filed 11–23–99; 8:45 am]

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[4] Professional subscribers are those persons who subscribe to OPRA Data and do not qualify for the reduced fees charged to nonprofessional subscribers.

[5] 17 CFR 240.11Aa3–2(c)(3).

[6] 17 CFR 240.11Aa3–2(c)(2).

[7] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42151; File No. SR–PHLX–99–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Removal of Certain Printers From the Equity Floor

November 17, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 10, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on October 22, 1999.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Equity Floor Procedure Advice E–5 (''Advice E–5''), Clocked Tickets; Phlx Rule 206, Written Orders-Day Orders; and Phlx Rule 216, Records to be kept. The amendments are necessary to allow for the removal from the Equity Floor of certain printers that generate PACE-delivered order tickets because the printers will not be Year 2000 compliant.[4] Therefore, the amended Advice E–5 would eliminate the requirement that specialists record the time of execution of PACE-delivered orders received on the floor from these printers. Corresponding amendments will be made to Phlx Rules 206 and 216 to address similar issues.

In addition, the proposed rule change to Advice E–5 would require specialists to record the time of receipt of hand-held orders to be placed on the specialist's book on the front of the ticket in accordance with Phlx Rule 206.[5] Fines for violations of Advice E–5, which have not been updated for ten years, are also being increased to better reflect the seriousness of the violation.[6] Thus the Exchange is also amending its minor rule plan.

The text of the proposed rule language follows. New text is italicized and deleted text is bracketed.

E–5 Clocked Tickets

Floor brokers are responsible for recording the time of receipt on the front of the ticket for each order received on the floor and the time of execution on the reverse side of the ticket for each order they are representing in the crowd at the time of execution.

Specialists are responsible *for recording time of receipt of hand-held (non-PACE delivered) orders to be placed on the Specialists's book on the front of the ticket, and* for recording the time of execution on the reverse side of the ticket for each order executed off their book *for all hand-held (non-PACE delivered) orders.*

FINE SCHEDULE (Implemented on a one year running calendar basis)

E–5

1st Occurrence $[50.00] *100.00*
2nd Occurrence $[100.00] *250.00*
3rd Occurrence $[200.00] *500.00*
4th and thereunder Sanction is discretionary with Business Conduct Committee

All *hand-held (non-PACE-delivered)* orders given to a specialist shall be in writing and shall be timed by him when received and filed in his book. They shall be good for the day only unless otherwise marked.

Rule 216

Every specialist shall keep a legible record of all orders placed with him in the securities in which he is registered or trading securities pursuant to Rule 233 as a specialist *(except PACE-delivered orders for which no written record is generated)* and all of all executions, modifications and cancellations of (such) orders, and shall preserve such records and all memoranda relating thereto in accordance with Regulation 240.17a–4 of the Securities and Exchange Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendments to Advice E–5 and Phlx Rules 206 and 216 is to allow for the removal of the Designated Automatic Routing to Terminal System (''DARTS'') printers from the Equity Floor without causing the specialists and floor brokers to be in violation of Advice E–5 or Phlx Rules 206 and 216.[7]

Currently orders sent to the equity floor through the PACE System generate a hard copy ticket, which is printed on a DARTS printer. These tickets provide hard copy records of time of receipt of the order. In addition, specialists stamp the time of execution of the order on the reverse side of the ticket on all manual market and limit orders. However, the system that supports the DARTS printers is not, and cannot become, Year 2000 compliant. Therefore, the DARTS printers will be removed from the Equity Floor. The information that is produced by the DARTS printer will be maintained electronically for the appropriate time periods mandated by the books and records requirements of the Commission.

Advice E–5 requires floor brokers to record, by time stamp, the time of receipt of the order on the front of the ticket and the time of execution of the order on the reverse side of the ticket. Specialists also are required to record the time of execution of orders executed off the specialist's book. In addition, Phlx Rule 206 requires, in part, that all orders given to a specialist be in writing and timed by him when received. Phlx Rule 216 requires, in part, that every specialist keep a record of all orders placed with him and all executions of such orders. In addition, Phlx Rule 216

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange designated the proposal as a section 19(b)(2) filing, revised its proposed language under Advice E–5 to better reflect its rules, and clarified that the amendment to Advice E–5 merely reflects its current rules. *See* Letter from Cynthia Hoekstra, Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated October 21, 1999 (''Amendment No. 1'').

[4] PACE is the Exchange's automated order routing and execution system on the equity trading floor.

[5] *See* Amendment No. 1, *supra* note 3.

[6] The Phlx's minor rule violation enforcement and reporting plan, codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules.

[7] This proposal affects PACE order tickets only, not telephone orders/manual tickets or production of hard copy reports.

requires the specialist to preserve such records in accordance with Rule 17a–4.

With no hard copy tickets recording order receipt and execution time data, floor brokers and specialists on the Equity Floor could be in violation of Advice E–5 and Rule 206 each time an order is received and executed on PACE. Without the DARTS printer tickets, specialists would be in violation of Rule 216 if they did not retain the DARTS printer tickets. Therefore, as a matter of practicality, it is necessary to eliminate the hard copy recording and document maintenance requirements for trades for which no hard copy ticket is generated. As stated above, the information that is produced by the DARTS printer will be maintained electronically for the appropriate time periods mandated by the books and requirements of the Commission. The removal of the hard copy tickets will improve trade-processing efficiencies and reduce the amount of paper that is used on the trading floor.

In addition, the proposed change to Advice E–5 would require specialists to record the time of receipt of hand-held orders to be placed on the specialist's book on the front of the ticket in accordance with Phlx Rule 206.[8] The fine schedule for violations of Advice E–5 has not been updated for ten years and will be increased to better reflect the seriousness of the violation.

Statutory Basis

For these reasons, the Exchange believes that the proposal to amend Advice E–5 and Phlx Rules 206 and 216 is consistent with Section 6 of the Act,[9] in general, and with Section 6(b)(5),[10] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market. In addition, these changes will eliminate equipment that will not be Year 2000 compliant, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[8] *See* Amendment No. 1, *supra* note 3.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–99–38 and should be submitted by December 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[FR Doc. 99–30585 Filed 11–23–99; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42143; File No. SR–Phlx–99–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Deleting Rules Adopted When Phlx Dell Options were Traded on Amex Technology

November 16, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] rendering the proposal effective upon receipt of this filing by the Commission.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change.

The Phlx proposes to delete the following rules related to using American Stock Exchange LLC (''Amex'') technology for the trading of Phlx Dell options: Rule 1051, Commentary .01; Rule 1052, Commentary .01; Rule 1053, Commentary .01; and Rule 1054, Commentary .01. The Exchange also proposes to modify Rule 1080, Commentary .03 to refer to Phlx options that were traded using Amex technology.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange has represented that the proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing, unless otherwise accelerated by the Commission. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(f)(6) under the Act. *Id.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to delete rules adopted when Phlx Dell options traded on Amex systems. The Amex rules are no longer necessary as Phlx is using its own system for trading all of its options, including Dell.

a. Background

On June 12, 1998, the Phlx received Commission approval to relocate Phlx Dell options to the Amex trading floor on a temporary basis.[5] The relocation was for a six-month period expiring December 12, 1998. Subsequently, Phlx Dell options returned to the Phlx trading floor, operating on Amex technology, on December 7, 1998.[6]

During this time, the Exchange continued and still continues to implement technological improvements to its AUTOM[7] System, such as upgrading the features of its electronic limit order book, the X.Station.[8] Specifically, the Exchange has implemented the X.Station on a floor-wide basis, which improved, among other things, cancellation order processing. The Phlx continues to believe that these improvements are benefiting AUTOM users.

Recently, the Exchange introduced the Floor Broker Order Entry System (''FBOE'') which allows floor brokers to electronically transmit customer orders, with the exception of all-or-none orders, stop and stop limit orders, to the specialist for placement on the X.Station electronic book.[9] In addition, the Exchange intends to implement other system enhancements, in order to provide technologically current features to its customers. The Phlx also remains committed to continuing to address AUTOM users' concerns regarding the system. Further, the Exchange also implemented rules requiring floor members and their employees to participate in Exchange-sponsored training respecting new automation introduced to the trading floor in order to ensure floor personnel are well acquainted with the new automated systems and features.[10]

Using Amex technology for Phlx Dell options was a temporary measure that was approved by the Commission on a pilot basis for one year. As described above the Exchange has made significant technological strides, which should facilitate transactions in Phlx Dell options. On August 23, 1999, the Exchange returned to Phlx technology for Phlx Dell options.

b. Proposal

The Exchange therefore proposes to delete Commentary .01 to Rules 1051–1055 relating to Phlx Dell options trading on Amex technology because they are no longer applicable to the trading of Phlx Dell options. As discussed in the proposed rule change to utilize Amex technology on the Phlx trading floor for Phlx Dell options, Amex and Phlx have significant differences in options trade processing primarily because of the timing and method of submission of trade participant information. These differences are discussed in a prior proposed rule change.[11]

Phlx rules 1051—1055 were modified to account for these differences in trade processing by Amex systems. First, the Exchange modified Rule 1051, General Comparison and Clearance Rule, by adding Commentary .01, which provides that Phlx Dell options utilizing Amex technology would result in the submission of some, but not all, trade information at the specialist's post, as clearing and detailed participant information would follow via the intra-Day Comparison (''IDC'') System. The Exchange now proposes that the commentary .01, be deleted from rule 1051. Thus, all Exchange options transactions shall be again reported at the time of execution to the Exchange for comparison of trade information at the specialist's post and all compared transactions shall be cleared through the Options Clearing Corporation (''OCC'').

Second, Rule 1052 places responsibility on clearing member organizations to clear *Exchange* options transactions. The Phlx clarified in rule 1052 (and Rule 1051 as well) that Phlx Dell options trading on Amex technology are ''Exchange'' transactions for this purpose as well. This clarification is no longer necessary; therefore, the Exchange proposes that commentary .01 to Phlx Rule 1052 be deleted.

Phlx Rules 1053 (Filing of Trade Information), Commentary. 01; 1054 (Verification of Contracts and Reconciliation of Uncompared Trades), commentary .01; and Rule 1055 (Reporting of Compared Trades to The Options Clearing Corporation), Commentary .01 were modified to account for the differences between the Amex and Phlx technology. Therefore, with the return to Phlx technology, such modifications to the rules are no longer necessary, as trade information will again be supplied or verified ''at the time of execution.'' These rules also provide that such information should be in a form prescribed by the Exchange, and, respectively, in accordance with procedures established by the Exchange.

Lastly, in order to trade Phlx Dell options on Amex technology, the Phlx adopted Commentary .03 to Rule 1080, which limited the liability of Amex and its affiliates for any damages sustained by a member or member organization growing out of the use or enjoyment of such Amex technology. In addition, Commentary .03 prohibited members from copying, modifying, disclosing or damaging Amex technology. Because Amex technology will no longer be used for Phlx Dell options, the Exchange proposes to modify Rule 1080, Commentary .03 such that it refers back to when Phlx Dell options traded using the Amex system.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[12] of the Act in general and furthers the objectives of Section 6(b)(5)[13] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

[5] *See* Securities Exchange Act Release No. 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (SR–Phlx–98–25).

[6] *See* Securities Exchange Act Release No. 40750 (December 4, 1998), 63 FR 69128 (December 15, 1998) (SR–Phlx–98–54).

[7] The Phlx Automated Options Market (AUTOM) System is the Exchange's electronic order delivery system, which provides automatic entry and routing of option orders to the Exchange trading floor, pursuant to Phlx Rule 1080.

[8] *See, e.g.*, Securities Exchange Act Release No. 39972 (May 7, 1998), 63 FR 26666 (May 13, 1998) (SR–Phlx–98–20) (relating to enhancements to the X.Station).

[9] *See* Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR–Phlx–99–11).

[10] *See* Options Floor Procedure Advice F–30 and Phlx Rule 625.

[11] *See supra* note 6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and national market system, as well as to protect investors and the public interest by changing rules to reflect the processing of Phlx Dell options on Phlx technology.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(i) of the Act [15] and subparagraph (f)(6) of rule 19b–4 thereunder.[16] Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until December 9, 1999, 30 days from November 9, 1999, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–22 and should be submitted by December 15, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–30586 Filed 11–23–99; 8:45 am]

BILLING CODE 8010–01–M

[14] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(e)(6).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice # 3148]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting from 9:30 a.m. to 4 p.m. on December 14, 1999, in Room 1105, US Department of State, 2201 C Street, NW, Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD will advise the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures US leadership before the international community in promoting the objectives and ideals of US labor policies now and in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the December 14 meeting includes discussion of operational aspects of the State Department's labor diplomacy function and State Department policy as it relates to labor diplomacy.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by close of business December 10, to ACLD Executive Secretary Mark Simonoff at (202) 647-4327 or fax (202) 647–0431 or email simonoff@state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the 23rd Street entrance to the State Department and have a driver's license with photo, a passport, a US Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Simonoff at the phone and fax numbers provided above.

Dated: November 18, 1999.

Leslie Gerson,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, US Department of State.

[FR Doc. 99–30641 Filed 11–23–99; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–39] NMS 11/19/99

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 December 14, 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, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 19, 1999.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 25559.

Petitioner: Aerospace Industries Association of America, Inc. (AIA).

Section of the FAR Affected: 14 CFR 21.182(a) and 45.11(a).

Description of Relief Sought: To allow aircraft manufacturers to manufacture aircraft for use in operations conducted under 14 CFR part 121, aircraft intended to be used for commuter operations under 14 CFR part 135, aircraft used for export, and aircraft certificated under 14 CFR part 25 and manufactured for use in operations under 14 CFR part 91 and 14 CFR part 129, without installing an identification plate during the production phase on the exterior of those aircraft.

Docket No.: 29659.

Petitioner: Aviation Services Int'l, Inc.

Section of the FAR Affected: 14 CFR 61.51(e)(1)(i) and 61.129(c).

Description of Relief Sought: To permit ASII pilots in training to use public aircraft to log pilot-in-command flight time and aeronautical experience for a helicopter rating.

Dispositions of Petitions

Docket No.: 27180.

Petitioner: EVA Airways Corporation.

Section of the FAR Affected: 14 CFR 61.77(a) and (b) and 63.23(a) and (b).

Description of Relief Sought/ Disposition: To permit the issuance of U.S. special purpose pilot authorizations and special purpose flight engineer certificates to airmen employed by EVA without those airmen meeting the requirement to hold a current foreign certificate or license issued by a foreign contracting State to the International Civil Aviation Organization, provided the airmen hold appropriate certificates issued by the Civil Aeronautics Administration, Republic of China.

GRANT, 9/24/99, Exemption No. 6689B.

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 products instead of the Application for Export Certificate of Airworthiness (Form 8130–1).

GRANT, 10/1/99, Exemption No. 6604B.

Docket No.: 25863.

Petitioner: Department of Defense.

Section of the FAR Affected: 14 CFR 91.117(a) and (b), 91.159(a), and 91.209(a).

Description of Relief Sought/ Disposition: To permit the DOD to conduct air operations in support of drug law enforcement and traffic interdiction without meeting certain requirements pertaining to (1) aircraft speed, (2) cruising altitudes for flights conducted under visual flight rules, and (3) the use of aircraft position lights.

GRANT, 9/25/99, Exemption No. 5100E.

Docket No.: 28718.

Petitioner: The Goodyear Tire & Rubber Company.

Section of the FAR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To allow the issuance of export airworthiness approvals for aircraft tires manufactured and located at Goodyear's Bangkok, Thailand, facility.

GRANT, 10/15/99, Exemption No. 6682A.

Docket No.: 29146.

Petitioner: TRAMCO, Inc., doing business as BFGoodrich Aerospace.

Section of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To allow BFGoodrich to make its inspection procedures manual (IPM) available to its supervisory and inspection personnel in lieu of giving a copy of the IPM to each if its supervisory and inspection personnel.

GRANT, 10/4/99, Exemption No. 7024.

Docket No.: 29536.

Petitioner: Astral Aviation, Inc., doing business as Skyway Airlines.

Section of the FAR Affected: 14 CFR 121.409(d).

Description of Relief Sought/ Disposition: To allow Skyway to use the EMB–145 flight simulator as a temporary substitute for that required by § 121.409(d) to conduct low altitude windshear flight training.

PARTIAL GRANT, 9/23/99, Exemption No. 7001.

Docket No.: 29606.

Petitioner: The Ninety-Nines of North Jersey, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To allow the Ninety-Nines to conduct local sightseeing flights for its annual Pennies-a-Pound event on October 9, 1999, or October 10, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

GRANT, 9/24/99, Exemption No. 7006.

Docket No.: 29710.

Petitioner: Airbus Industrie.

Section of the FAR Affected: 14 CFR 25.144(c)(1).

Description of Relief Sought/ Disposition: To permit relief from the requirement for passenger oxygen masks to be automatically presented before the cabin pressure altitude exceeds 15,000 feet for Airbus Model A319, A320, and A321 series airplanes.

PARTIAL GRANT, 9/16/99, Exemption No. 6994.

[FR Doc. 99–30664 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–40]

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 December 14, 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, DC 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 19, 1999.

Michael E. Chase,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29723.
Petitioner: Westjet Air Center, Inc.
Section of the FAR Affected: 14 CFR 61.3(a) and (c).
Description of Relief Sought: To permit Westjet pilots to carry written confirmation of FAA-issued pilot or medical certificates provided by Westjet based on information in Westjet's approved record system.

Docket No.: 29738.
Petitioner: Express One International, Inc.
Section of the FAR Affected: 14 CFR 121.547(c)(4) and 121.583(a)(1).
Description of Relief Sought: To allow Express One to permit foreign crewmembers and authorized personnel employed by International Civil Aviation Organization member airlines, including European Air Transport and Air Contractors Ltd., to be admitted to the flight deck without a seat available for use in the passenger compartment or to be carried aboard Express One airplanes without meeting the passenger-carrying requirements of part 121.

Docket No.: 29746.
Petitioner: American Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.344 (a)(21) and (b)(3).
Description of Relief Sought: To permit American to (1) operate its Fokker 100 (F–100) airplanes without recording the leading edge slats/flaps position, (2) complete the required digital flight data recorder (DFDR) installations on its fleet of F–100, Boeing 727–200, and McDonnell Douglas MD–80 airplanes using an alternative compliance schedule rather than at the next heavy maintenance check after August 18, 1999, and (3) extend by 14 months the August 20, 2001, final compliance deadline for the installation of the required DFDR on 23 Boeing 757–200 airplanes and 2 Airbus 300–600 airplanes.

Dispositions of Petitions

Docket No.: 29128.
Petitioner: B/E Aerospace, Inc., Seating Products Group.
Section of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To allow the issuance of export airworthiness approvals for Class II and Class III products manufactured and located at B/E Aerospace SPG facilities in Leighton-Buzzard Bedfordshire, England, and Kilkeel County Down, Northern Ireland.
Grant, 10/08/99, Exemption No. 7041.

Docket No.: 29336.
Petitioner: The Boeing Company.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To allow Boeing to give copies of its Inspection Procedures Manual (IPM) to key individuals in specific and functional areas of its repair station and make the manual available electronically to all other employees, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.
Grant, 11/03/99, Exemption No. 7065.

Docket No.: 29397.
Petitioner: Japan Airlines Company, Ltd.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To allow JAL to use the calibration standards of the National Research Laboratory of Metrology (NRLM) and the Electrotechnical Laboratory (ETL) in lieu of the calibration standards of the NIST to test its inspection and test equipment.
Grant, 10/22/99, Exemption No. 7050.

Docket No.: 29398.
Petitioner: All Nippon Airways Company, Ltd.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To allow ANA to use the calibration standards of the NRLM and the ETL in lieu of the calibration standards of the NIST to test its inspection and test equipment.
Grant, 10/22/99, Exemption No. 7051.

Docket No.: 29471.
Petitioner: Mr. Terry L. Florie.
Section of the FAR Affected: 14 CFR 61.213(a)(3).
Description of Relief Sought/ Disposition: To permit Mr. Florie to be eligible for a ground instructor certificate or rating without passing the knowledge test on the fundamentals of instructing required by § 61.213(a)(3).
Denial, 10/06/99, Exemption No. 7023.

Docket No.: 29555.
Petitioner: Trans World Airlines, Inc.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To allow TWA to make available one copy of its IPM to its supervisory and inspection personnel, rather than giving a copy of the manual to each of these individuals.
Grant, 10/06/99, Exemption No. 7040.

[FR Doc. 99–30665 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FA–1999–6483]

Fractional Ownership Advisory Committee; Submission of Comments and Public Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This document announces a public meeting in which the Federal Aviation Administration (FAA), on behalf of the Fractional Ownership Advisory Committee (FOAC), solicits the views and recommendations of all interested parties, who are not members of the FOAC, on such revisions to the Federal Aviation Regulations as may be appropriate with respect to fractional ownership programs.

DATES: The public meeting will be held on November 30, 1999, and December 1, 1999, at 9:00 a.m. in Washington, DC. Registration will begin at 8:30 a.m. on each day. Written statements must be received no later than December 1, 1999.

ADDRESSES: The public meeting will be held at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza East, SW., Washington, DC 20024; telephone (202) 484–1000, facsimile (202) 646–4456.

Persons who are unable to attend the meeting and wish to submit written statements may mail statements (clearly marked with the docket number) in triplicate to Federal Aviation Administration, office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. FAA–1999–6483, 400 Seventh St., SW., Nassif Building, Rm. PL–401, Washington, DC 20590. Statements also may be submitted electronically to the following Internet address: 9-npm-cmts@faa.gov. Statements may be inspected in room PL–401. Written statements to the docket will receive the same consideration as oral statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: Request to present an oral statement at the public meeting and questions regarding the logistics of the meeting should be directed to Carrie Pugh, Flight Standards Service, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 493–4153, facsimilie (202) 267–5229.

SUPPLEMENTARY INFORMATION: The public meeting will be held at the Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC 20024, telephone: (202) 484–1000. Persons needing overnight accommodations should contact the hotel directly.

The purpose of the meeting is to provide an opportunity for interested parties to make oral and written statements to the FOAC expressing their views and recommendations concerning the management of and operation of fractional ownership programs and how the FAA should regulate such operations. The agenda for the meeting will include:

Day One:

- Welcoming remarks.
- Public presentations.
- Responses by presenters to questions posed by members of the FOAC.

Day Two:

- Public Presentations.
- Responses by presenters to questions posed by members of the FOAC.

Participation at the Public Meeting

Requests from persons who wish to present oral statements at the public meetings should be received by the FAA no later than November 26, 1999. Such requests should be submitted to Carrie Pugh, Flight Standards Service, AFS–200 listed in the section above titled ''For Further Information Contact'' and should include a written time needed for the presentation, and identification of the kind of entity that may be affected by any future rulemaking with respect to fractional ownership programs. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers and presenters and make the agenda available at the meeting. Because presenters on the agenda may decide not to make presentations presenters should make themselves available to speak earlier than scheduled. To accommodate as many presenters as possible, the amount of time allocated to each presenter may be less than the amount of time requested. Persons requiring audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Background

In May 1996, a management company asked the FAA to approve the master interchange agreement for what it called a fractional ownership master interchange program, which the management company sought to operate under subpart F of 14 CFR part 91. When this request was forwarded to FAA headquarters, it marked the beginning of an extensive agency review of master interchange programs and the fractional ownership issue. During its review, the FAA obtained information on several other programs from the management companies that operate them. It also received information from management companies that are not engaged in fractional ownership programs, charter operators, corporate customers, and various industry associations.

The FAA's consideration of the fractional ownership issue has now proceeded to a point where the Administrator deems it appropriate to create the Fractional Ownership Advisory Committee to provide the FAA with advice and recommendations on the appropriate regulatory structure for fractional ownership programs. The Fractional Ownership Advisory Committee will serve as a forum for interaction among FAA, the fractional owners, fractional and traditional management companies, and charter operators.

Public Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures established for this meeting:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 a.m. and 9 a.m.), subject to availability of space in the meeting room.

2. Representatives from the FAA will conduct the public meeting.

3. The public meeting is intended as a forum to gain additional information with respect to fractional ownership programs. Participants must limit their presentations to this issue.

4. The meeting will offer the opportunity for all interested parties to present additional information not currently available to the FAA.

5. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group. If necessary, the meeting may be extended to evenings. If practicable, the meeting may be accelerated to enable adjournment in less than the time scheduled.

6. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and written material submitted on fractional ownership programs will be included in the public docket. Each person interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting.

9. The meeting is designed to solicit public views and more complete information relevant to the regulation of fractional ownership operation. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC, on November 19, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

[FR Doc. 99–30608 Filed 11–22–99; 10:19 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Tippecanoe, Carroll and Cass Counties; Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Tippecanoe, Carroll and Cass Counties, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Heil, Planning and Program Development Manager, Federal Highway, Administration, Room 254, Federal Office Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Telephone (317) 226–7491.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Transportation (INDOT), will prepare an environmental impact statement (EIS) on a proposal to improve and/or relocate SR 25 from Lafayette to Logansport, a distance of approximately 54 kilometers (34 miles).

The proposed project was designated a high priority project by Congress in the Transportation Equity Act of the 21st Century (TEA–21). Improvements to the corridor are needed to reduce overall travel time, reduce traffic congestion and improve traffic safety. The proposed project is the final element in the state's effort to provide a multilane highway from Lafayette to Fort Wayne.

The range of alternatives under consideration include the do nothing alternative, alternatives using various other transportation modes, widening the existing two-lane highway, and constructing a multi-lane controlled access highway on new location. The study of the build alternatives will consider various grade and alignment designs.

The scoping process will include early coordination with federal, state and local agencies; the preparation of a scoping document, including an environmental overview, and a scoping meeting. The scoping meeting will be held after all parties have had an opportunity to review the scoping document and proper notice has been given.

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.

This program is described in the Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.

Issued on: November 16, 1999.

Lawrence M. Heil,

Planning and Program Development Manager, Indianapolis, Indiana.

[FR Doc. 99–30637 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Prevention of Prohibited Drug Use in Transit Operations; Prevention of Alcohol Misuse in Transit Operations

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of random drug and alcohol testing rates.

SUMMARY: This notice announces the random testing rates for employers subject to the Federal Transit Administration's (FTA) drug and alcohol rules.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Snider, Drug and Alcohol Program Manager for the Office of Safety and Security, (202) 366–2896 (telephone) and (202) 366–7951 (fax). Electronic access to this and other documents concerning FTA's drug and alcohol testing rules may be obtained through the FTA World Wide Web home page at http://www.fta.dot.gov.

SUPPLEMENTARY INFORMATION: The FTA required large transit employers to begin drug and alcohol testing employees performing safety-sensitive functions on January 1, 1995, and to report, annually by March 15 of each year beginning in 1996, the number of such employees who had a verified positive for the use of prohibited drugs, and the number of such employees who tested positive for the misuse of alcohol. Small employers commenced their FTA-required testing on January 1, 1996, and began reporting the same information as the large employers beginning March 15, 1997. Employers are required annually to submit other data, not relevant here, in the same report; these data are available from the FTA as discussed below.

The 1994 rules established a random testing rate for prohibited drugs and the misuse of alcohol; specifically, the rules require that employers conduct random drug tests at a rate equivalent to at least 50 percent of their total number of safety-sensitive employees for prohibited drug use and at least 25 percent for the misuse of alcohol. The rules provide that the drug random testing rate may be lowered to 25 percent if the ''positive rate'' for the entire transit industry is less than one percent for two consecutive years. Once lowered, it may be raised to 50 percent if the positive rate equals or exceeds one percent for any one year. (''Positive rate'' means the number of positive results for random drug tests conducted under part 653 plus the number of refusals of random tests required by part 653, divided by the total number of random drug tests, plus the number of refusals of random tests required by part 653.)

The alcohol rule provides that the random rate may be lowered to 10 percent if the ''violation rate'' for the entire transit industry is less than .5 percent for two consecutive years. It will remain at 25 percent if the ''violation rate'' is equal to or greater than .5 percent but less than one percent, and it will be raised to 50 percent if the ''violation rate'' is one percent or greater for any one year. (''Violation rate'' means the number of covered employees found during random tests given under part 654 to

have an alcohol concentration of .04 or greater, plus the number of employees who refuse a random test required by part 654, divided by the total reported number of random alcohol tests conducted under part 654, plus the total number of refusals of random tests, required by part 654.)

FTA has received and analyzed the 1998 data from large and small transit employers. The ''positive rate'' for random drug tests was 1.07 percent and the ''violation rate'' for random alcohol tests was 0.22 percent; therefore, for 2000, transit employers will continue to be required to conduct random drug tests at a rate equivalent to at least 50 percent of the total number of their ''safety-sensitive'' employees for prohibited drugs. In 1999, the FTA lowered the random alcohol testing rate to 10 percent. Because the random alcohol violation rate was lower than .5 percent for two consecutive years (0.19 percent for 1997 and 0.22 percent for 1998), the random alcohol testing rate will remain at 10 percent for 2000.

FTA will be publishing, in December, a detailed report on the 1998 data collected from large and small employers. This report may be obtained from the Office of Safety and Security, Federal Transit Administration, 400 Seventh Street, SW, Room 9301, Washington, DC 20590, (202) 366–2896.

Date Issued: November 17, 1999.

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 99–30595 Filed 11–23–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE TREASURY

Department Offices; International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the Foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the ''Commission'') shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The sixth meeting of the Advisory Commission will be held on December 14, 1999, beginning at 9:00 a.m. and tentatively ending at 3:00 p.m. in 2226 Rayburn House Office Building, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden, Senior Policy Advisor, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda will focus on continued discussion by the Commission members of the World Trade Organization.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish such comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the sixth meeting, 16 copies of any written material should be provided to the Designated Federal Office no later than December 8, 1999.

Dated: November 18, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–30654 Filed 11–23–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–84]

Cancellations of Customs Broker Licenses

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

ACTION: Brokers' licenses cancellations.

I, the Commissioner of Customs, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 CFR 111.51(a)), hereby cancel the following Customs brokers' licenses without prejudice.

Port	Individual	License
Laredo	A and A Customs Brokerage Services, Inc.	10303
San Juan	Trans-port Broker Services, Inc.	9848
Los Angeles	DNT Customs Services, Inc.	11516
Los Angeles	Preferred LSI, Inc.	13840
Seattle	A.S.E. Customs and Logistics, Inc.	16140
San Francisco	Walker International	11898

Dated: November 19, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–30681 Filed 11–23–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–85]

Revocation of Customs Broker License

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

ACTION: Broker License Revocation.

I, as Commissioner of Customs, pursuant to Section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641(g)(2)(c)), Part 111.53(b)(3)(c) and 111.53(b)(3)(f), hereby revoke the following Customs broker licenses with prejudice.

Port	Individual	License No.
Los Angeles	John V. Urbano	6884
Los Angeles	Abraham Shiepe	7114
New York	Robert Proto	4016

Dated: November 4, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–30682 Filed 11–23–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–83]

Retraction of Revocation Notice

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

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the **Federal Register**.

Port	Name	License No.
Wilmington	Janice Carter Wilson	07440
New York	Robert P. Weinrib	06455
Kansas	Michael E. Welch	03778
Miami	Paul Francis Cassidy	12502

Licenses 07440, 06455, 03778 and 12502 are valid licenses.

Dated: November 19, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–30680 Filed 11–23–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–82]

Cancellation of Customs Broker Licenses

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

ACTION: Brokers' Licenses Cancellations.

I, as Commissioner of Customs, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers' licenses due to the deaths of the brokers.

Name	Port	License No.
Alfredo Zertuche, Jr	Laredo	09376
George Helstrom	New York	03783
Saul Federman	New York	05607
Joseph Acosta	New Orleans	05054

Dated: November 19, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–30679 Filed 11–23–99; 8:45 am]

BILLING CODE 4820–02–P

federal register

Wednesday
November 24, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 460, et al.

Medicare and Medicaid Programs; Programs of All-Inclusive Care for the Elderly (PACE); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 460, 462, 466, 473, and 476

[HCFA–1903–IFC]

RIN 0938–AJ63

Medicare and Medicaid Programs; Programs of All-Inclusive Care for the Elderly (PACE)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This rule establishes requirements for Programs of All-inclusive Care for the Elderly (PACE) under Medicare and Medicaid. These are pre-paid, capitated programs for beneficiaries who meet special eligibility requirements and who elect to enroll. Programs must apply for approval and are evaluated in terms of specific criteria. Only a limited number of programs can be approved. Priority consideration will be given to applicants that have been operating under ongoing PACE demonstration projects.

DATES: Effective date: These regulations are effective on November 24, 1999. The incorporation by reference of the publication listed in the rule was approved by the Director of the Federal Register as of November 24, 1999.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 24, 2000.

ADDRESSES: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1903–IFC, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA1903IFC@hcfa.gov. For e-mail comment procedures, see the beginning of **SUPPLEMENTARY INFORMATION**. For further information on ordering copies of the **Federal Register** contained in this document, see the beginning of **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Janet Samen, (410) 786–4533; or Terry Pratt, for State technical assistance, (410) 786–5831.

SUPPLEMENTARY INFORMATION:

E-mail, Comments, Procedures, and Availability of Copies

E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1903–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested, and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa, Discover, or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or tollfree at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

A. Legislative History

Section 4801 of Pub. Law 105–33, the Balanced Budget Act of 1997 (BBA), authorized coverage of PACE under the Medicare program. It amended title XVIII of the Social Security Act (the Act) by adding section 1894, which addresses Medicare payments to, and coverage of benefits under, PACE. Section 4802 of BBA authorized the establishment of PACE as a State option under Medicaid. It amended title XIX of the Act by adding section 1934, which directly parallels the provisions of section 1894. Section 4803 of BBA addresses implementation of PACE under both Medicare and Medicaid, the effective date, timely issuance of regulations, priority and special consideration in processing applications, and transition from PACE demonstration project waiver status.

B. Demonstration Project History

Section 603(c) of the Social Security Amendments of 1983 (Pub. Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. Law 99–272) authorized the original demonstration waiver for On Lok Senior Health Services in San Francisco. Section 9412(b) of Pub. Law 99–509, the Omnibus Budget Reconciliation Act (OBRA) of 1986, authorized HCFA to conduct a PACE demonstration project to determine whether the model of care developed by On Lok could be replicated across the country. (The number of sites was originally limited to 10, but OBRA 1990 authorized an increase to 15 demonstration sites.) The PACE demonstration replicated a unique model of managed care service delivery for a small number of very frail community-dwelling elderly, most of whom were dually eligible for Medicare and Medicaid coverage and all of whom were assessed as being eligible for nursing home placement according to the standards established by their respective States. The model of care included as core services the provision of adult day health care and multidisciplinary team case management, through which access to and allocation of all health services was controlled. Physician, therapeutic,

ancillary and social support services were furnished in the participant's residence or on-site at the adult day health center, unless those locations were not feasible. Hospital, nursing home, home health, and other specialized services were furnished under contract. Financing of this model was accomplished through prospective capitation of both Medicare and Medicaid payments. Demonstration sites had been permitted by section 4118(g) of Pub. Law 100–203 (OBRA of 1987) to assume full financial risk progressively over the initial three years, but that authority was removed by section 4803(b)(1)(B) of the BBA. There are currently 25 approved PACE demonstration sites.

C. Use of the PACE Protocol

Throughout this document, when we refer to ''the Protocol'' we mean the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between HCFA and On Lok, Inc. A copy of the Protocol is included at Addendum A.

We are directed by sections 1894(f)(2) and 1934(f)(2) of the Act to incorporate the requirements applied to PACE demonstration waiver programs under the Protocol, to the extent consistent with the provisions of sections 1894 and 1934 of the Act. We also are authorized to modify or waive provisions of the Protocol if the modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of sections 1894 and 1934 of the Act.

D. Consultation With States

Sections 4801 and 4802 of Public Law 105–33 clearly dictate a cooperative relationship between the Secretary and the States in the development, implementation and administration of the PACE program. In order to fulfill these requirements we utilized the American Public Welfare Association (APWA) as the conduit to solicit States for volunteers to consult with HCFA staff. The participating State staff members represented States with a range of PACE experience. Each State staff volunteer selected a specific target area to provide information.

In order to efficiently and effectively obtain a large amount of feedback in a short period of time, HCFA staff arranged a series of conference calls to discuss a wide range of issues pertaining to PACE organization requirements, the application process, enrollment, and payment and related financial data collection. Each subject area discussion included HCFA staff and two to three State representatives. The feedback obtained during these meetings has been an invaluable source of information in understanding State operational concerns, in constructing the regulation and in the development of operational guidelines that will be released at a later date. We believe that this approach will minimize operational barriers that are frequently inherent when new programs are initiated.

E. Consultations With State Agency on Aging

Under the Older Americans Act, State Agencies on Aging are charged with the responsibility of promoting comprehensive and coordinated service systems for older persons in their States. Consistent with this responsibility, the State Agencies on Aging oversee important programs for home and community-based services funded through Title III of the Older Americans Act, State revenues, and the Medicaid home and community-based waiver program. (Two thirds of the State agencies are involved in administering home and community-based programs.)

The State agencies also implement and oversee important planning, information and referral, case management, and quality assurance functions as well as administering the State Long Term Care Ombudsman Program through which service quality in nursing homes and board and care homes are monitored in every State. Home care quality is monitored in an increasing number of States.

The State agency which administers the PACE program should regularly consult with the State Agency on Aging in overseeing the operation of the PACE program in order to avoid service duplication in the PACE service areas and to assure the delivery and quality of services to PACE participants. We are considering the extent to which the State Long Term Care Ombudsman Program would be useful in promoting the rights of PACE participants and in monitoring the quality of care provided by PACE organizations. Additional information on this topic is presented in the section on ''participant rights''.

F. State Medicaid Plan Requirement

The State Medicaid plan is the contract between the States and the Federal government whereby States agree to administer the Medicaid program in accordance with Federal law and policy. The State plan preprint sets forth the scope of the Medicaid program, including groups covered, services furnished, and payment policy. When a State completes a new State plan preprint page due to changes in its Medicaid program (called a ''State plan amendment''), the preprint page must be approved by HCFA in order for the State to receive Federal matching funds.

Section 1905(a)(26) of the Act, as added by section 4802(a)(1) of BBA, provides authority for States to elect PACE as an optional Medicaid benefit. The State plan electing the optional PACE program must be approved before we can approve an application for a PACE organization in that State.

We developed an interim State plan preprint for PACE. A State Medicaid letter dated March 23, 1998, provides information and guidance to State Medicaid agencies on how to satisfy the State plan amendment requirement. Additional directions for completing the State plan amendment will be provided in a State Medicaid Director letter that will be issued at or soon after publication of this regulation.

G. Interaction With Medicare+Choice

The BBA also established a new Medicare+Choice program that expanded the health care options available to Medicare beneficiaries. Under the Medicare+Choice program, beneficiaries may elect to receive Medicare benefits through enrollment in one of an array of private health plan choices beyond the original (fee-for-service) Medicare program or the plans previously available through managed care organizations under section 1876 of the Act. The BBA set forth the requirements for Medicare+Choice organizations in a new part C of title XVIII of the Act. Interim final regulations to implement the Medicare+Choice program were published June 26, 1998 (63 FR 34968). Final regulations addressing some of the comments were published February 17, 1999 (64 FR 7968).

Although the PACE program has certain fundamental similarities to Medicare+Choice and managed care organizations, PACE is not a Medicare+Choice plan. The BBA established distinct requirements for the PACE program. PACE is similar to some Medicare+Choice options in these ways: it is capitated; it is risk-based; it provides managed care; and it is an elective option. However, PACE differs significantly from Medicare+Choice plan in other ways such as: it is not available nationwide (only in a limited number of sites); it includes statutory waivers that expand the scope of Medicare covered services; it is not available to all beneficiaries (only to a defined subset of frail elderly); and it is a joint Medicare/Medicaid program. However, the BBA did direct us to

consider some of the requirements established for Medicare+Choice as we develop regulations for PACE organizations in certain areas common to both programs, e.g., beneficiary protections, payment rates, and sanctions.

II. Provisions of the Interim Final Rule

General Approach

As part of the President's and Vice President's regulatory reform initiative, we have been committed to changing current regulations to focus on outcome of care and to eliminate unnecessary procedural requirements. We remain committed to this regulatory reform initiative. However, in the development of the regulations for the PACE program, several factors have contributed to the use of a more procedural rather than outcome-oriented approach.

As set forth in sections 4801 and 4802 of the BBA, the PACE program includes medical as well as non-medical services for the care of the frail elderly; this is both a new and a unique model of service delivery. Moreover, as previously noted, sections 1894(f)(2) and 1934(f)(2) of the Act establish as the foundation for this regulation the PACE Protocol. By imposing such a requirement, Congress assured the use of the procedural elements contained in the PACE Protocol as a minimum to ensure beneficiary protections and safeguards. As Congress mandated, we are adopting the requirements of the PACE Protocol to the extent they are consistent with the statutory provisions. We have clarified and expanded upon certain provisions contained in the Protocol to more clearly define the requirements and make them more quantifiable for purposes of enforcement. We will identify and discuss all substantive modifications made to the requirements contained in the Protocol.

After reviewing the public comments that we receive and after we gain some experience applying the provisions of this interim final rule to PACE programs, we will reevaluate the provisions to determine where we can make modifications to adopt an approach more consistent with the regulatory reform initiative.

This interim final rule contains the first published regulations applicable to the PACE program. To accommodate the new regulations, we are establishing a new subchapter E (PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)) and a new part 460 (PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)). We are also redesignating subchapter D as subchapter F (PEER REVIEW ORGANIZATIONS); we are redesignating parts 462, 466, 473, and 476 as parts 475, 476, 478, and 480, respectively; and are revising the section numbers to conform to the new part numbers. We are reserving the former subchapter D. In addition, we are redesignating subchapter E as subchapter G (STANDARDS AND CERTIFICATION) with no changes in part designations.

Subpart A—Basis, Scope and Definitions

Basis (§ 460.2)

We state that the regulations set forth in Subchapter E, part 460, are based on sections 1894, 1905(a), and 1934 of the Act, which authorize Medicare payments to, and coverage of benefits under, PACE and authorize the establishment of PACE as a State option under Medicaid to provide for Medicaid payments to, and coverage of benefits under, PACE.

Scope and Purpose (§ 460.4)

We state that the purpose of this regulation is to set forth the requirements that an entity must meet in order to be approved as a PACE organization that operates a PACE program under Medicare and Medicaid. This part also sets forth how individuals may qualify to enroll in a PACE program, how Medicare and Medicaid payment will be made for PACE services, provisions for Federal and State monitoring of PACE programs, and procedures for sanctions and terminations. We state that the purpose of a PACE program is to provide pre-paid, capitated, comprehensive health care services that are designed to:

- Enhance the quality of life and autonomy for frail, older adults;
- Maximize dignity of and respect for older adults;
- Enable frail, older adults to live in their homes and in the community as long as medically and socially feasible; and
- Preserve and support the older adult's family unit.

This philosophy is based on Part I, section A, of the Protocol. Adopting a mission or philosophy statement that includes these elements indicates that an entity is guided by a set of values that influence its structure, planning, and day-to-day operations that is consistent with the purpose of PACE.

Definitions (§ 460.6)

We provide several definitions based on those in sections 1894(a) and 1934(a) of the Act and add definitions of several other terms.

Sections 1894(a)(3) and 1934(a)(3) of the Act define a ''PACE provider.'' We have changed that term to ''PACE organization'' in this regulation for clarity. The term ''PACE provider'' would be confusing because both Medicare (at 42 CFR 400.202) and Medicaid (at 42 CFR 400.203) define the word ''provider,'' but the definitions are different and neither applies to entities that operate PACE programs. Those definitions denote individual providers of individual services under conventional fee-for-service systems. We selected the alternative term ''PACE organization'' since ''organization'' is the term used in both titles XVIII and XIX when referring to managed care organizations, which are more similar to entities under PACE. In the few places where we do use the term ''provider'' in this regulation, we are using it in the broad generic sense to refer to an individual or an entity that furnishes health care services. Our use of the term is not limited to the narrow Medicare definition in 400.202. We define a PACE organization as an entity that has in effect a PACE program agreement.

Based on sections 1894(a)(4) and 1934(a)(4) of the Act, we define a PACE program agreement as an agreement between a PACE organization, HCFA, and the State administering agency for the operation of a PACE program.

In accordance with sections 1894(a)(8) and 1934(a)(8) of the Act, we define the State administering agency as the State agency responsible for administering the PACE program agreement.

In accordance with sections 1894(a)(9) and 1934(a)(9) of the Act, we define a trial period as the first three contract years in which a PACE organization operates under a PACE program agreement, including any contract year during which the entity operated under a PACE demonstration waiver program.

We have added a definition of a contract year as the term of a PACE program agreement, which is a calendar year except that a PACE organization's initial (start-up) contract year may be from 12 to 23 months as determined by HCFA. This will enable us to adjust the length of the initial (start-up) contract year so that subsequent years are on a standard annual calendar year cycle.

We define a Medicare beneficiary as an individual who is entitled to Medicare Part A benefits and/or enrolled under Medicare Part B. This term includes dually-eligible individuals who are also Medicaid recipients.

We have defined a participant as an individual enrolled in a PACE program. A Medicare participant is a Medicare beneficiary who is enrolled in a PACE

program, and a Medicaid participant is a Medicaid recipient who is enrolled in a PACE program.

We clarify that the term ''services'' includes both items and services.

Subpart B—PACE Organization Application and Evaluation

Purpose (§ 460.10)

This subpart establishes application requirements for an entity that seeks approval from HCFA as a PACE organization.

PACE Under Both Medicare and Medicaid

We are requiring that each PACE organization must enter into a program agreement under both sections 1894 and 1934 of the Act, *i.e.,* that each organization participate in both Medicare and Medicaid. Most of the text of those sections is identical and our analysis indicates that key sections contemplate entities acting as PACE organizations under both programs.

Sections 1894(f)(2) and 1934(f)(2) of the Act require that we incorporate in regulations the requirements applied to PACE demonstration waiver programs under the PACE Protocol, to the extent consistent with the provisions of sections 1894 and 1934. Under the Protocol, PACE demonstration programs operated under both Medicare and Medicaid. We believe that the directive to incorporate the requirements in the Protocol reflects an expectation by Congress that all PACE organizations would participate in both Medicare and Medicaid. This view is reinforced by paragraph (f)(2)(B) of these sections, which permits us to modify or waive provisions of the PACE Protocol ''so long as such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements'' of sections 1894 and 1934, but which forbids modifying or waiving, among others, the following provisions:

- Capitated, integrated financing that allows the organization to pool payments received from public and private programs and individuals; and
- The assumption by the organization of full financial risk.

We have concluded that both of these provisions preclude the possibility of a Medicare-only or Medicaid-only PACE program. For example, if a program could collect capitation payments from Medicare but bill fee-for-service under Medicaid, not all financing would be capitated, nor would financing be integrated, nor would the organization assume full financial risk.

The law does not require that States offer the PACE benefit under Medicaid. As indicated by its title, section 4802 of BBA provides for the ''Establishment of PACE Program as Medicaid State Option.'' If an entity attempted to become a PACE organization under Medicare in a State which has not included PACE program services as an option under its Medicaid program, it would not be possible for that entity to be both a Medicare and a Medicaid PACE organization. While this would curtail the availability of PACE programs in such States, we have concluded that this result was intended because a Medicare-only program could not meet the fundamental concept of an all-inclusive, integrated, capitated, full-risk program.

Moreover, both sections 1894 and 1934 of the Act contemplate the active collaboration of Federal and State governments in the administration of PACE. Each State must have a State administering agency that is responsible for administering PACE program agreements in the State under sections 1894 and 1934 of the Act. The State administering agency closely cooperates with HCFA in establishing procedures for entering into, extending, and terminating PACE program agreements. The State administering agency cooperates with HCFA and the PACE organization in the development of participant health status and quality of life outcome measures. The State administering agency cooperates with HCFA in conducting oversight reviews of PACE programs and has the authority to terminate a PACE program agreement for cause. If Medicare-only programs had been contemplated in a State that does not elect the PACE option, there would have been no reason to assign such a significant role to a State administering agency. We believe that a State which has not chosen PACE as an optional service would be ill-prepared or unable to perform this role.

Most of the text of section 1894 of the Act is identical to text in section 1934. Portions of that text reflect the concept of entities acting as PACE organizations under both programs. The scope of Medicare PACE program benefits includes ''all items and services covered under this title (for individuals enrolled under this section [section 1894]) and all items and services covered under title XIX.'' Similarly, section 1934 defines the Medicaid benefit package as ''all items and services covered under title XVIII (for individuals enrolled under section 1894) and all items and services covered under this title.'' In addition, to be eligible for PACE, an individual must require the nursing facility level of care covered under the State Medicaid plan.

Section 1894(e) of the Act provides that ''the Secretary, in close cooperation with the State administering agency'' will establish program agreements for ''entities that meet the requirements for a PACE organization under this section, section 1934, and regulations.'' A corresponding provision is found at section 1934(e) of the Act, referring to ''entities that meet the requirements for a PACE organization under this section, section 1894, and regulations.'' We believe that the use of the correlative ''and'' indicates that PACE entities would have to meet all three sets of requirements.

A parallel provision provides for termination of PACE program agreements (see paragraphs (e)(5) of sections 1894 and 1934 of the Act). Termination of an agreement under both sections 1894 and 1934 may be accomplished by either ''the Secretary or a State administering agency.''

On the other hand, we acknowledge that there are some portions of the law which are inconsistent with this position. First, there is the fact that Congress enacted Medicare and Medicaid PACE benefits through two separate statutory sections. In addition, section 4803(c)(1) of BBA directs us, in determining ''provider status,'' to ''give priority in processing applications of entities to qualify as PACE programs under section 1894 or 1934 of the Social Security Act.'' Further, section 1894(a)(4) defines a PACE program agreement as ''an agreement, consistent with this section, section 1934 (if applicable), and regulations promulgated to carry out such sections.'' See also section 1934(a)(4).

Nonetheless, it is highly unlikely that any entity could be a viable PACE organization without approval under both Medicare and Medicaid. The majority of potential participants are Medicare beneficiaries who also are eligible for Medicaid. Those who are not currently Medicaid-eligible may eventually exhaust their financial resources and become eligible. Medicare participants who are not enrolled in PACE under Medicaid must pay premiums equal to the Medicaid capitation rate. Aside from the technicality that there would not be an established Medicaid capitation rate in a State that does not elect the PACE option, most of these participants would lack the ability to pay such significant premiums.

As the above citations illustrate, some provisions of the law are conflicting and thus ambiguous. We therefore must interpret them to give effect to as many of the provisions as possible and to the policy objectives that they advance. In

keeping with the Congressional intent that the PACE Protocol guide our implementation of the PACE program, we have determined that PACE organizations must be approved under both Medicare and Medicaid. Based on this interpretation, if a State should choose not to amend its State Medicaid plan to adopt PACE as an optional Medicaid service, we would not accept PACE applications from entities in that State. Also, if a State has elected the optional benefit but declines to recommend a particular entity as a PACE organization, we would not accept an application from that entity.

Application Requirements (§ 460.12)

Section 1905(a)(26) of the Act provides authority for States to elect PACE as an optional Medicaid benefit. The State plan electing the optional PACE program must be approved before we can approve an application for a PACE organization in that State.

We have established § 460.12 to set forth the application requirements for the PACE program. In order for HCFA to determine whether an entity qualifies as a PACE organization, an individual authorized to act for the entity must submit an application that describes thoroughly how the entity meets all the requirements specified in this regulation. In recognition of the 90-day review timeframe specified in the statute and described below and the numerical limit on the number of PACE program agreements, HCFA will review and take action to approve, deny or request additional information only on complete applications; *i.e,* those applications that address all elements of the PACE program agreement. HCFA will send a letter to each applicant indicating whether or not the application is complete and specifying when the 90-day review period ends.

Except for entities that qualify for priority processing or special consideration as discussed below, we will accept and begin to review applications 90 days after the effective date of this interim final regulation. Entities interested in obtaining specific information for use in applying for PACE organization status should access the PACE homepage, available through both the Medicare and Medicaid HCFA websites (www.hcfa.gov/medicare (or medicaid) /PACE/pacehmpg.htm).

States have played a significant role in the development of PACE demonstration projects as well as other community-based alternatives to institutionalization. Most States have implemented home and community based programs to provide comprehensive coordinated services to various groups of Medicaid recipients. As a result, States have gained extensive experience in demographic analysis and contracting with entities that are capable of delivering a specified range of services.

Although the PACE statute does not specify the States' role in the application approval process, many aspects of implementing PACE in Medicare and Medicaid will necessitate extensive involvement of the State administering agencies and the State Medicaid Agencies. With regard to applications, we believe the States are in the best position to work with potential organizations to develop programs that meet our requirements and are integrated into the State's overall long-term care delivery system.

Therefore, we are requiring in § 460.12(b) that applications for PACE organization status be accompanied by an assurance from the State administering agency indicating that it considers the entity to be qualified to be a PACE organization and that the State is willing to enter into a PACE program agreement with the entity. We will not accept applications from entities that have not obtained these assurances.

To enable a State to make such assurances, an entity would have established to the satisfaction of the State that it is committed to the PACE model of care, there is sufficient funding for program development and facilities, there is adequate demand for PACE services as shown by demographic analysis, and the entity has hired core PACE staff and has developed contracts for referral arrangements and other program services that the site will not furnish directly.

Entities that are interested in developing a PACE program agreement should contact their State administering agency to determine whether the State has submitted or plans to submit a State plan amendment to elect PACE as an optional benefit under its State Medicaid plan and if the State has established additional requirements for PACE organizations.

Priority Consideration (§ 460.14)

We have established section 460.14 to address priority applications. The statute requires that we give priority in processing applications through August 5, 2000, to entities that are operating under PACE demonstration waivers under the authority of section 603(c) of the Social Security Amendments of 1983, as extended by section 9220 of COBRA of 1985, or section 9412(b) of the OBRA of 1986. In addition, we are directed to give priority to entities that applied to operate under a PACE demonstration waiver under section 9412(b) of the OBRA of 1986 as of May 1, 1997.

To give priority in processing applications from entities that meet the criteria, we will accept applications only from these entities beginning on the effective date of this interim final regulation and continuing for 45 days. Applications from other entities will not be accepted during this period. During the subsequent 45 days, extending to 90 days after the effective date of this regulation, we will continue to accept applications from entities that meet the priority processing criteria and we also will accept applications from entities that qualify for special consideration.

Special Consideration (§ 460.16)

In § 460.16, Special Consideration, we define the qualifications to receive special consideration of a PACE application.

The statute requires that we give special consideration in the processing of applications through August 5, 2000, to an entity that, as of May 1, 1997, indicated a specific intent to become a PACE organization through formal activities, such as entering into a contract to conduct a PACE feasibility study.

To give special consideration in processing applications from entities that meet the criteria, we will accept applications from these entities beginning 45 days after the effective date of this interim final regulation. During the 45-day period that extends from 45 days after the effective date to 90 days after the effective date, we will accept applications only from entities that meet the priority processing criteria or entities that qualify for special consideration. Applications from other entities will not be accepted during this period.

Applications from entities that believe they are entitled to special consideration must include information regarding the formal activities they engaged in towards becoming a PACE organization. If we agree that special consideration is appropriate for applications submitted after the special 45-day window, we will identify those applicants and factor in the entity's special status in the event that we have a greater number of applications under review than available capacity for PACE program agreements.

HCFA Evaluation of Applications (§ 460.18)

We will approve entities based upon a review of the materials submitted as part of the application, as well as information from the State

administering agency and information obtained through onsite visits.

Notice of HCFA Determination (§ 460.20)

Sections 1894(e)(8) and 1934(e)(8) of the Act require us to approve or deny an application for PACE organization status within 90 days after the date of the submission of the application unless additional information is requested. Applications are deemed approved unless we deny PACE organization status in writing or request additional information within the 90-day timeframe. We clarify that, for purposes of the 90-day time limit described in this section, the date that an application is considered to be submitted to HCFA is the date on which the application is delivered to the address designated by HCFA.

These sections also provide that we may request in writing such additional information as may be required in order to make a final determination regarding the application and, after the date we receive such information, the application shall be deemed approved unless, within 90 days of such date, we deny such request.

Based on this authority, we may take up to 90 days to request additional information and, once the information is received, may take an additional 90 days to complete processing of the application. It is important to note that there is no corresponding requirement that the State administering agency or the PACE organization respond to HCFA's request for additional information within a specified timeframe.

If the additional information proves insufficient to approve the application, the application will be denied. We will notify each applicant of our determination and the basis for the determination in writing. If the application is denied, we will provide the basis for the denial and the process for requesting reconsideration of the application.

Priority and Special Consideration

Section 4803(c) of the BBA directs us to give priority in processing applications of entities to qualify as PACE organizations under section 1894 or 1934 of the Act first to PACE demonstration sites and then to entities which had applied to operate a PACE demonstration site as of May 1, 1997. In addition, section 4803(c)(3) of the BBA requires that we give special consideration in the processing of applications to any entity that, as of May 1, 1997, had indicated specific intent to become a PACE organization through formal activities such as entering into contracts for feasibility studies.

Service Area Designation (§ 460.22)

In § 460.22, Service Area Designation, we specify that each application must designate the service area of the program. HCFA (in consultation with the State administering agency) may exclude from the proposed service area designation any area that is already covered under another PACE program agreement. This will avoid unnecessary duplication of services and impairing the financial and service viability of an existing PACE organization. This section implements the provisions of sections 1894(e)(2)(B) and 1934(e)(2)(B) of the Act.

Limit on Number of PACE Program Agreements (§ 460.24)

Sections 1894(e)(1)(B) and 1934(e)(1)(B) of the Act establish a limit on the number of PACE program agreements that may be in effect on August 5 of each year, i.e., the anniversary of the enactment of the PACE statute. Those sections state that the Secretary shall not permit the number of PACE organizations with which agreements are in effect under those sections or under section 9412(b) of the OBRA of 1986 to exceed—

- 40 as of August 5, 1997, the date of the enactment of the PACE statute, or
- As of each succeeding anniversary of such date, the numerical limitation for the preceding year plus 20. The annual increase in the number of PACE program agreements is not tied to the actual number of agreements in effect as of a previous anniversary date.

Based on this statutory language, we may enter into up to 80 PACE program agreements as of August 5, 1999 and the limit on the number of PACE program agreements increases by 20 each year thereafter.

Subpart C—PACE Program Agreement

Program Agreement Requirement (§ 460.30)

In accordance with sections 1894(a)(4) and 1934(a)(4) of the Act we have established § 460.30 to require that each PACE organization have an agreement with HCFA and the State administering agency for the operation of a PACE program by the organization under Medicare and Medicaid. This three-party agreement must be signed by an authorized official of the organization, as well as by an authorized HCFA official and an authorized State official.

Content and Terms of PACE Program Agreement (§ 460.32)

In § 460.32(a), we stipulate the required content of a PACE program agreement.

We are requiring that each PACE program agreement designate the service area of the program, specifically identifying the area by county, zip code, street boundaries, census tract, block, or tribal jurisdictional area, to the extent that those identifiers are appropriate. Any changes in the designated service area will require advance approval by HCFA and the State administering agency. This requirement implements the provisions of sections 1894(e)(2)(A)(I) and 1934(e)(2)(A)(I) of the Act and reflects Part I, section D of the Protocol.

Each PACE organization must agree to meet all applicable requirements under Federal, State, and local laws and regulations, including provisions of the Civil Rights Act, the Age Discrimination Act, and the Americans with Disabilities Act. This includes, but is not limited to, all requirements contained elsewhere in these regulations. This requirement implements in part the provisions of sections 1894(e)(2)(A)(iv) and 1934(e)(2)(A)(iv) of the Act.

We require that each agreement indicate the effective date and term of the agreement.

We are requiring that each PACE program agreement include information related to: organizational structure of the PACE organization; participant rights; process for grievances and appeals; eligibility, enrollment and disenrollment policies; service description; quality assessment and performance improvement; capitation rates; names and numbers of administrative contacts in the organization; and program agreement termination procedures. These requirements are based on sections 1894(b)(2) and 1934(b)(2) of the Act and on Part X, section A of the Protocol.

We will identify in each PACE program agreement the levels of performance that we require the organization to achieve on standard quality measures and the data and information on participant care that we and the State require the organization to collect. A detailed discussion of the levels of performance and the standard quality measures are contained in the preamble discussions for §§ 460.134 and 460.202(b) of this regulation.

In § 460.32(b), we specify that a PACE program agreement may provide additional requirements for individuals to qualify as PACE program eligible individuals. This provision implements

sections 1894(e)(2)(A)(ii) and 1934(e)(2)(A)(ii) of the Act. However, the eligibility criteria in § 460.150(b)(1)–(3) cannot be modified. In addition, a PACE program agreement may contain such additional terms and conditions as the parties agree to, if such terms and conditions are consistent with sections 1894 and 1934 of the Act and with these regulations. This provision implements sections 1894(e)(2)(A)(v) and 1934(e)(2)(A)(v) of the Act.

Duration of PACE Program Agreement (§ 460.34)

In § 460.34, we specify that each agreement will be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate, in accordance with sections 1894(e)(2)(A)(iii) and 1934(e)(2)(A)(iii) of the Act.

Subpart D—Sanctions, Enforcement Actions, and Terminations

Violations for Which HCFA May Impose Sanctions (§ 460.40)

In § 460.40 we specify, based on paragraph (e)(6)(B) of sections 1894 and 1934 of the Act, that HCFA can impose, in addition to any other remedies authorized by law, any of three types of sanctions if HCFA determines that a PACE organization has committed any of nine listed violations. The following PACE organization violations specified in this section are based on provisions of sections 1857(g)(1) and 1903(m)(5)(A) of the Act:

- Fails substantially to furnish to a participant medically necessary items and services that are covered PACE services, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the participant.
- Involuntarily disenrolls a participant, in violation of § 460.164.
- Discriminates in enrollment or disenrollment among Medicare beneficiaries or Medicaid recipients, or both, who are eligible to enroll in a PACE program, on the basis of an individual's health status or need for health care services.
- Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment, except as permitted by § 460.150, by Medicare beneficiaries or Medicaid recipients whose medical condition or history indicates a need for substantial future medical services.
- Imposes charges on participants enrolled under Medicare or Medicaid for premiums in excess of the premiums permitted.
- Misrepresents or falsifies information that is furnished to HCFA or the State under this part; or, to an individual or any other entity under this part.
- Prohibits or otherwise restricts a covered health care professional from advising a participant who is a patient of the professional about the participant's health status, medical care, or treatment for the participant's condition or disease, regardless of whether the PACE program provides benefits for that care or treatment, if the professional is acting within his or her lawful scope of practice.
- Operates a physician incentive plan that does not meet the requirements of section 1876(i)(8) of the Act.
- Employs or contracts with any individual who is excluded from participation in Medicare or Medicaid under section 1128 or 1128A of the Act (or with any entity that employs or contracts with such an individual) for the provision of health care, utilization review, medical social work, or administrative services.

Sanctions That HCFA Can Impose (§§ 460.42 and 460.46)

We describe the two types of sanctions in §§ 460.42 (suspension of enrollment or payment by HCFA) and 460.46 (civil money penalties). Each of the sanctions, or remedies, that are specified in these sections for specific violations are based on provisions of sections 1857(g)(2), 1857(g)(4), and 1903(m)(5)(B) of the Act. With respect to suspension of enrollment in PACE, HCFA may suspend enrollment of Medicare beneficiaries after the date HCFA notifies the organization of the violation. Suspending enrollment of Medicaid recipients is an action taken by the State rather than HCFA. With respect to suspension of payment, HCFA may suspend Medicare payment to the PACE organization and deny payment to the State for medical assistance for services furnished under the PACE program agreement.

In addition, HCFA may impose civil money penalties of $100,000 plus $15,000 for each individual not enrolled as a result of the PACE organization's discrimination in enrollment or disenrollment or practice that would deny or discourage enrollment; $25,000 plus double the excess amount above the permitted premium charged a participant by the PACE organization; $100,000 for each misrepresentation or falsification of information; and $25,000 for any violation specified in § 460.40.

Additional Actions by HCFA or the State (§ 460.48)

In § 460.48 we specify, based on paragraph (e)(6)(A) of sections 1894 and 1934 of the Act, that if HCFA, after consultation with the State administering agency, determines that a PACE organization is not in substantial compliance with requirements in these regulations, HCFA or the State administering agency can take one or more of the following actions: Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan; withhold some or all payments under the PACE program agreement until the organization corrects the deficiency; or terminate the program agreement.

Termination of PACE Program Agreement (§ 460.50)

In § 460.50 we specify, in accordance with paragraph (e)(5)(A) of sections 1894 and 1934 of the Act, that HCFA or a State administering agency may terminate at any time a PACE program agreement for cause and that a PACE organization may terminate an agreement after appropriate notice to HCFA, the State administering agency, and participants. In accordance with paragraph (e)(5)(B) of sections 1894 and 1934 of the Act, we specify that HCFA or a State administering agency may terminate a PACE program agreement with a PACE organization if HCFA or the State administering agency determines that:

- Either there are significant deficiencies in the quality of care furnished to participants, or the PACE organization has failed to comply substantially with conditions under these regulations or with the terms of its PACE program agreement; and
- The PACE organization has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

Based on the Protocol, Part IX, section A.1, we also provide for termination if HCFA or the State administering agency determines that the organization cannot ensure the health and safety of its participants. This determination may result from the identification of deficiencies which HCFA or the State administering agency determines cannot be corrected. Based on the Protocol, Part IX, section A.2, we also require that if the organization terminates the agreement, a minimum of 90 days notice must be given to HCFA and the State administering agency regarding the organization's intent and that participants must be given a minimum of 60 days notice.

Transitional Care During Termination (§ 460.52)

Based on the Protocol, Part IX, section B, we require that the PACE organization develop a detailed written plan for phase-down in the event of termination which includes the following: the process for informing participants, the community, HCFA and the State administering agency in writing about termination and transition procedures; and steps that will be taken to help assist participants to obtain reinstatement of conventional Medicare and Medicaid benefits, transition their care to other providers, and terminate marketing and enrollment activities. Also, in accordance with paragraphs (a)(2)(C) and (e)(5)(C) of sections 1894 and 1934 of the Act, we specify in § 460.52 that an entity whose PACE program agreement is in the process of being terminated must provide assistance to each participant in obtaining necessary transitional care through appropriate referrals and making the participant's medical records available to new providers.

Termination Procedures (§ 460.54)

In § 460.54 we specify termination procedures based on paragraph (e)(7) of sections 1894 and 1934 of the Act, which provide that:

- The provisions of section 1857(h) of the Act apply to termination of a PACE program agreement in the same manner as they apply to a termination of a contract with a Medicare+Choice organization under part C of title XVIII of the Act.

The provisions of section 1857 of the Act authorize termination of an agreement with an organization based on the following:

- We provide the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of our determination that cause exists for termination; and

- We provide the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before terminating the agreement. However, termination is authorized by section 1857(h)(2) of the Act without invoking these procedures if we determine that a delay in termination, resulting from compliance with these procedures before termination, would pose an imminent and serious risk to the health of participants enrolled with the organization.

Subpart E—PACE Administrative Requirements

PACE Organizational Structure (§ 460.60)

We have established § 460.60 to specify the structural requirements for a PACE organization. We believe that these requirements are essential to the PACE organization's ability to ensure the health and safety of the participants. The performance of certain basic organizational functions is a minimum condition for an environment in which appropriate care can occur. We have based the organizational structure requirements on Part I of the Protocol.

We require that the PACE organization have a current organizational chart showing officials in the PACE organization and relationships to any other organizational entities. The chart for a corporate entity must indicate the PACE organization's relationship to the corporate board and to any parent, affiliate, or subsidiary corporate entities. A PACE organization that is planning a change in organizational structure must notify HCFA, the State administering agency, and participants, in writing, at least 60 days before the change would take effect. Changes in organizational structure must be approved by HCFA and the State administering agency. In the event of a change that would constitute a change of ownership, HCFA would apply the general provisions described in 42 CFR 422.550. Changes in organizational structure approved by HCFA and the State administering agency must be forwarded to the consumer advisory committee (described later in the preamble in the section on governing body) for dissemination to participants as appropriate. We specifically invite comment on the extent to which changes in organizational structure are important to participants, information on the types of changes that have been communicated to participants, the timing of disclosure, and the effect on participants.

The Protocol requires that a PACE organization have a project director. We have included this requirement, but have changed the term to program director. We have renamed this position and further defined the role of the individual. The PACE organization must have a program director who is responsible for the oversight and administration of the entity. She or he would be responsible for the effective planning, organization, administration, and evaluation of the organization's operations. The program director would ensure that decisions about medical, social and supportive services are not unduly influenced by fiscal managers. The program director is responsible for ensuring that appropriate personnel perform their functions within the organization. The program director would inform employees and contract providers of all organization policies and procedures. If the PACE organization is part of a larger health system, the program director would clearly define and inform staff (employees and contractors) of the relationship.

We have also maintained the Protocol's requirement for a medical director, but we have further defined the responsibilities of this position. The PACE organization must have a medical director who is responsible for the delivery of participant care, clinical outcomes, and the implementation and oversight of the quality assessment and performance improvement program. Thus, the medical director is responsible for achieving the best clinical outcomes possible for all participants. Under this requirement, we would expect the medical director to use data comparing the program with other PACE organizations, where data are available, and to use the organization's data to demonstrate internal improvements in outcomes over time.

Governing Body (§ 460.62)

This section focuses on the ability of the organization's governing body to provide effective administration in an outcome-oriented environment. The governing body guides operations and promotes and protects participant health and safety. The governing body is legally and fiscally responsible for the administration of the PACE organization. However, the specific approach to administration of the organization is left to the discretion of the governing body. This reflects our goal of promoting the effective management of the organization, without limiting flexibility in determining how to achieve that goal.

The governing body must create and foster an environment that provides quality care that is consistent with participant needs and the program mission. To that end, the primary requirement is that an identifiable governing body, or designated person(s) so functioning, have full legal authority and responsibility for the governance and operation of the organization, the development of policies consistent with the mission, the management and provision of all services (including the management of contractors), fiscal operations, and the development of

policies on participant health and safety. Also, the governing body will establish personnel policies and contract provisions with respect to employees or contractors with patient care responsibilities giving adequate notice before leaving the PACE organization's network. These provisions would be intended to avoid disruptions in care and permit orderly transition of responsibilities.

We have added a requirement that the governing body be responsible for the quality assessment and performance improvement program. The purpose of this requirement is to link the development, implementation, and coordination of the ongoing quality assessment and performance improvement program with all aspects of the PACE program. We believe this requirement will stimulate an aggressive effort by the organization to identify and use the best practices available for all participants. As discussed in the section on the quality assessment and performance improvement program, the PACE organization has the flexibility to design its own quality improvement program.

Consistent with the Protocol, we have included a requirement that the PACE organization must ensure community representation on issues related to participant care. This may be achieved by having a community representative on the governing body.

We have added a requirement that a PACE organization must establish a consumer advisory committee to provide advice to the governing body on matters of concern to participants. Consumer participation through advisory committees is a well accepted community organization vehicle to maximize the involvement of consumers in a program designed to serve them. With the use of such a committee the governing body will have the benefit of consumer advice, including advice on quality of care. Consumers also are likely to feel a greater stake in the operation of the program. In order to assure appropriate representation, participants and representatives of participants must constitute a majority of the membership of this committee. One specific duty of the consumer advisory committee is to receive information regarding changes in the PACE organization's structure to determine those about which information should be disseminated to participants.

Personnel Qualifications (§ 460.64)

Although the Protocol does not specify personnel requirements for the various staff employed by or under contract with the PACE organization, we believe that certain minimum standards must be met in order to ensure quality of care for the frail elderly population being served. To this end, we have established § 460.64.

Our approach to personnel qualifications follows principles described in a **Federal Register** publication proposing changes to the conditions of participation for home health agencies, 62 FR 11022–23 (March 10, 1997). This is a flexible approach that relies on State requirements as much as possible. We require that personnel meet applicable State licensure, certification, or registration requirements. The personnel qualifications fall into three categories: (1) personnel for whom there are statutory qualifications; (2) personnel for whom all States have licensure, certification, or registration requirements; and (3) personnel for whom we have specified requirements since not all States have licensure, certification, or registration requirements.

The first category consists of personnel for whom the Act contains qualifications. Section 1861(r) of the Act generally defines a physician as a doctor of medicine or osteopathy, legally authorized to practice medicine and surgery by the State in which such function or action is performed, or certain other practitioners for limited purposes. This definition is reflected in regulations at 42 CFR 410.20, and we have adopted this definition for a physician providing services for a PACE organization. In addition, to reflect the key role of the primary care physician in the PACE model, we are requiring the primary care physician to have a minimum of 1 year's experience in working with a frail or elderly population.

In the second category of personnel qualifications, we defer to State law. We specify that all staff (employee or contractor) of the PACE organization must meet applicable State requirements. That is, they must be legally authorized (currently licensed or, if applicable, certified or registered) to practice in the State in which they perform the function or action and must act within the scope of their authority to practice.

The third category of personnel qualifications includes certain professions for which not all States currently have licensing, certification, or registration requirements. If a State does have licensing, certification, or registration requirements for a professional listed in this section, then the State qualifications would apply.

We reviewed the personnel requirements of other Medicare and Medicaid providers that serve populations similar to PACE participants (*e.g.,* home health agencies, nursing facilities, intermediate care facilities), and we have established personnel requirements for PACE organizations that are as consistent as possible with those applicable to other providers. If a State does not have licensing, certification, or registration requirements applicable to the following professions, then the qualifications specified below apply.

We are requiring that the registered nurse be a graduate of a school of professional nursing and have a minimum of one year's experience working with a frail or elderly population.

We are requiring that the social worker (1) have a master's degree in social work from an accredited school of social work; and (2) have a minimum of one year's experience working with a frail or elderly population.

We are requiring that the physical therapist (1) be a graduate of a physical therapy curriculum approved by the American Physical Therapy Association, the Committee on Allied Health Education and Accreditation of the American Medical Association, or the Council on Medical Education of the American Medical Association and the American Physical Therapy Association; and (2) have a minimum of one year's experience working with a frail or elderly population.

We are requiring that the occupational therapist (1) be a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association; (2) be eligible for the National Registration Examination of the American Occupational Therapy Association; (3) have 2 years of appropriate experience as an occupational therapist and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that such determination of proficiency does not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist after December 31, 1977; and (4) have a minimum of one year's experience working with a frail or elderly population.

We are requiring that the recreation therapist or activities coordinator have 2 years experience in a social or recreational program providing and

coordinating services for a frail or elderly population within the last 5 years, one of which was full-time in a patient activities program in a health care setting.

We are requiring that the dietitian (1) have a baccalaureate or advanced degree from an accredited college with major studies in food and nutrition or dietetics; and (2) have a minimum of one year's experience working with a frail or elderly population.

We are requiring that all PACE center drivers (1) have a valid driver's license to operate a van or bus in the State of operation; and (2) be capable of and experienced in transporting individuals with special mobility needs.

We believe that each of these persons should have experience working with the frail or elderly population in order to better recognize issues specific to this population.

We have not defined personnel requirements for the PACE center manager or the home care coordinator. We are giving PACE organizations the flexibility to determine who is best suited to fill these positions since each PACE center may have different needs. Since the home care coordinator is responsible for acting as the liaison between the multidisciplinary team and the home care providers, she or he should possess good leadership and communication skills. In addition, the home care coordinator should be able to identify and understand participants' medical and social needs and evaluate the home care needs of participants. Therefore, we believe that a registered nurse or social worker would be a good candidate to fill this position.

We have not imposed personnel requirements for personal care attendants since these individuals will primarily be providing ''non-skilled'', personal care services (*e.g.,* bathing, toileting, transferring). We are soliciting comments on whether to include specific personnel requirements for personal care attendants. It is important that personal care attendants possess certain basic skills necessary to provide quality care to PACE participants. Thus, we are requiring PACE organizations to implement a training program for each personal care attendant to ensure that they exhibit competency in basic skills in personal care services. The training program should include maintenance of a clean, safe, and healthy environment; appropriate and safe techniques in personal hygiene and grooming; safe transfer techniques and ambulation; reading and recording temperature, pulse, and respiration; and observation, reporting, and documentation of patient status and the care or service furnished. In addition, the training program developed for each personal care attendant must include other elements consistent with their assigned duties for specific participants.

We recognize that personal care attendants in the home environment may furnish not only personal care services, but also home care services. When the participant needs home care services, the PACE organization must ensure that it has qualified staff (either employees or contractors) that meet the requirements for home health aides to furnish these services.

Training (§ 460.66)

In § 460.66, we have required that the PACE organization provide ongoing training to maintain and improve the skills and knowledge of each staff member with respect to their specific duties. The training should result in the staff's continued ability to demonstrate the skills necessary for the performance of their specific positions or job duties. The ability of the PACE organization to ensure patient safety and to achieve patient-specific performance measures requires competent staff. We believe there is a direct relationship between the quality of the organization's staff and patient well-being. The training requirement is intended to ensure that all staff are able to adapt to new or additional job demands. The PACE organization is only responsible for ensuring that the individual is educated and trained for her or his specific job. The individual would continue to be responsible for her or his own professional education and for any continuing education needed to maintain licensure or professional certification unless the organization chooses to assume this responsibility. In addition, we have included a specific training requirement for personal care attendants as described above.

Program Integrity (§ 460.68)

We have established § 460.68 to guard against potential conflicts of interest or other program integrity problems for PACE organizations, based on Part I, section E of the Protocol. An organization must not have any staff (employees or contractors) who have been convicted of criminal offenses related to their involvement in Medicaid, Medicare, other health insurance or health care programs, or social service programs under Title XX of the Act. We expanded this provision from the Protocol to prohibit an organization from having any staff who have been excluded from participation in Medicare or Medicaid, or having staff in any capacity where an individual's contact with participants would pose a potential risk because the individual has been convicted of physical, sexual, drug, or alcohol abuse. Members of the PACE organization's governing body, and their family members, are prohibited from having a direct or indirect interest in contracts with the organization. (Examples of indirect interests are holdings in the name of a spouse, dependent child, or other relative who resides with the member of the governing body.) These requirements are intended to protect participants and to prevent fraud under Medicare and Medicaid.

We recognize that in rural, Tribal, or urban Indian communities there may be limited availability of individuals willing to and capable of performing key functions for the PACE organization. HCFA and the State administering agency may grant a waiver of the conflict of interest requirement for PACE organizations to allow individuals who have a direct or indirect interest in a contract or the provision of services to the PACE organization to recuse themselves from decisions directly or indirectly affecting those interests, rather than barring them entirely from serving on the PACE organization's policy making board or as directors, officers, partners, employees, or consultants of the PACE organization. Such a waiver may be granted if HCFA and the State administering agency determine that there are not enough people who could meet the requirement in the PACE organization's service area and the proposed alternative does not adversely affect the availability of care or the quality of care that is provided to participants.

We have also added the requirement that the PACE organization must have a process to gather information on program integrity issues and respond to any request from HCFA within a reasonable amount of time.

Contracted Services (§ 460.70)

Under the scope of benefits described in sections 1894(b)(1) and 1934(b)(1) of the Act, a PACE organization may enter into written contracts with each outside entity to furnish services to participants. Consequently, we require that all services, except for emergency services as described in § 460.100, not furnished directly by a PACE organization must be obtained through contracts which meet the requirements specified in regulations. We are adopting the contracting provisions in Part VII, section A of the Protocol.

A PACE organization can only contract with entities that meet all applicable Federal and State

requirements. We have provided some examples of the types of requirements that contractors would be expected to meet. The contractor must be accessible, *i.e.,* located within or near the PACE organization's service area.

To avoid breakdowns in communication or in the provision of care, we require a PACE organization to designate an official liaison to coordinate activities between contractors and the organization. Effective coordination of services is necessary to avoid duplicative or conflicting services. Designating an individual as liaison provides a conduit for sharing information. The liaison would inform contractors of PACE organization policies, changes in participants' plans of care, information from team meetings, and quality improvement activities and goals. Contractor staff would inform the PACE organization, through the liaison, of updates and changes in a participant's status, personnel changes in the contractor, and any other information necessary for the continuity of participant care. All care must be evaluated by the PACE organization, with particular attention to care provided by contracted personnel. This requirement provides a mechanism to ensure that contracted personnel are adhering to organization policies and procedures. It also affords the organization an opportunity to identify any education or training needs of contracted personnel.

The PACE center is required to maintain a current list of contractors and provide a copy to anyone upon request. Copies of signed contracts for inpatient care must be furnished to HCFA and the State administering agency.

Under the specific contract content requirements, we require each contract to be in writing and contain the following information:

- Name of contractor.
- Services furnished.
- Payment rate and method.
- Terms of the contract, including the beginning and ending dates, as well as methods of extension, renegotiation and termination.
- Contractor agreement to: furnish only those services authorized by the PACE multidisciplinary team; accept payment from the PACE organization as payment in full and not to bill participants, HCFA, the State Medicaid agency or private insurers; hold harmless HCFA, the State and PACE participants in the event that the PACE organization cannot or will not pay for services performed by the contractor pursuant to the contract; not assign or delegate duties under the contract unless prior written approval is obtained from the PACE organization; and submit reports as required by the PACE organization.

We have not established a specific notice requirement for termination of contracts. We believe that PACE organizations will contract with individuals and entities that understand and embrace the organization's mission and commitment to participants. As discussed previously, the governing body is required to establish personnel policies that address adequate notice of termination by contractors and employees with direct patient care responsibilities to permit an orderly transition and avoid disruptions in care. We specifically request public comment on whether we should add a requirement for notice before a contractor could terminate its contract.

Physical Environment (§ 460.72)

To ensure that the center and home are free of hazards that may cause harm to the participants, staff, or visitors, we have established § 460.72. Because issues of adequate space, infection control, fire prevention, dietary services, and the safety of transportation services are important to ensure quality care, we have added requirements for each in this condition.

We have maintained the following requirements from the PACE Protocol with a few clarifications:

- The PACE center must be designed, constructed, equipped, and maintained to provide for the physical safety of participants, personnel, and visitors;
- The PACE center must ensure a safe, sanitary, functional, accessible and comfortable environment for the delivery of services, that protects the dignity and privacy of the participant; and
- The PACE center must include sufficient suitable space and equipment to provide primary medical care and suitable space for team meetings, treatment, therapeutic recreation, restorative therapies, socialization, personal care and dining. (We believe that a PACE organization should furnish primary care services in the center, but this provision allows flexibility to avoid duplicating an entire primary care clinic if that is not necessary.)

The PACE organization must establish, implement, and maintain a written plan to ensure that all equipment is maintained in accordance with the manufacturer's recommendations to keep all equipment (mechanical, electrical and patient care) free of defect. Based on the manufacturer's experience with the equipment, we believe it has the most knowledge about routine maintenance and recommended repair schedules necessary to keep the equipment in good operating condition.

The Life Safety Code (LSC) is a set of fire protection requirements designed to provide a reasonable level of safety from fire. The LSC was developed by the National Fire Protection Association and adopted by the Department of Health and Human Services as the standard which ensures reasonably fire-safe facilities. The LSC specifies requirements for building construction features such as walls and doors, exits and exit access, and fire protection devices such as sprinklers, smoke detectors, and fire extinguishers.

The 1997 edition of the LSC is divided into occupancy chapters, including Business, Education, and Health Care Occupancies. Business occupancies include clinics and offices, and educational occupancies cover schools and day care centers. Health care occupancies include facilities where the patients are rendered incapable of self-preservation and where they remain overnight. Unfortunately, the LSC does not designate a specific category for comprehensive outpatient services provided to nursing home eligibles, so we have chosen to stipulate that the PACE center must meet the occupancy provisions of the 1997 edition of the LSC for the type of setting in which it is located (*i.e.,* hospital, office building, etc.).

Each type of LSC occupancy requires a fire alarm system. A fire alarm system must provide three functions: (1) Initiation—a method of initiating the alarm, such as a pullbox; (2) notifications—a method of notifying the occupants, such as a loud bell, horn, chimes, or flashing lights for those patients who are deaf; and (3) control—a method of controlling other fire protection functions and features, such as air conditioning shutdown, automatic release (closing) of fire doors, etc. We require a PACE center to meet the requirements for a fire alarm system in accordance with the occupancy section of the LSC that applies to its building. Each occupancy section also requires evacuation plans, fire exit drills, and fire procedures. The purpose of the drills is to test the efficiency, knowledge, and response of the staff and to ensure that safe care will be provided to participants during an emergency.

The statute and implementing regulations governing some Medicare providers (*i.e.,* nursing facilities, hospitals, hospices) authorize us to accept a State code in lieu of the LSC

if it adequately protects patients. Likewise, under these regulations the LSC will not apply in a State where HCFA finds that a fire and safety code imposed by State law adequately protects PACE participants and staff.

We recognize that it could be burdensome to require strict adherence to all of the requirements of the LSC. PACE centers may be established in a variety of building types (*e.g.,* hospitals or office buildings), which must be considered in requiring adherence to the LSC. We also recognize that some centers may have alternative features that provide an equivalent level of protection to that required by the specific requirements of the LSC. In some buildings it may even be impractical or impossible to provide a specific feature due to the construction of the building. Therefore, we have specified that HCFA may waive specific provisions of the LSC which, if rigidly applied, would result in unreasonable hardship on the organization. Specific provisions may be waived only if the waiver does not adversely affect the health and safety of the participants and staff.

We have established four requirements that we believe are fundamental for a PACE organization to effectively prepare for emergency situations. The PACE organization must establish, implement, and maintain documented procedures to manage medical and nonmedical emergencies or disasters that are likely to threaten the health or safety of participants, staff or the public including, but not limited to, fire, equipment, water or power failures, care-related emergencies, and natural disasters likely to affect their geographic location. We also state that we do not expect organizations to develop emergency plans for natural disasters that typically do not affect their geographic area. For example, organizations in the Southeast would not typically need to develop emergency procedures for earthquakes.

PACE organizations must train each staff member (employee and contractors) on the actions necessary to address different medical and nonmedical emergencies. This requirement is designed to ensure the safety and security of both the participants and the staff. In addition, the participants must be appropriately trained on the organization's emergency procedures since they may need to take steps to protect themselves during an emergency. PACE participants need to be informed on what to do, where to go, and whom to contact if a center emergency occurs. The PACE center must also provide periodic orientation to staff and participants.

Appropriate medical practice dictates that the organization must have trained personnel, drugs, and emergency equipment immediately available at every center at all times to adequately support participants until an Emergency Medical System (EMS) responds to the center. We have defined the minimum emergency equipment that must be on the premises and immediately available as easily portable oxygen, airways, suction, and emergency drugs. In addition, the center must have a documented plan to obtain EMS services from sources outside the center when needed.

At least annually, a PACE organization must actually test, evaluate, and document the effectiveness of its emergency and disaster plans to ensure appropriate responses to the situations and needs that may arise from both medical and nonmedical emergencies. Drills and emergency episodes often reveal a weakness or flaw in the design of the emergency plan. An annual review will allow flaws or potential problems to be identified and corrected.

Infection Control (§ 460.74)

Infection control is vital to the health and safety of participants, so we are requiring in § 460.74 that the PACE organization adhere to accepted policies and standard procedures, including at least the standard precautions developed by and available from the Centers for Disease Control and Prevention (CDC). These guidelines have been developed by the CDC in collaboration with industry representatives and have proven effective as a means of diminishing the spread of blood-borne pathogens and other infectious agents. The PACE organization must establish, implement, and maintain a documented infection control plan that will assure a safe and sanitary environment and prevent and control the transmission of disease and infection. At a minimum, the infection control plan must include the following:

(1) Procedures to identify, investigate, control, and prevent infections in every center and in a participant's place of residence;

(2) Procedures to record any incidents of infection; and

(3) Procedures to analyze the incidents of infection, to identify trends, and develop corrective actions related to the reduction of future incidents.

Transportation Services (§ 460.76)

Transportation services are a critical component of PACE service delivery, so it is crucial that the PACE organization take appropriate steps to ensure that participants can be safely transported from their homes to the center and to appointments. We have established § 460.76 to require that the PACE organization's transportation services must be safe, accessible and equipped to meet the needs of each participant. In addition, we require that the organization's transportation program include procedures on at least the following: (1) Maintenance of transportation vehicles according to the manufacturer's recommendations; (2) equipping transportation vehicles to communicate with the PACE center; (3) training transportation personnel on the special needs of participants and appropriate emergency response; and (4) as part of the multidisciplinary team process, communicating relevant changes in the participants' care plans to transportation personnel.

Dietary Services (§ 460.78)

It is important that each PACE center provide each participant with a nourishing, palatable, well-balanced meal that meets the daily nutritional and special dietary needs of each participant. Each meal must be: prepared by methods that conserve nutritive value, flavor, and appearance; prepared in a form designed to meet individual needs; and prepared and served at the proper temperature. The center must provide substitute foods or nutritional supplements that meet the daily nutritional and special dietary needs of any participant who refuses the food served, cannot tolerate the food served, or who does not eat adequate amounts. In addition, the PACE organization must provide nutrition support (that is, tube feedings, total parenteral nutrition, or peripheral parenteral nutrition) to meet the daily nutritional needs of a participant if indicated by his or her medical condition or diagnosis.

It is vital to the health and safety of participants that the food provided meets acceptable safety standards. Therefore, we are requiring the PACE organization to:

(1) Procure foods (including nutritional supplements and items to meet special nutrition needs) from sources approved or considered satisfactory by Federal, State, Tribal or local authorities that have jurisdiction over the service area of the organization;

(2) store, prepare, distribute, and serve foods (including nutritional supplements and items to meet special nutrition needs) under sanitary conditions; and

(3) dispose of garbage and refuse properly.

Fiscal Soundness (§ 460.80)

Part I, section F of the Protocol addresses fiscal soundness and paragraph (e)(4)(A)(ii) of sections 1894 and 1934 of the Act requires that during the trial period we conduct a comprehensive assessment of a PACE organization's fiscal soundness. We have established § 460.80 to address requirements for fiscal soundness.

Each PACE organization must have a fiscally sound operation as demonstrated by total assets being greater than total unsubordinated liabilities, sufficient cash flow and adequate liquidity to meet obligations as they become due, and a net operating surplus or a plan for maintaining solvency.

Each organization must have a documented insolvency plan approved by HCFA and the State administering agency which, in the event of insolvency, provides for: the continuation of benefits for the duration of the period for which capitation payment has been made; the continuation of benefits to participants who are confined in a hospital on the date of insolvency until their discharge; and protection of participants from liability for payment of any fees which are the legal obligation of the PACE organization.

Each organization must have adequate arrangements to cover expenses in the event it becomes insolvent. To this end, we have specified requirements in this section that are consistent with the Protocol.

Marketing (§ 460.82)

Based on Part III, section B of the Protocol, we have established § 460.82 to address marketing of PACE programs. PACE organizations must conduct marketing activities that inform the general public about their programs.

All marketing material must be approved by HCFA and the State administering agency. Initial marketing material is reviewed as part of the application process. After an organization is under a PACE program agreement, any new or revised marketing materials must be submitted for review by HCFA and the State administering agency. We will complete our review within 45 days after we receive the information from the organization or the material will be deemed approved. We have added the requirement for review and approval of revised marketing materials since revisions could potentially introduce false or misleading information. Although the Protocol includes a 30-day review and approval timeframe, we adopted a 45-day period to be consistent with the process used by HCFA for review of changes to Medicare+Choice organization marketing materials.

Printed marketing materials must meet participants' special language requirements. Marketing materials must provide complete and clear information regarding the requirement that all services (other than emergency services), including primary care and specialist physician services, be furnished by or authorized by the PACE organization and that participants may be fully and personally liable for the costs of unauthorized or out-of-PACE program agreement services.

PACE organizations must ensure that their employees or agents do not conduct prohibited marketing activities such as discrimination of any kind among individuals who meet PACE eligibility standards; activities that could mislead or confuse potential participants or misrepresent the PACE organization, HCFA, or the State administering agency; activities that involve gifts or payments to induce enrollment; contracting outreach efforts to individuals or organizations whose sole responsibility involves direct contact with the elderly to solicit enrollment; or unsolicited door-to-door marketing.

Each PACE organization must establish, implement, and maintain a documented marketing plan with measurable enrollment objectives and a system for tracking its effectiveness.

Subpart F—PACE Services

PACE Benefits Under Medicare and Medicaid (§ 460.90)

Pursuant to sections 1894(a)(2)(B) and (b)(1) and 1934(a)(2)(B) and (b)(1) of the Act, we have established § 460.90 to specify that Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, copayments, coinsurance, or other cost sharing do not apply to PACE benefits. In addition, we have specified that, in accordance with sections 1894(a)(1)(B)(i) and 1934(a)(1)(A) of the Act, the PACE participant shall receive Medicare and Medicaid benefits solely through the PACE organization.

Required Services (§ 460.92)

Based on the provisions of sections 1894(b)(1)(A) and 1934(b)(1)(A) of the Act, we are requiring in § 460.92 that each PACE benefit package include for all participants, regardless of source of payment, all Medicaid covered services as specified in the State's approved Medicaid plan, a variety of services specified in the Protocol, and other services determined necessary by the multidisciplinary team to meet the participant's needs (*e.g.*, respite care). As specified in Part IV, section A.3 of the Protocol, at a minimum the PACE organization must provide the following benefit package:

- Multidisciplinary assessment and treatment planning;
- Primary care services including physician and nursing services;
- Social work services;
- Restorative therapies, including physical therapy, occupational therapy and speech-language pathology;
- Personal care and supportive services;
- Nutritional counseling;
- Recreational therapy;
- Transportation;
- Meals;
- Medical specialty services including, but not limited to: anesthesiology, audiology, cardiology, dentistry, dermatology, gastroenterology, gynecology, internal medicine, nephrology, neurosurgery, oncology, ophthalmology, oral surgery, orthopedic surgery, otorhinolaryngology, plastic surgery, pharmacy consulting services, podiatry, psychiatry, pulmonary disease, radiology, rheumatology, surgery, thoracic and vascular surgery, and urology;
- Laboratory tests, x-rays and other diagnostic procedures;
- Drugs and biologicals;
- Prosthetics and durable medical equipment, corrective vision devices such as eyeglasses and lenses, hearing aids, dentures, and repairs and maintenance for these items;
- Acute inpatient care: ambulance; emergency room care and treatment room services; semi-private room and board; general medical and nursing services; medical surgical/intensive care/coronary care unit, as necessary; laboratory tests, x-rays and other diagnostic procedures; drugs and biologicals; blood and blood derivatives; surgical care, including the use of anesthesia; use of oxygen; physical, occupational, and respiratory therapies; speech-language pathology; and social services.
- Nursing facility care: semi-private room and board; physician and skilled nursing services; custodial care; personal care and assistance; drugs and biologicals; physical, occupational, and recreational therapies and speech-language pathology, if necessary; social services; and medical supplies and appliances.

Required Services for Medicare Participants (§ 460.94)

In accordance with paragraph (b)(1)(A)(i) of sections 1894 and 1934 of the Act, we specify that the PACE benefit package for Medicare participants must include, in addition to the services required by § 460.92, the scope of hospital insurance benefits described in 42 CFR part 409 and the scope of supplemental medical insurance benefits described in 42 CFR part 410.

This provision is based on explicit statutory wording that requires the inclusion of Medicare covered services only for individuals enrolled under section 1894 of the Act. Those individuals include Medicare-only participants and dually-eligible Medicare/Medicaid participants. The PACE organization may choose to include coverage of these services for other participants, but is not required to do so.

In accordance with section 1894(g) of the Act, we specify that the following requirements of title XVIII of the Act (and regulations relating to such requirements) are waived and do not apply to services under the PACE program:

- The provisions of subpart F of part 409 of 42 CFR that limit coverage of institutional services;
- The provisions of subparts G and H of 42 CFR part 409 and parts 412 through 414 that relate to rules for payment for benefits;
- The provisions of subparts D and E of 42 CFR part 409 that limit coverage of extended care services or home health services;
- The provisions of subpart D of 42 CFR part 409 that impose a 3-day prior hospitalization requirement for coverage of extended care services; and
- The provisions of 42 CFR 411.15(g) and (k) that may prevent payment for PACE program services to individuals enrolled in the PACE program.

Excluded Services (§ 460.96)

We provide a list of excluded services based on Part IV, section A.6 of the Protocol. The services that are excluded from coverage under the PACE program are as follows:

- Any service that is not authorized by the multidisciplinary team, even if it is listed as a required service, unless it is an emergency service .
- For services in inpatient facilities, private room and private duty nursing services, unless medically necessary, and non-medical items for personal convenience such as telephone, radio or television rental, unless specifically authorized by the multidisciplinary team as part of a participant's plan of care.
- Cosmetic surgery, which does not include surgery required for improved functioning of a malformed part of the body resulting from an accidental injury or for reconstruction following mastectomy.
- Experimental medical, surgical or other health procedures.
- Services rendered outside the United States, except as may be permitted in accordance with 42 CFR 424.122 and 424.124 or as may be permitted under the State's approved Medicaid Plan. While the Protocol did not recognize any exceptions, the required inclusion of Medicare and Medicaid covered services results in certain limited exceptions being possible. For example, a State that borders another country might include some Medicaid coverage across the border, and Medicare covers some emergency hospital, ambulance, and physician services outside the United States. (As defined in 42 CFR 400.200, the United States includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.)

Service Delivery (§ 460.98)

We are requiring in § 460.98 that the PACE organization must establish and implement a written plan to provide care that meets the needs of its participants across all care settings on a 24 hour basis, each day of the year. The PACE organization must furnish comprehensive medical, health, and social services that integrate acute and long-term care. These services must be furnished at least in the PACE center, the participant's home, and inpatient facilities. The PACE organization must not discriminate against any participant in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, or source of payment.

The requirements in this section implement provisions in Part IV, section B of the Protocol and ensure the availability of and access to services as a PACE organization grows. The following requirements are based on the Protocol:

- At least the following services must be furnished at every PACE center: primary care (including physician and nursing services); social services; restorative therapies (including physical and occupational therapy); personal care and supportive services; nutritional counseling; recreational therapy; and meals.
- The PACE organization must operate at least one PACE center either in or contiguous to its designated service area, with sufficient capacity for routine attendance by its participants.
- The PACE organization must ensure accessible and adequate services to meet the needs of all its participants. When necessary, the organization must increase the number of centers, staff, and other PACE services.
- The frequency of a participant's attendance at the center is determined by the multidisciplinary team based on the needs and desires of each participant.

We added the requirement that, if there is more than one center, each center must offer the full range of services and have sufficient staff to meet the needs of participants.

Emergency Care (§ 460.100)

We expanded on and clarified the provisions in Part IV, section A of the Protocol to ensure access to necessary services and to adopt a beneficiary-centered approach.

We require a PACE organization to establish and maintain a written plan for handling emergency health care needs. The organization must ensure that the participants and caregivers know when and how to access emergency services and ensure that HCFA, the State, and PACE participants are held harmless if the PACE organization does not pay for emergency services.

Emergency care is appropriate when services are needed immediately because of an injury or sudden illness and the time required to reach the PACE organization or a network provider would cause risk of permanent damage to the participant's health. Thus, emergency care services include inpatient and outpatient services, furnished by a qualified emergency services provider (other than the PACE organization or one of its contract providers) either in or out of the PACE organization's service area, that are needed to evaluate or stabilize an emergency medical condition. An emergency medical condition means a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in: serious jeopardy to the health of the participant; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part.

Emergency services that fall within this description do not require prior

authorization by the PACE organization. We believe that relying on the prudent layperson standard in establishing a participant's need for emergency services is more clear than the definition of emergency care in the Protocol. We adopted the prudent layperson standard from the Consumer's Bill of Rights and Responsibilities (discussed in detail in the section on participant rights). The same standard is used in the Medicare+Choice definition of emergency medical condition. This standard encompasses a slightly broader range of circumstances than does the Protocol language, by including some situations that could fit under the Protocol description of ''urgent care'' or ''urgently needed services.'' We think this clarification is helpful because the Protocol wording does not clearly distinguish between emergency and urgent care.

Other services a participant may need while temporarily absent from the PACE organization's service area, that are not emergency services but cannot be delayed until the participant returns, would need prior authorization. The fact that these services may be ''urgently needed'' means that the PACE organization would be expected to authorize a participant to obtain them from a non-contract provider outside of the service area, but it does not exempt them from the requirement for prior authorization. This approach differs from that applied to Medicare+Choice organizations, where prior authorization for urgently needed services is not required. We believe that the differences in the population served by PACE organizations warrant different treatment of urgent, though not emergency, care needs. Due to the relative frailty, more limited mobility, and more complex health status of PACE participants, we believe the need to maintain coordination of care by the multidisciplinary team justifies contact with and authorization by the PACE organization prior to receipt of non-emergency care outside the PACE network.

The emergency services plan must provide for the availability of appropriate on-call providers. We expanded this requirement from the Protocol to provide a safety net for unanticipated health incidents, so participants do not encounter difficulty obtaining care when they are away from the PACE center, when they are away from the PACE organization's service area and require services that cannot be delayed until they return, or when they require post-stabilization care services following emergency services. An on-call provider must be available 24-hours per day to address any participant questions about accessing emergency services and respond to requests for authorization of urgently needed out-of-network services or post-stabilization care services following emergency services.

We believe that PACE organizations are organized to be responsive to all participant care needs, including the need for urgently needed or post-stabilization services. However, in order to ensure that unforeseen circumstances do not result in delays in needed care, we have clarified that the PACE organization must cover urgently needed out-of-network or post-stabilization care services if it does not respond to a request for approval within 1 hour after being contacted or cannot be contacted for approval.

Multidisciplinary Team (§ 460.102)

This section is based on provisions in Part IV, section B of the Protocol. The Protocol requires that the PACE organization assign each participant to a multidisciplinary team based at the PACE center where the participant attends. We have included a requirement that the PACE organization must establish a multidisciplinary team at each center to comprehensively assess and meet the individual needs of each participant. We believe that a well-functioning multidisciplinary team is critical to the success of the PACE program, as the team is instrumental in controlling the delivery, quality, and continuity of care. Members of the multidisciplinary team should be knowledgeable about the overall needs of the patient, not just the needs which relate to their individual disciplines. In order to meet all of the health, psychosocial, and functional needs of the participant, team members must view the participant in a holistic manner and focus on a comprehensive care approach.

Based on the Protocol, we are requiring that the multidisciplinary team be composed of at least the following members:

a. Primary Care Physician—We considered expanding this to include nurse practitioners but decided to retain the requirement in the Protocol. While it would be acceptable for a PACE organization to include a nurse practitioner on the multidisciplinary team, we believe that this should be in addition to rather than instead of the primary care physician. The physician is an integral part of the team serving as a gatekeeper for the participant's medical care, and we feel it is important to retain this standard in order to ensure quality care.

b. Registered Nurse—The Protocol requires the inclusion of a ''nurse.'' We are specifying that this team member be a registered nurse. The nurse represented on the multidisciplinary team must exhibit leadership and management skills that are more consistent with the training received by registered nurses, as opposed to licensed practical nurses. In addition, we believe that a registered nurse would be better able to determine and respond to the health care needs of the frail population, particularly for home care services. We welcome comments on this issue.

c. Social Worker;

d. Physical Therapist;

e. Occupational Therapist;

f. Recreational Therapist or Activity Coordinator;

g. Dietitian;

h. PACE Center Manager—We have changed the Protocol terminology from ''PACE Center Supervisor'' to ''PACE Center Manager''. The center manager is responsible for overall operation of the PACE center and ensuring service delivery. The individual who holds this position should be a good facilitator and should possess good communication skills. She or he could be the leader of the multidisciplinary team, but we are not requiring this. We are giving the PACE organization and the multidisciplinary team the flexibility to decide who should lead the team and facilitate the discussions.

i. Home Care Coordinator—Since PACE services may be furnished in the home, the coordination of in-home services with PACE center and primary care services is critical to effective service delivery. This coordination is especially important if the PACE organization has contractors providing the home care services. The PACE organization must designate a home care coordinator to supervise and coordinate home care services, whether these services are furnished by a PACE employee or through a contractor. We are changing the Protocol's term ''home care liaison'' to ''home care coordinator'', because ''home care liaison'' has another meaning in Medicare and we want to avoid confusion.

j. Personal care attendants or their representatives—We have changed the Protocol term ''health care worker/aide'' to ''personal care attendant'', as we believe this term more accurately describes this type of worker. We believe that ''health care worker'' is too general and could apply to other members of the team.

k. Drivers or their representatives—This requirement remains unchanged from the Protocol.

Due to the age of PACE participants, a geriatrician could be a valuable member of the multidisciplinary team. As one option, the primary care physician could be a geriatrician. However, physicians who specialize in geriatrics are relatively rare and availability might be a serious problem. We have not required the involvement of a geriatrician but we welcome comments about whether such a requirement would be desirable and, if so, whether the geriatrician should be employed by the PACE organization and should primarily serve PACE participants.

Consistent with the Protocol, we are requiring that primary medical care for all participants be furnished by the PACE primary care physician(s). The primary care physician must serve as the gatekeeper to the participant's use of medical specialists and inpatient care, and he or she must be an integral member of the multidisciplinary team. Ultimate responsibility for management of medical situations must rest with the PACE primary care physician.

The multidisciplinary team is responsible for the initial assessment, periodic reassessments, the plan of care, and coordinating 24-hour care delivery. A critical element of the success of the multidisciplinary team is the degree to which team members share information and communicate with one another. The Protocol requires the physician to keep the multidisciplinary team informed of the medical condition of each participant and to remain alert to pertinent input from other team members. We feel this should be the responsibility of each member of the team rather than just the physician, as it is critical to timely intervention to address potential problems. We are modifying the requirement to reflect this; *i.e.,* each member of the team must regularly inform the multidisciplinary team of the medical, functional, and psychosocial condition of each participant and remain alert to pertinent input from other team members, participants, and caregivers. This communication can take place through formal measures such as team meetings and written documentation in participants' medical records, but should not be limited to formal mechanisms; informal communication between team members (*e.g.,* CARDEX systems, informal updates during shift changes and as different personnel report to work) should be encouraged as well. It is critical that personal care attendants be involved in the communication process. Since they often have the first contact with the participant, it is important that they regularly share information on the participant's mood, activities, daily habits, etc. Each team member must document changes in the participant's condition in the participant's medical record.

We are retaining the Protocol requirement that members of the multidisciplinary team must serve primarily PACE participants, unless a waiver is granted. After considering this issue, we concluded that for a frail elderly population, such as is served by the PACE program, it is important to support and retain measures that promote quality and continuity of care. If team members serve primarily PACE participants, they are able to develop a rapport with participants and are better able to plan for and provide their care. We recognize that team members may have other patients, but this must not interfere with the provision of services for PACE participants. HCFA and the State administering agency may grant a waiver of this requirement if they determine that—

- There are not enough individuals available in the PACE organization's service area who meet the requirement; and
- The proposed alternative does not adversely affect the availability of care or the quality of care that is provided to participants.

If an applicant seeking approval as a PACE organization believes a waiver is warranted, it must include a request for the waiver in its application and describe in detail the circumstances supporting the request. For example, in a rural, Tribal, or urban Indian community the number of PACE participants, or the availability of appropriate multidisciplinary team members in some categories, may be insufficient for some team members to primarily serve PACE participants. Such an applicant would need to demonstrate that the alternative it proposes will maintain the continuity of care and assure sufficient availability of services so that participants receive prompt, effective care.

We are requiring that the PACE organization establish, implement and maintain documented internal procedures governing the exchange of information between team members, contractors, and participants and their caregivers consistent with the requirements for confidentiality in § 460.200(e). It is important for the organization to develop these procedures to avoid breakdowns in communication which would be detrimental to the success of the PACE program. We also want to emphasize the importance of regular communication from family members and other caregivers and health care workers in the home. It is critical that these individuals routinely report changes in participant status to the multidisciplinary team.

Consistent with the Protocol, we are requiring that the following members of the team be employees of the PACE organization: primary care physician (unless an exception is granted), registered nurse, social worker, recreational therapist or activity coordinator, PACE center manager, home care coordinator, and PACE center personal care attendants. It is important to note that ''personal care attendants'' in this context refers to individuals who work in the PACE center to provide assistance to participants while they are at the center (*e.g.,* assist medical staff, escort participants, bathe and toilet participants) and does not refer to personal care attendants who provide care to participants outside of the PACE center. Personal care attendants who work in the home are not required to be employees of the PACE organization.

HCFA and the State administering agency may grant a waiver of the requirement that the primary care physician be employed by the PACE organization if they determine that—

- There are not enough physicians in the PACE organization's service area who meet the PACE requirements or State licensing laws make it inappropriate for the organization to employ physicians; and
- The proposed alternative does not adversely affect the availability or the quality of care that is provided to participants.

If an applicant seeking approval as a PACE organization believes a waiver is warranted, it must include a request for the waiver in its application and describe in detail the circumstances supporting the request. For example, in a rural, Tribal, or urban Indian community the number of PACE participants, or the availability of primary care physicians, may be insufficient to make employment by the organization a feasible option. As another example, some State licensing laws prohibit the corporate practice of medicine, making it inappropriate for the organization to employ physicians. Such applicants would need to demonstrate that their contracts with physicians will maintain the continuity of care and assure sufficient availability of services so that participants receive prompt, effective care. We invite

comments on whether this waiver provision is too broadly defined.

Participant Assessment (§ 460.104)

The information obtained through the participant assessment is the basis for the treatment plan developed by the multidisciplinary team. As such, it is important that the assessment be as comprehensive as possible, in order to capture all of the information necessary for the multidisciplinary team to develop a plan of care that will adequately address all of the participant's functional, psychosocial, and health care needs.

The assessment process begins before enrollment, as set forth in § 460.152, when the PACE organization evaluates whether a potential participant can be cared for appropriately in the program. Often, current PACE demonstration programs present a proposed plan of care to the potential participant as part of the enrollment process. The initial comprehensive assessment must be completed promptly following enrollment, but individual team members' in-person assessment of the participant should be scheduled at appropriate intervals based on the participant's level of health. Because the initial assessments are thorough, this will ensure that the participant is not overwhelmed with several team members conducting assessments at one time. However, the initial comprehensive assessment must be completed quickly so that the plan of care can be completed and implemented without delay. This often has been accomplished by the effective date of enrollment and should never be delayed more than a few days beyond that date. With the team concept, the goal is to obtain input from each discipline, as well as from the participant, to perform an assessment that identifies the services necessary to address the participant's needs and care preferences.

As part of the initial comprehensive assessment, each of the following members of the multidisciplinary team must individually evaluate the participant in person and develop a discipline-specific assessment of the participant's health and social status:

- Primary care physician;
- Registered nurse;
- Social worker;
- Physical therapist or occupational therapist, or both;
- Recreational therapist or activity coordinator;
- Dietitian; and
- Home care coordinator.

These individuals represent the most vital components of the participant's treatment and psychosocial development. These disciplines are the core needed to determine the specific needs of the participant. At the recommendation of individual team members, other professional disciplines (*e.g.,* speech-language pathology, dentistry, or audiology) may participate in the initial comprehensive assessment if the participant's needs warrant their inclusion.

HCFA is currently in the preliminary stages of developing a standardized core assessment instrument to be used by PACE organizations for continuous quality improvement. Until such time as this instrument is completed, we are requiring that the participant's assessment include, at a minimum, the following information:

- physical and cognitive function and ability;
- medication use;
- participant and caregiver preferences for treatment;
- socialization and availability of family support;
- current health status and treatment needs;
- nutritional status;
- home environment, including home access and egress;
- participant behavior;
- psychosocial status;
- medical and dental status; and
- participant language.

We believe that this information will provide a basic framework from which a comprehensive plan of care can be developed. This assessment is appropriate for every participant, and ensures that the plan of care focuses on the participant's medical, psychosocial, and functional needs. However, this list represents the minimum information to be included in the comprehensive assessment, and the PACE organization is encouraged to include other assessment items as necessary. HCFA may impose additional or more specific assessment requirements upon development of the standardized core assessment instrument.

The Protocol requires that the discipline-specific plans be consolidated into a single plan of care for the participant. The development of the plan of care must occur through discussion and consensus of the entire multidisciplinary team. We are clarifying this requirement by stating that the discussion must take place during team meetings, in order to facilitate group discussion of the plan of care and ensure that all members of the team are actively involved in the decision-making process, and that the plan of care must be completed promptly.

In developing the plan of care, the PACE multidisciplinary team is also required to inform female participants that they are entitled to choose a women's health specialist from the network of PACE providers. We have included this requirement to be in compliance with the Consumer's Bill of Rights and Responsibilities (discussed in more detail later in this preamble in the section on participant rights). This requirement is intended to ensure that female participants are able to select providers who specialize in women's health for routine and preventive care.

Reassessments are necessary to provide information to adjust participants' plans of care. Periodic reassessments ensure the continued accuracy and effectiveness of the participant's plan of care. Consistent with the Protocol, we are requiring the following members of the multidisciplinary team to conduct an in-person reassessment on at least a semi-annual basis:

- Primary care physician;
- Registered nurse;
- Social worker;
- Recreational therapist or activity coordinator; and
- Other team members actively involved in the development or implementation of the participant's plan of care, for example, home care coordinator, physical therapist, occupational therapist, or dietitian.

The primary care physician, registered nurse, social worker, and recreational therapist/activity coordinator are required to provide assessments at least semi-annually as they are the most critical in terms of defining outcomes of care. Other team members actively involved in the participant's plan of care must also reassess semiannually, as they have an impact on the care the participant is receiving. If the participant is not receiving these other services (*e.g.,* home care, physical therapy, occupational therapy, dietitian services), these members of the team would not be required to conduct a semi-annual assessment.

Consistent with the Protocol, we are requiring the following members of the multidisciplinary team to conduct an in-person reassessment on at least an annual basis:

- Physical therapist and/or occupational therapist;
- Dietitian; and
- Home care coordinator.

It is important for the multidisciplinary team to monitor and respond to any changes in a participant's condition or family situation or any concerns raised by the

participant or his or her designated representative. The Protocol requires that the participant be reassessed by the team or by selected members of the team to develop a new plan of care when the health status or psychosocial situation of a participant changes. We believe that at least all members of the multidisciplinary team that are required to perform the initial comprehensive assessment should reassess the participant. If fewer members participate in this reassessment, a critical component of a participant's care might be overlooked.

If a participant's health or psychosocial status has changed or if a participant (or his or her designated representative) believes that a particular service needs to be initiated, continued, or eliminated for the participant, the appropriate multidisciplinary team members must reassess the participant. The purpose of this reassessment is to evaluate whether it is necessary to increase, continue, reduce, or terminate particular services and whether a different course of treatment is needed. A complete reassessment should ensure that the participant is receiving a continuing program of care that meets his or her current needs. Requiring a reassessment based on the concerns of the participant emphasizes the active role the participant plays in the assessment process and subsequent development of the plan of care. The participant's adherence to the plan is critical to the successful delivery of services. Therefore, permitting the participant (or designated representative) to trigger a reassessment gives participants the opportunity to express any dissatisfaction with the manner in which any care or services will be furnished.

The PACE organization is required to have explicit procedures for timely resolution of requests from participants (or designated representatives) to initiate, continue, or terminate a particular service. Unless an extension is granted, the multidisciplinary team must notify the participant (or designated representative) of its decision to approve or deny the request as expeditiously as the participant's condition requires, but no later than 72 hours after the multidisciplinary team receives the request. We considered establishing both a standard process and an expedited process for responding to a participant request; however, because of the frailty of this population, we concluded that every request is urgent and requires a quick response. We want to ensure that a participant's health is not adversely affected due to a delay in reassessing the participant's condition. The goal of the program is to maximize the participant's functioning, and a quick response is meant to ensure that all factors are evaluated, all necessary services are being furnished, and participant health is not compromised. A timely notification also allows participants adequate time to consider appeal rights, if necessary, without compromising their health.

The multidisciplinary team may extend the 72-hour timeframe by no more than 5 additional days if the participant or designated representative requests the extension, or the team documents its need for additional information and how the delay is in the interest of the participant. An extension could be warranted because not all the appropriate members of the multidisciplinary team may always be able to meet with the participant, conduct a discipline-specific reassessment, discuss the results of the reassessment with the entire multidisciplinary team, and develop a response to the request within 72 hours. The PACE organization retains the flexibility to determine the most appropriate manner in which to provide notification to the participant (or designated representative).

If, based on the reassessment, the multidisciplinary team decides to deny the participant's request, the denial must be explained to the participant (or designated representative) orally and in writing. The PACE organization must provide the specific reasons for the denial in understandable language.

If the participant (or designated representative) is dissatisfied with the outcome of the reassessment, the participant may appeal the decision in accordance with § 460.122. Specifically, the PACE organization must: (1) Inform the participant or designated representative of his or her right to appeal the decision; (2) describe both the standard and expedited appeals processes, including the right to and conditions for obtaining an expedited appeal of a denial of services; and (3) describe the right to and conditions for continuation of contested services through the period of the appeal.

If the multidisciplinary team fails to provide the participant with timely notice of the resolution of the request for reassessment or does not furnish the services required by the revised plan of care, this failure constitutes an adverse decision, and the participant's request must be automatically processed as an appeal by the PACE organization in accordance with § 460.122.

Team members who reassess a participant must reevaluate the plan of care. Any changes in the plan of care must be discussed and approved by the multidisciplinary team and the participant (or designated representative). The plan of care reflects the team's and participant's goals for the participant's care. Obtaining the participant's approval of the proposed plan of care is important to the successful delivery of services and the participant's adherence to the plan.

In addition, we also require that any services included in the revised plan of care as a result of a reassessment must be furnished to the participant as expeditiously as the participant's health condition requires. It is critical that care not be delayed and that the participant receive comprehensive care that maintains his or her functional status. Because we recognize that some changes in the participant's plan of care (*e.g.,* installing a wheelchair ramp at the participant's home) may require more time to accomplish, we have chosen not to specify a timeframe for delivering services. However, we are soliciting comment on the necessity of requiring a specific timeframe. Whenever a participant assessment or reassessment occurs, the information must be documented in the participant's medical record.

Plan of Care (§ 460.106)

Based on Part IV, section B of the Protocol, we developed requirements for the participant's plan of care. We are requiring that the multidisciplinary team promptly develop a comprehensive plan of care that specifies the care needed to meet the participant's medical, physical, emotional, and social needs, as identified in the initial comprehensive assessment. The plan of care must identify measurable outcomes to be achieved and must be developed in collaboration with the participant and her or his caregiver. The specified outcomes need not be discipline-specific. Instead, these are team goals for the participant's care. Involving the participant in the plan of care is important to the successful delivery of services and the participant's adherence to the plan.

We are requiring the team to implement, coordinate, and monitor the plan of care by providing services directly and supervising the delivery of services furnished by contract providers. The participant's health and psychosocial status, as well as the effectiveness of the plan of care, must be monitored continuously through the provision of services, informal observation, input from participants and caregivers, and communications among

members of the multidisciplinary team and other providers.

We are requiring that, on at least a semiannual basis, the multidisciplinary team reevaluate the participant plan of care, including the defined outcomes, and make changes as necessary. Semiannual review of the participant's plan of care ensures that the needs of the participant are being met. It allows the team to determine if the participant's level of health has changed thus dictating a change in the level of services or even the setting in which care must be provided.

We are requiring that participant plans of care be developed, reviewed, and reevaluated in collaboration with the participants or caregivers. The purpose of participant/caregiver involvement is to assure that they approve of the care plan and that participant concerns are addressed. We are giving PACE organizations the flexibility to determine how often care plans should be reviewed with the participant. We welcome comments on the issue of whether or not to impose a timeframe for this activity.

The participant's plan of care and any changes in the plan must be documented in the participant's medical record.

Subpart G—Participant Rights

(Sections 460.110–460.118)

Introduction

In accordance with sections 1894(b)(2)(B) and 1934(b)(2)(B) of the Act, the PACE program agreement requires the PACE organization to have in effect, ''written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this title and Federal and State law that are designed for the protection of patients.'' In addition, sections 1894(f)(3) and 1934(f)(3) of the Act give us the discretion to apply such requirements of part C of title XVIII and sections 1903(m) and 1932 of the Act relating to protection of beneficiaries and program integrity as would apply to Medicare+Choice organizations under part C and to Medicaid managed care organizations under prepaid capitation agreements under section 1903(m). Moreover, sections 1894(f)(2) and 1934(f)(2) of the Act require us to incorporate the requirements in the PACE protocol which includes a patient bill of rights.

We also have made every effort to assure that the rights and protections established in the PACE agreement are in substantial compliance with the Presidential Advisory Commission's (The Commission) Consumer Bill of Rights and Responsibilities (CBRR), which appears as an addendum to The Commission's Final Report to the President, entitled *Quality First: Better Health Care for All Americans* (March 1998). (A copy of the Final Report can be obtained by calling the Agency for Health Care Policy and Research, Department of Health and Human Services at 1–800–358–9295.) The President issued an Executive Memorandum to the Secretary of the Department of Health and Human Services dated February 20, 1998, which requires that, by December 31, 1999, Medicare and Medicaid health care programs be brought into substantial compliance with the CBRR. The PACE program is included within that framework.

In considering how to apply these patient protections, the statute requires that we take into account the differences between the populations served and benefits provided under PACE, Medicare+Choice, and Medicaid managed care. We believe that the PACE program is unique in its approach to meeting the needs of the frail elderly. Unlike most managed care organizations which are responsible for meeting health care needs alone, the PACE program is an integrated partnership between the individual, the community, and the PACE organization, which is dedicated to providing all-inclusive care to meet all medical and social needs to enable the participant to remain in the community.

We believe it is important to establish participant rights that reflect the differences in the PACE delivery approach from that of other managed care systems. For example, since PACE participants receive services most days of the week, either at the PACE center or through home visits, PACE organizations are able to monitor changes in a participant's medical condition and social service needs on a daily basis. When PACE participants are referred to contracted specialists, in most cases, the PACE organization makes the appointment, provides transportation, and often provides an aide or other staff member to accompany the participant. While managed care organizations may provide this level of care management to some enrollees, PACE organizations do so routinely for their entire participant census. Also, while managed care organizations furnish a selected array of medical services, they do not furnish all-inclusive care, including social and recreational services intended to enhance participants' quality of life.

To reiterate the philosophy set forth in the PACE Protocol, the PACE organization furnishes comprehensive services designed to: (1) enhance the quality of life and autonomy for frail, older adults; (2) maximize dignity and respect of older adults; (3) enable frail, older adults to live in their homes and in the community as long as medically and socially feasible; and (4) preserve and support the older adult's family unit. The bill of rights for PACE participants must complement and maintain this philosophy. We have relied on the PACE Protocol and incorporated the basic rights that it identifies. However, we are also guided by the Medicare+Choice regulations and by the CBRR.

We also recognize that the statute directs us to consider State law. We have interpreted this to mean that a PACE organization's participant bill of rights may include additional rights and protections as required by State or local laws and regulations or ethical considerations of particular concern, but only if these additions or modifications provide stronger rights and protections than those established in this regulation. Regardless, it is up to the PACE organization to establish appropriate policies and procedures for assuring that the participant bill of rights is fully operational throughout the PACE organization.

Consistent with the Protocol and the CBRR, we have retained the concept that participants can choose to be represented by family members, caregivers, or other representatives. We intend that a participant may designate a representative to exercise any or all of the rights to which the participant is entitled.

We are requiring, as did the Protocol, the PACE organization to provide encouragement and assistance to participants in understanding and exercising their rights and in recommending changes in PACE policies and services. In addition, it is likely that many of the frail elderly or their chosen representatives will need guidance in navigating the pre-enrollment, enrollment, and post-enrollment processes of PACE. In the previous discussion on consultations with the State Administration on Aging, we referred to the State Long Term Care Ombudsman Programs. These State programs promote and monitor the quality of care in nursing homes, including identifying and resolving complaints, making regular visits to nursing homes, and generally, improving the quality of care and

quality of life of nursing home residents. The role of the ombudsman is to engage in a variety of activities designed to encompass both active advocacy and representation of residents' interests. We are specifically requesting public comment on whether the ombudsman program could play a role in consumer assistance to potential PACE participants, as well as to those who have disenrolled and need assistance in organizing their care. With regard to PACE participants, we are also interested in receiving public input as to whether an ombudsman could provide one-on-one consumer assistance to PACE participants and their designated representatives to exercise their rights and work effectively with the multidisciplinary team.

In § 460.110, we require a PACE organization to have a written participant bill of rights that is designed to protect and promote the rights of each participant. The organization is required to inform participants upon enrollment, in writing, of their rights and responsibilities, and all rules and regulations governing participation. In addition, the organization must protect participants' rights and provide for the exercise of those rights.

Finally, there are numerous references throughout the regulations to the PACE organization furnishing various kinds of information to participants in writing. In order for this information to be understandable and useful, it must be presented in a legible format. The frail elderly PACE population would be expected to have vision problems that make the use of sufficiently large, clear type particularly important in written communications. While we are not mandating the use of a particular typeface or font size, we expect PACE organizations to ensure that documents are legible for their intended audience.

Specific Participant Rights

• Right #1—Respect and nondiscrimination. Each participant has the right to considerate, respectful care from all PACE employees and contractors at all times and under all circumstances. Each participant has the right not to be discriminated against in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, or source of payment.

The individual's right to respect and nondiscrimination is embedded in the basic philosophy of the PACE program. Within this context, it is essential that PACE participants are assured of the following rights:

(1) To receive comprehensive health care in a safe and clean environment and in an accessible manner.

(2) To be treated with dignity and respect, be afforded privacy and confidentiality in all aspects of care, and be provided humane care.

(3) Not to be required to perform services for the PACE organization.

(4) To have reasonable access to a telephone.

(5) To be free from harm, including physical or mental abuse, neglect, corporeal punishment, involuntary seclusion, excessive medication, and any physical or chemical restraint imposed for purposes of discipline or convenience and not required to treat the participant's medical symptoms.

(6) To be encouraged and assisted to exercise rights as a participant, including the Medicare and Medicaid appeals processes as well as civil and other legal rights.

(7) To be encouraged and assisted to recommend changes in policies and services to PACE staff.

The following discussion provides the rationale for inclusion of these rights. In keeping with the PACE model, we recognize the participant's right to receive comprehensive care in a safe and clean environment and in an accessible manner. The Protocol states that a PACE participant must receive treatment and rehabilitative services. We have expanded this requirement to state that the participant has a right to receive comprehensive health care. The PACE organization must offer and manage all health, medical, and social services needed to restore or preserve the participant's independence. The PACE multidisciplinary team must arrange for preventive, rehabilitative, curative, and supportive services in adult day health centers, participant homes, hospitals, and nursing homes. The revised language addresses the complete range of services in each setting that a participant is entitled to, once enrolled in the PACE organization.

The Protocol stipulates that the participant has the right to have dignity, privacy, and humane care. For purposes of clarification, we require the PACE organization to treat the participant with dignity and respect, to afford the participant privacy and confidentiality in all aspects of care, and to provide humane care. The PACE organization must assure that a participant's dignity and privacy are respected not only in its own facilities but also in affiliated or contract providers. Staff should be instructed that any discussions with participants regarding treatment, the participant care plan, and medical conditions should be held in private and kept confidential. While recognizing the participant's right to privacy and confidentiality, we are not advocating physical barriers because participants should be in the view of the staff at all times to ensure safety. However, in situations where there is participant body exposure during treatment, the staff should be instructed to provide temporary screens or curtains.

We have adopted from the Protocol the right to be free from harm, including physical or mental abuse, neglect, corporeal punishment, involuntary seclusion, excessive medication, and inappropriate use of physical or chemical restraints. We have revised the wording used in the Protocol regarding the use of restraints. We do not view this as a policy change from the protocol, but felt the rewording was necessary to emphasize that the use of restraints must be limited to those situations with adequate, appropriate clinical justification. The use of restraints must be based on the assessed needs of the patient, be monitored and reassessed appropriately, and be ordered for a defined and limited period of time. The least restrictive and most effective method available must be utilized and it must conform to the patient's plan of care. Restraints may only be used as a last resort and must be removed or ended at the earliest possible time. We do not believe that restraints of any kind should ever be used as a preferred approach to care and we expect PACE organizations to ensure that their programs are ''restraint free'' to the greatest extent possible. Specific requirements regarding the use of restraints are established in § 460.114.

We are in the midst of examining our seclusion and restraint policy for all HCFA-covered providers. We call your attention to the discussion of the use of seclusion and restraints in the HCFA interim final rule with comment concerning the conditions of participation for hospitals (HCFA–3018–IFC, published July 2, 1999, 64 FR 36070). In that regulation, we have established very explicit standards for the use of seclusion and restraints both in medical/surgical care and for behavior management (see § 482.13(e) and (f)). While the standards are not identical to those we have included in § 460.114, they share the common principle that patients have the right to be free from restraints of any form that are not medically or psychiatrically necessary or are used as means of coercion, discipline, convenience, or retaliation by staff. In the preamble for the hospital conditions of participation, we indicate our intent to examine the

applicability of the hospital restraint and seclusion standards to other providers. Therefore, we formally ask for comments about how best to extend the protections proposed for hospital patients to participants in the PACE program.

We have also adopted the rights established in the Protocol to encourage and assist the participant to exercise his or her rights, including the Medicare and Medicaid appeals processes, as well as civil and legal rights and we have maintained the right to telephone access. On the other hand, we have altered the right not to be required to perform services for the organization unless the services are included for therapeutic purposes in the plan of care. Upon reflection, it is our belief that a therapeutic program should not be tied to performing services for the PACE organization.

The CBRR specifies that organizations should not discriminate on the basis of race, ethnicity, national origin, religion, sex, age, mental or physical disability, or source of payment. PACE organizations are required to comply with all Federal, State, and local laws, including discrimination statutes with regard to marketing, enrollment, and provision of services. However, we recognize that, with regard to health status considerations, PACE organizations are required as part of the intake process to assess whether a potential participant is appropriate for PACE, that is, meets the State's nursing home eligibility standard but can be cared for in the community. Meeting required certification standards within the PACE context is not deemed a violation of antidiscrimination laws. Still, in order to ensure that the qualification decision is free from other, illegal forms of discrimination, we are requiring PACE organizations to retain information on individuals who are assessed but, for whatever reason, are not enrolled.

• Right #2—*Information disclosure.* Each PACE participant has the right to receive accurate, easily understood information and to receive assistance in making informed health care decisions. Specifically, each participant has the right:

(1) To be fully informed in writing of the services available from the PACE organization, including identification of all services that are delivered through contracts, rather than furnished directly by the PACE organization—

(A) Before enrollment;

(B) At enrollment; and

(C) When there is a change in services.

(2) To have the enrollment agreement, described in § 460.154, fully explained in a manner understood by the participant.

(3) To examine, or upon reasonable request, to be assisted to examine the results of the most recent review of the PACE organization conducted by HCFA or the State administering agency and any plan of correction in effect.

In order for consumers, independently or in concert with their designated representatives, to make rational decisions, they need accurate, reliable information that will allow them to assess differences in their health care options, including information critical to their initial decision to enroll in PACE and whether to remain in PACE. The CBRR provides for comprehensive information to be provided to consumers in three basic categories: health plan information; health professional information; and health care facilities. Topics addressed include benefits, cost-sharing, dispute resolution, consumer satisfaction and plan performance information, network characteristics, care management information, corporate organization, etc. The CBRR indicates that certain information should be provided routinely with the remaining information available upon request.

Information that is provided to potential enrollees is addressed in more detail in the sections on marketing (§ 460.82) and enrollment (§ 460.154). With regard to participant rights, we have linked the right to information disclosure to the information that is included in the enrollment agreement. The PACE organization must explain the enrollment agreement in a manner understood by the participant to ensure that all participants fully comprehend their rights and responsibilities from the beginning of their relationship with the PACE organization. Among the items in the enrollment agreement are: an acknowledgment that the participant understands that the PACE organization is the participant's sole service provider; a description of PACE services available and how services are obtained from the PACE organization; the procedures for obtaining emergency and urgently needed out-of-network services; information on the grievance and appeals processes; conditions for disenrollment; description of participant premiums, if any, and procedures for payment of premiums. We are requiring that the PACE organization inform participants whenever changes occur in the services available from the PACE organization.

The enrollment agreement also indicates that the PACE organization has a program agreement with HCFA and the State administering agency that is subject to renewal on a periodic basis. In order to provide participants with information on the status of their organization's agreement, PACE participants have the right to examine the results of the most recent review of the PACE organization conducted by HCFA and the State administering agency and any plan of correction in effect.

We are also requiring in § 460.60(d), that changes in the organizational structure of the PACE provider be approved in advance by HCFA and the State administering agency. Once approved, information about changes in organizational structure will be forwarded to the consumer advisory committee for dissemination to participants as appropriate. In this way, participants will be kept informed about the organizational structure of the PACE provider and may determine if any organizational changes made by the PACE organization affect their continued enrollment in PACE.

• Right #3—*Choice of providers.* Each participant has the right to a choice of health care providers, within the PACE organization's network, that is sufficient to ensure access to appropriate high-quality health care. Specifically, each participant has the right:

(1) To choose his or her primary care physician and specialists from within the PACE network.

(2) To request that a qualified specialist for women's health services provide routine or preventive women's health services.

(3) To disenroll from the program at any time.

The right to access specialists must be seen in the context of the PACE model. Active involvement by participants in care planning in conjunction with a multidisciplinary team approach to care management and service delivery are fundamental aspects of the PACE model of care. In fact, although sections 1894(f)(2)(B) and 1934(f)(2)(B) of the Act provide for waiver of certain provisions of the protocol, use of the multidisciplinary team approach may not be waived. Development of a participant's plan of care begins with a comprehensive assessment. Participant preferences for care are identified components of the assessment. Once the plan of care is developed, the team is required to continuously monitor the effectiveness of the plan in collaboration with participants.

Moreover, the team is required to develop, review, and reevaluate the plan of care in collaboration with the participant to ensure there is agreement

with the plan of care and that participant concerns are addressed. These provisions complement the participant rights to participate in treatment decisions, to be fully informed of his or her functional status by the multidisciplinary team, to participate in the development and implementation of the plan of care, and to make health care decisions, including the right to refuse treatment and to be informed of the consequences of the decisions.

It is in this context that the determination with regard to the need for specialty care is made by the multidisciplinary team and the participant. If there is disagreement, then the participant has the right to engage the dispute resolution process. Regardless, the multidisciplinary team is expected to give ample consideration to a participant's request to see a specialist and to objectively determine whether such visits are necessary to meet the needs described in the plan of care. To further emphasize access to a woman's health care specialist within the context of the PACE model, we have identified such a request as one of the participant preferences that must be considered in developing the plan of care.

The CBRR asserts that consumers with complex or serious medical conditions who require frequent specialty care should have direct access to a qualified specialist of their choice within a plan's network of providers. Authorizations, when required, should be for an adequate number of direct access visits under an approved treatment plan. We believe that central to the PACE model, with its reliance on an all-inclusive plan of care that is derived by a multidisciplinary team in collaboration with the participant, is the organization's interest in ensuring that participants obtain the care they need, including specialty care, in the easiest and most efficient manner possible. A participant who needs a course of therapy with a specialist will have that need reflected in his or her plan of care and would receive that care for the duration and number of visits specified in the plan. In light of the requirements elsewhere in this rule concerning the development and management of the plan of care, we believe it would be redundant to include an explicit requirement that would mirror this CBRR provision, and have, therefore, not included such a requirement.

With regard to having a choice of primary care physician and specialists, the PACE organization is required to maintain sufficient staff and contractors to meet the needs of its participants. Given the participant census of PACE organizations, it is most likely that choice will be limited. PACE organizations likely will start out with one of each type of specialist and perhaps only one primary care physician. Although CBRR includes the right to choose among physicians in the provider's network, it was aimed at managed care organizations with thousands of patients and numerous providers. Such is not the case with the PACE model. Potential participants must weigh the limited network of PACE organizations with the benefits of a comprehensive, all-inclusive delivery system in choosing to enroll.

CBRR provides a right to transitional care for patients who are undergoing an extensive course of treatment for a chronic or disabling condition. As we discuss in greater detail in the section on the enrollment process, potential participants must be advised that the PACE organization is the participant's sole source provider and that the organization guarantees access to services, but not to a specific provider. As a result, PACE employees and specialists under contract are expected to provide as much advance notice as possible of their decision to terminate their relationship with the PACE organization in order to provide sufficient time for the organization to secure a replacement. In addition, the PACE organization and its contractors are expected to provide as much advance notice as possible of a decision to terminate a contract in order to provide for an orderly transition for participants. We are requesting public input on the propriety of establishing a contract requirement to ensure a minimum transition period.

• Right #4—*Access to emergency services.* Each participant has the right to access emergency health care services when and where the need arises without prior authorization by the PACE multidisciplinary team.

In addition to establishing a participant right to emergency services without prior authorization, we have described emergency care, emergency medical condition, urgently needed services and post-stabilization care services previously in the preamble in the section regarding emergency care and in § 460.100, consistent with the CBRR.

• Right #5—*Participation in treatment decisions.* Each participant has the right to fully participate in all decisions related to his or her care. A participant who is unable to fully participate in treatment decisions has the right to designate a representative. Specifically, each participant has the right:

(1) To have all treatment options explained in a culturally competent manner, and to make health care decisions, including the right to refuse treatment, and be informed of the consequences of the decisions.

(2) To have the PACE organization explain advance directives and to establish them, if the participant so desires, in accordance with §§ 489.100 and 489.102 of this chapter.

(3) To be fully informed of his or her health and functional status by the multidisciplinary team.

(4) To participate in the development and implementation of the plan of care.

(5) To request a reassessment by the multidisciplinary team.

(6) To be given reasonable advance notice, in writing, of any transfer to another treatment setting and the justification for the transfer (*i.e.,* due to medical reasons or for the participant's welfare or that of other participants). The PACE organization must document the justification in the participant's medical record.

As noted previously, active involvement by participants and their designated representatives in care planning is fundamental to the PACE model of care. As a result, we have retained the rights in the Protocol related to participant involvement in the development and implementation of the plan of care. We retained the participant's right to be fully informed by the multidisciplinary team of his or her health and functional status. In support of this right, the PACE participant must have, upon written request, access to all records pertaining to herself or himself. Moreover, the team must provide care information in a manner that is responsive to the culturally diverse populations whom they serve. The PACE organization may need to develop strategies for enhancing cultural competence in its staff such as increased use of interpreters, incorporating in-house training programs, recruiting culturally diverse staff or contractors, or establishing relationships with organizations that provide technical assistance regarding cultural aspects of health care.

The Protocol states that a participant has the right to refuse treatment and be informed of the consequences of such refusal. The Protocol also states that PACE participants can establish advance directives and make health care decisions. We restructured these two requirements in order to place greater emphasis on the participant's right to make health care decisions and to clarify that the right to refuse treatment

is a type of health care decision. We have maintained the participant's right to make advance directives but have clarified that within this right the PACE organization is required to fully explain advance directives (in accordance with §§ 489.100 and 489.102 of this chapter) to participants.

We have maintained the requirement that PACE organizations provide reasonable advance notice in writing of any transfer to another part of the program. However, we are soliciting comment on the necessity of specifying a timeframe for participant notification. Given the frailty of the PACE population, some participants may require additional time to prepare for the transition to other parts of the program, while others may require the transfer without delay. We welcome comments on the feasibility of including a specific timeframe that would apply to all participants.

In addition to these specific rights, there are other processes embodied in the PACE model that promote participant involvement in care planning and implementation. For example, the comprehensive assessment that serves as the basis for the plan of care includes participant and caregiver preferences for care and input from participant and caregivers is used by the multidisciplinary team to monitor the effectiveness of the plan of care. Finally, the team is specifically required to develop, review, and reevaluate the plan of care in collaboration with the participant or caregiver to ensure that there is agreement with the plan of care and that participant concerns are addressed.

In support of effective involvement in care planning and communication between participants and providers, we note that the statute provides for a specific sanction if we determine that the PACE organization imposes a physician incentive plan that does not meet statutory requirements (see § 460.40(h)) or prohibits or otherwise restricts a health care practitioner from discussing treatment options with the participant or caregiver (see § 460.40(g)).

• Right #6—*Confidentiality of health information.* Each participant has the right to communicate with health care providers in confidence and to have the confidentiality of his or her individually identifiable health care and other information protected, including information contained in an automated data bank (see § 460.200). Each participant also has the right to review and copy his or her own medical records and request amendments to those records.

Consistent with the CBRR and Medicare+Choice and Medicaid managed care organization requirements, participants have the right to communicate with any member of the multidisciplinary team and contract providers in confidence and to have the confidentiality of their individually identifiable health care information protected.

In addition, the section on maintenance of records and reporting of data (see § 460.200) specifically addresses confidentiality and the safeguarding of health, financial, and other information. It requires PACE organizations to establish written policies and implement procedures to safeguard the privacy of participant information and ensure appropriate use and release of participant information. When the HHS privacy standards required by the Health Insurance Portability & Accountability Act of 1996, Public Law 104–191, are finalized, most plans and providers (including HCFA components and most PACE organizations) will be required to comply with the requirements of that regulation as well.

• Right #7—*Complaints and appeals.* Each participant has the right to a fair and efficient process for resolving differences with the PACE organization, including a rigorous system for internal review by the organization and an independent system of external review. Specifically, each participant has the right:

(1) To be encouraged and assisted to voice complaints to PACE staff and outside representatives of his or her choice, free of any restraint, interference, coercion, discrimination or reprisal by the PACE staff.

(2) To appeal any treatment decision of the PACE organization, its employees, or contractors through the process described in § 460.122.

We have adopted the concepts expressed in the CBRR for both the internal and external appeals processes as described in detail in the following section.

§ 460.116 requires the PACE organization to have written policies and implement procedures to ensure that the staff, the participant, and his or her representative understand these rights. The regulations also require that, at the time of enrollment, staff review the bill of rights with the participant and representative, if any, in a manner which they understand. The PACE organization is expected to assure that information is provided to the physically and mentally disabled, that translator services are available as needed for non-English speaking participants, and that interpreter services and other accommodations (such as TTY connections) are made available to the hearing-impaired.

We have incorporated the requirement that participant rights be posted in a prominent place in the PACE center in English and any other principal language of the community. This allows participants, center staff, and other concerned persons to review the participant's rights at any time. For those participants who speak or read in only a ''non-predominant'' language, the participants should have their rights explained to them in a manner they understand.

§ 460.118 requires the PACE organization to have and implement documented, established procedures to respond to and rectify a violation of a participant's right. This is intended to ensure that the PACE organization will address all violations of participants' rights and not allow problems to continue.

Grievances and Appeals

In accordance with sections 1894(b)(2)(B) and (f)(3) and 1934(b)(2)(B) and (f)(3) of the Act, we have established requirements at §§ 460.120 through 460.124 requiring PACE organizations to establish procedures for grievances and appeals. We have adapted these requirements from Part II, section B of the Protocol. Rather than follow the Protocol's interchangeable use of the terms ''complaint,'' ''grievance,'' and ''appeal,'' we have distinguished between grievances and appeals. Our intent was to delineate between (1) a participant's grievance regarding dissatisfaction with service delivery or the quality of a service furnished and (2) a participant's action with respect to noncoverage of or nonpayment for a service. We believe that such a distinction is needed to clearly establish both a process to address a participant's dissatisfaction with service delivery or quality of care furnished and a process to address the PACE organization's refusal to furnish or pay for a particular service. The grievance process and the appeals process are similar, since both are based on the Protocol, with some minor differences due to the nature of the complaint.

Grievance Process (§ 460.120)

A grievance is defined as a complaint, either written or oral, expressing dissatisfaction with service delivery or the quality of care furnished.

The PACE organization must have a formal written process to evaluate and resolve grievances, whether medical or

non-medical in nature, by PACE participants, their family members, or representatives. Having a formal written process to evaluate and resolve grievances is essential since all personnel (employees and contractors) who have contact with participants should be aware of and understand the basic procedures for receiving and documenting grievances in order to initiate the appropriate process for resolving participant concerns.

We have retained the requirement from the Protocol that all participants must be informed of the grievance process in writing. This information must be provided to participants upon enrollment into the PACE program and at least annually thereafter. We believe it is critical that participants are fully and promptly informed of this process and periodically reminded of their rights, so they may exercise these rights from the beginning of their relationship with the PACE organization.

The grievance process, at a minimum, must include procedures for:

(1) filing a participant's grievance;

(2) documenting the participant's grievance;

(3) responding to and resolving the participant's grievance in a timely manner; and

(4) maintaining confidentiality of the participant's grievance.

The PACE organization's internal procedures should assure that every grievance is handled in a uniform manner and that there is communication between different individuals who are responsible for reviewing or resolving grievances. In addition, the PACE organization must also have appropriate documentation, so the information can be utilized both in the organization's internal quality improvement activities and in HCFA's quality assessment projects. Requiring that grievances be responded to and resolved in a timely manner provides a protection to the participants. It is intended to ensure that the PACE organization addresses all participant concerns and does not allow the problem in service delivery to be unresolved. Finally, at all times, an organization must have procedures governing confidentiality to protect against unauthorized or inadvertent disclosure of information. Participant confidentiality may also prevent reprisal against the participant.

It is critical that the PACE organization continue to provide care to the participant during the grievance process because under the law participants must receive care solely through the PACE organization. Continuing care also encourages participants to continue to voice concerns about service delivery without fear of any reprisal.

The PACE organization must discuss the step, including timeframes for response, that will be taken to resolve the participant's grievance both at the time of the participant's enrollment and when a grievance is filed. This assures the participant that there will be resolution of the issue. In addition, the organization acknowledges the participant's concern, tries to address the problem, and makes any necessary adjustments in service delivery.

The PACE organization must maintain, aggregate, and analyze information on grievance proceedings. This requirement is an integral part of fostering an environment of continuous improvement, and it complements the requirement on internal quality assessment and performance improvement. We expect that, once an organization has a quality improvement system in place, participant grievances will be analyzed evaluated since grievances may be the first clue that a problem exists. By analyzing the number and types of grievances, a PACE organization will be able to develop activities to monitor and improve the grievance resolution process, as well as identify and make improvements or modifications in area of care. This also applies to the appeals process.

PACE Organization's Appeals Process (§ 460.122)

An appeal is defined as participant's action taken with respect to a PACE organization's noncoverage of or nonpayment for a service. The PACE organization must have a formal written appeals process, with specified timeframes for response. We have retained the requirement from the Protocol that all participants must be informed of the appeals process in writing. This information must be provided to participants upon enrollment into the PACE program, at least annually thereafter, and whenever the multidisciplinary team denies a request for services or payment. The appeals process, at a minimum, must include procedures for:

(1) timely preparation and processing of written denials of coverage or payment in accordance with § 460.104(c)(3)

(2) filing a participant's appeal;

(3) documenting the participant's appeal;

(4) appointing an appropriately credentialed and impartial third party that was not in the original action and that does not have a stake in the outcome of the appeal to review the participant's appeal;

(5) responding to and resolving the participant's appeals as expeditiously as the participant's health condition requires, but no later than 30 calendar days after it receives an appeal; and

(6) maintaining confidentiality of the participant's appeals.

The appeals process is very similar to the grievance process. However, we have included the requirement that an objective third party be appointed to review all appeals, so information is reviewed by an individual or group that has no stake or involvement in the decision. This helps to prevent bias in the decision. In addition, we have specified that the PACE organization must respond to participant appeals within 30 days of receipt of an appeal and established a shorter timeframe for expedited appeals. We have not included a provision for a 14-day extension of this 30-day timeframe (as allowed under the Medicare+Choice regulations at 42 CFR 422.590(a)) in recognition of the frailty of the PACE population. We are soliciting comments on both the appropriateness of this timeframe and on the necessity of requiring a specific timeframe.

We have adopted the Protocol requirement that the PACE organization must give the parties involved in the appeal a reasonable opportunity to present evidence related to the dispute in person as well as in writing.

It is critical that the PACE organization continue to furnish care to the participant during the appeal process because under the law participants must receive care solely through the PACE organization. In addition, we have incorporated the Medicaid continuation of benefits provision for all Medicaid participants. Under the continuation of benefits provision, the PACE organization may not terminate or reduce disputed services while an appeal is pending if the Medicaid participant requests that they be continued with the understanding that he or she may be liable for the cost of those services if the appeal is not resolved in his or her favor. It is critical that all other care continue in order to maintain the participant's functional status. The goal of the program is to furnish comprehensive care to the participant and this cannot be accomplished if there is a breakdown in the provision of services.

The PACE organization must have an expedited appeals process for situations in which the participant believes that if the service is not furnished her or his life, health, or ability to regain

maximum function would be jeopardized. This provides for prompt consideration of requests for services if the participant's health might be adversely affected if she or he had to wait for the standard appeals process. As noted above, the goal of the program is to maximize the participant's functioning, and the expedited appeals process ensures that all factors are evaluated so that all necessary services are being furnished and participant health is not compromised. We have added a requirement that the PACE organization must respond to the appeal as expeditiously as the participant's health condition requires, but no later than 72 hours after it receives the appeal. The 72-hour timeframe may be extended by up to 14 calendar days if the participant requests the extension or if the organization justifies to the State administering agency the need for additional information and how the delay is in the interest of the participant. These timeframes for responding to expedited appeals are consistent with the requirements for Medicare+Choice plans in 42 CFR 422.590(d), published June 26, 1998 (63 FR 35110–35111). We recognize that the outcome of pending litigation may compel modification of this requirement. We will amend the requirement if resolution of the litigation makes changes necessary.

The PACE organization must take appropriate action as expeditiously as the health condition of the participant requires if, on appeal, a determination is made in favor of the participant. There may be situations in which the PACE organization has made an incorrect or inaccurate assessment of the participant's needs or condition and has denied a service. In these situations, it is critical that care not be delayed and that the participant continue to receive comprehensive care that maintains her or his functional status.

We have maintained the Protocol requirement that all determinations that are wholly or partially adverse to the participant must be forwarded to HCFA and the State administering agency. We have required that the PACE organization notify HCFA, the State administering agency, and the participant of its actions at the time the decision is made.

Additional Appeal Rights Under Medicare or Medicaid (§ 460.124)

The PACE organization must also inform participants in writing of their additional appeal rights under Medicaid or Medicare managed care (§ 460.124), assist participants in choosing which appeal process to pursue if both are applicable, and then forward the appeal to the appropriate external entity. Participants who are dually eligible for Medicare and Medicaid may utilize either the Medicare or the Medicaid managed care appeal process. In those cases where participants are covered only under one program (Medicare or Medicaid), only the appropriate appeals process would apply.

Subpart H—Quality Assessment and Performance Improvement

We have adopted quality assessment and performance improvement requirements that are consistent with the provisions from Part V of the Protocol. We have also added requirements to prepare PACE organizations for the outcome-based continuous quality improvement (OBCQI) system that is being developed under a HCFA contract by the Center for Health Services and Policy Research (CHSPR) at the University of Colorado.

Sections 1894(e)(3) and 1934(e)(3) of the Act state that under a PACE program agreement, the PACE organization, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE participants.

The CHSPR is developing a core data set that will provide the foundation for OBCQI in PACE. In developing the data set for PACE, CHSPR is examining existing HCFA data instruments such as the Minimum Data Set (a part of the nursing home Resident Assessment Instrument), the Outcome and Assessment Information Set (OASIS, a part of the Medicare home health agency conditions of participation, DataPACE (developed by On Lok, Inc. and used currently by PACE demonstration sites), and the Functional Independence Measure (FIM) items (an assessment data set used in rehabilitation hospitals), for data items which may be pertinent for PACE. This project supports the development of an OBCQI system for PACE and consists of five tracks of activities: (1) Outcome indicator development; (2) outcome measure development; (3) data item and instrument assessment and specification; (4) feasibility and pilot testing of the measures, the data items, and the system; and (5) construction and finalization of a practical OBCQI program for PACE. The data items to be specified will need to be collected at defined time points. In order to have comparable data across the PACE centers, all PACE providers will be required to collect all items in this data set for each of their PACE centers exactly as specified.

In spring of 1999, CHSPR began feasibility testing of the proposed data items and the time point for data collection. Pilot testing activities are scheduled March 2000 and continue through November 2000. Draft final recommendations for the core data items, outcome measures, data collection time points, risk-adjustment methods for the organization-level outcome reports, and the OBCQI implementation plan will be available early in 2001 with the final report completed in the spring of 2001.

The OBCQI system for PACE will be used to assess and improve (where needed) the quality of care provided to PACE participants. In order to have comparable data across the PACE centers, all PACE organizations will be required to collect the items in this data set for each of their PACE centers as specified. If new PACE organizations are investing in data systems, these systems must be flexible enough to incorporate the data items specified as a result of the OBCQI project. HCFA's expectation is that the OBCQI approach resulting from this project will be carefully integrated into, not simply added to or superimposed on, current clinical and administrative practices at the PACE sites. The unique nature of PACE and the health status attributes of PACE participants are being considered in developing the OBCQI system.

HCFA has begun to specify a preliminary classification scheme or framework of outcomes relevant to the PACE program. This taxonomy will be refined over the course of the project to develop an OBCQI system. The initial classification of outcomes includes: functional status, physiologic status and symptom management, cognitive functioning, emotional and mental health status, participant quality of life, caregiver quality of life, satisfaction with care, knowledge and compliance, end of life, and utilization.

The general framework for the PACE OBCQI system consists of two stages. The first stage is outcome analysis which includes data collection, analysis, and outcome reporting. The second stage is outcome enhancement and entails selecting specific outcomes for review, after which plans of action are documented to change or reinforce care behaviors. A key characteristic of OBCQI is the use of outcomes to help focus efforts in individual PACE sites to improve care behaviors. For the purposes of this project an outcome is defined as a participant or caregiver change in health, knowledge, ability, quality of life, outlook, or motivation that occurs over a period of time. Outcomes can be global ones that

pertain to all PACE participants or can be more focused and pertain to specific types of participants such as those diagnosed with dementia. There are both end-result and instrumental outcomes. An end-result outcome is a change in participant or caregiver status in an area that care is or should be intended to directly impact. Attainment of one or more end-result outcomes is the primary purpose of care (*e.g.,* an improvement in skin breakdown when care has or should have been furnished to maintain or enhance skin integrity). An instrumental outcome is a ''facilitating'' outcome that may be important in attaining an end-result outcome, although it is not the primary purpose of care (*e.g.,* participant adherence to a medication regimen). Outcome indicators are constructs or attributes of change in health status that reflect a participant outcome, but are not concerned with the quantification of the outcome. When the outcome indicator is precisely quantified, it results in an outcome measure.

PACE organizations and reviewers will be able to use organization-level outcome reports to compare one PACE organization and its PACE centers to all other PACE organizations and their PACE centers relative to risk-adjusted outcomes. Additionally, a PACE organization or reviewers will be able to track a given organization's outcomes and evaluate/monitor how the outcomes have changed relative to an earlier time period.

PACE organizations and States have opportunities to give input into the development of the outcome measures and the OBCQI system. These opportunities include membership in the project Advisory Committee, participation in the clinical and research technical expert panels, and involvement in piloting the data collection instruments, time points for data collection, and the outcome measures. Additionally, feedback and input from State Medicaid representatives and PACE organizations is sought at the annual PACE policy forum sponsored by the National PACE Association (NPA) in the spring of each year.

General Rule (§ 460.130)

We are requiring the PACE organization to develop, implement, maintain, and evaluate an effective data-driven quality assessment and performance improvement program. It is important that the quality assessment and performance improvement program take into consideration the wide range of services furnished by PACE. Additionally, the program should use data to identify and improve areas of poor performance. The PACE organization must take actions that result in improvements in its performance across the spectrum of care.

Quality Assessment and Performance Improvement Plan (§ 460.132)

The PACE organization must have a written quality assessment and performance improvement plan. Consistent with the protocol, we are requiring PACE organizations to have their quality assessment and performance improvement plan annually reviewed by the PACE governing body and, if necessary, revised. Further, in this section we set forth the minimum requirements for a written plan that specifies how the PACE organization proposes to (1) Identify areas in which to improve or maintain the delivery of services and patient care; (2) develop and implement plans of action to improve or maintain quality of care; and (3) document and disseminate the results of the quality assessment and improvement activities to the PACE staff and subcontractors.

Minimum Requirements for Quality Assessment and Performance Improvement Program (§ 460.134)

The requirement contained in § 460.134 is consistent with the PACE Protocol, but it provides more explicit information about what types of outcomes must be used to monitor quality. The PACE organization's quality assessment and performance improvement program must include, but need not be limited to, the use of objective measures to demonstrate improved performance with regard to:

(1) Service utilization. PACE demonstration programs currently collect utilization data such as inpatient hospitalizations and emergency room visits. This information can be used to evaluate fiscal well-being, as well as evaluate quality of care. A PACE organization can use its own utilization data for its PACE centers to compare with other PACE organizations and their centers across the nation. By comparing utilization data across PACE centers, the PACE organizations, HCFA and State administering agencies can identify PACE centers who appear to have unusually high or low utilization of a particular service. Reviewers will be able to target reviews of PACE centers whose utilization data suggest, for example, that participants may be receiving fewer services than necessary to achieve expected outcomes. The purpose of including utilization data in the PACE organization's quality assessment and performance improvement program is to help the PACE organization ensure that participants receive the appropriate level of care through their PACE center. Additionally, using information regarding utilization of and reasons for emergency care and hospital and nursing home admissions, the PACE organization can identify areas for improvement.

(2) Caregiver and participant satisfaction. Caregiver and participant satisfaction with services is an important element of a quality assessment and performance improvement program. A PACE organization must survey, on an ongoing basis, participants and their caregivers to determine satisfaction with the services furnished and the outcomes achieved. Given the large number of PACE participants who are cognitively impaired and the critical role caregivers play in keeping PACE participants in the community, it is important to survey caregivers about their satisfaction with the program. HCFA expects the PACE organization to use this information to identify opportunities to improve services and caregiver and participant satisfaction. HCFA does not intend, at this point, to prescribe the specific tools for measuring participant and family satisfaction. Since the OBCQI project has not finalized the indicators to measure these issues, it would be unreasonable to request specific data collection for these items at this time. It is the responsibility of the PACE organization to survey the participants and family but HCFA is not specifying the survey tool they must use. The PACE organization will be expected to demonstrate its satisfaction measurement system and how it is used as part of the overall internal quality assessment and performance improvement system. Upon completion of the CHSPR OBCQI project, PACE organizations may be required to collect data on a limited number of specific caregiver and participant satisfaction measures. In developing the measures, we will examine the Consumer Assessments of Health Plans Study Surveys that HCFA is currently using for Medicare managed care plans.

(3) Measures derived from participant assessment data. These measures can be used to determine if individual and organization-level measurable outcomes are achieved compared to a specified previous time period. These measures should encompass the various areas needed to monitor care for PACE participants, including physiologic, functional, cognitive, mental health, social/behavioral, and quality of life

outcomes. At the completion of the PACE OBCQI project, the types of measures will be specified in these areas. In the meantime, PACE organizations should begin to use similar measures in these areas as part of their internal quality improvement programs. For example, PACE organizations should begin to focus their own quality improvement activities on outcomes such as stabilization in ability to bathe, from a baseline period to each follow-up period; improvement in dyspnea from admission into PACE to a follow-up period; improvement in transportation services over a specific time period; and improvement in caregiver stress from participant admission into PACE to a follow-up time period.

(4) Effectiveness and safety of staff-provided and contracted services, including the competency of clinical staff, promptness of service delivery, and achievement of treatment goals and measurable outcomes. For participants to experience the outcomes that the PACE benefit is intended to achieve, staff must demonstrate skills and competencies necessary to facilitate those desired outcomes. The PACE organization is expected to include data-based, criterion-referenced performance measures of staff skills, to utilize these data to ensure that staff maintain skills, and to provide training as new techniques and technologies are introduced and as new staff are hired. Each PACE organization will be expected to demonstrate that it has a system of appropriate complexity for keeping track of the skills and competencies of the staff and for effectively identifying and addressing staff training needs. These data should be an integral part of the PACE organization's internal quality assessment and performance improvement program that provides continuous feedback on staff performance.

(5) Non-clinical areas. The types of outcomes in this area include outcomes related to participants' grievances, transportation services, and meals. For example, if a PACE organization finds a high rate of grievances not resolved, the PACE organization might target its activities to improve the grievance process.

We expect PACE organizations to use the most current clinical practice guidelines and professional standards in the development of outcome measures applicable to the care of PACE participants. Continuous improvement is only possible through the identification and use of current information, techniques, and practices. While HCFA is not imposing any specific standards of practice, this requirement establishes the expectation that the PACE organization will utilize the current standards as a routine part of its daily operations.

We have added a requirement that the PACE organization must meet minimum levels of performance on standardized quality measures that will be established by HCFA and the State administering agency which are specified in the PACE program agreement. For example, HCFA might require all PACE organizations to achieve a 95 percent flu immunization rate for their PACE participants. If a PACE organization fails substantially to meet these specified requirements, the continuation of the PACE program agreement may be conditional on the execution of a corrective action plan, or alternatively, some or all further payments for PACE program services may be withheld until the deficiencies have been corrected. We are not establishing minimum performance standards in this regulation. Rather, we will establish minimum performance standards based on analysis of available data sets that are applicable to PACE participants.

We have added a requirement that the PACE organization take actions to ensure the accuracy and completeness of all data used for outcome monitoring. A data-driven quality assessment and performance improvement program must be based on accurate data. The regulations require that PACE organizations set up mechanisms to check for the accuracy, timely collection, and completeness of all data.

Internal Quality Assessment and Performance Improvement Activities (§ 460.136)

In § 460.136, we require that the PACE organization must use a set of outcome measures to identify areas of good or problematic performance and must take actions targeted at reinforcing or improving care based on these outcome measures.

The PACE organization also must incorporate any actions resulting in performance improvement into its standards of practice for the delivery of care. A method of periodically tracking performance to assure that any improvements are sustained over time must also be incorporated in the program. The PACE organization must use its own experience from its performance improvement program to change care behaviors and to ensure that these behaviors are sustained.

Unlike the Protocol, we are requiring the PACE organization to set priorities for performance improvement, considering the prevalence and severity of identified problems and giving priority to improvement activities that affect clinical outcomes. However, any identified problems that directly or potentially threaten the health and safety of participants must be corrected immediately. Prioritizing areas of improvement is essential to ensure consistency in the quality of care furnished over time. Conditions that may threaten the health and safety of participants must be immediately and directly addressed when they are identified.

Similar to the Protocol, we are requiring the PACE organization to designate an individual to coordinate and oversee implementation of quality assessment and performance improvement activities. The purpose of this requirement is to ensure that the PACE organization designates responsibility for a quality assessment and performance improvement plan and the various activities resulting from this plan. Also, this individual is responsible for ensuring that all team members, PACE staff, and contract providers are aware of the various quality assessment and performance improvement activities.

We have added a requirement that the PACE organization ensure that all team members, PACE staff, and contract providers are involved in the development and implementation of the quality assessment and performance improvement activities and are aware of the results of these activities. The process of service delivery in PACE requires the team to identify participant problems, determine appropriate treatment objectives, select interventions and evaluate outcomes of care on an individual participant basis. The multidisciplinary teams are in a unique position to provide PACE management with structured feedback on the performance of the PACE program and suggest ways in which performance can be improved. Thus, we expect the PACE organization to make full use of the multidisciplinary team and other staff in contributing to the internal quality improvement program.

Consistent with the Protocol, we are requiring the PACE organization to involve PACE participants and caregivers in the quality assessment and performance improvement activities, including providing information about their satisfaction with services. One of the best sources of information about the strengths and weaknesses of a program is from the users of the program. In this case, it is important for PACE programs to get feedback from

both PACE participants and caregivers to help identify areas that need improvement.

Committees With Community Input (§ 460.138)

Similar to the Protocol, we are requiring that the PACE organization develop a committee(s) with community input to (1) evaluate data collected pertaining to quality outcome measures, (2) address the implementation of and results from the quality assessment and performance improvement plan, and (3) provide input related to ethical decision-making including end-of-life issues and implementation of the Patient Self-Determination Act. Through this committee, the PACE organization will be able to receive guidance regarding its quality assessment and performance improvement program and the ethical issues faced by PACE organizations.

Additional Quality Assessment Activities (§ 460.140)

As the final requirement under Quality Assessment and Performance Improvement as set forth in this section, we require that PACE organizations participate in periodic, external quality improvement reporting requirements as may be specified by the HCFA or the State administering agency. Examples of participation in a quality assessment and performance improvement activity include the reporting of data items for outcome measurement purposes, participation in the survey process, and participation in a HCFA-directed national quality improvement project.

Subpart I—Participant Enrollment and Disenrollment

Eligibility To Enroll in a PACE Program (§ 460.150)

In accordance with sections 1894(a)(5) and (c)(1) and 1934(a)(5) and (c)(1) of the Act, we have established § 460.150, to specify the requirements for eligibility to enroll in the PACE program. According to the Protocol, in order to be eligible for enrollment in PACE, an individual must be:

a. At least fifty-five years of age;

b. A resident in the PACE organization's service area;

c. Assessed by the multidisciplinary team; and

d. Certified by the State Medicaid Agency as eligible for nursing home level of care.

With the exception of the requirement to be assessed by the multidisciplinary team, these requirements are also included in the statute.

Sections 1894(c)(2) and 1934(c)(2) of the Act provide that a PACE program eligible must have a health status comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Further, sections 1894(c)(2) and 1934(c)(2) of the Act specify that this determination will be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE organizations on potential PACE program eligible individuals. This provision means that PACE organizations will continue to serve patients who are as frail as those served under the demonstration; this will prevent PACE organizations from selecting enrollees who need less care and whose care is therefore less costly.

We examined some informational data extracted from the PACE Fact Book (Second Edition, 1996, prepared by On Lok, Inc., 1333 Bush Street, San Francisco, California, 94109) which provides a portrait of participants in the eleven fully-capitated demonstration sites as of December 31, 1995. Activities of daily living (ADL) are personal care tasks (bathing, dressing, toileting, transferring, and eating) that a person must be able to perform to be considered independent. A person is considered to have an ADL dependency, and a score of ''1'' is assigned, for each of those 5 tasks for which some or full assistance is needed to perform the task. A similar scale measures dependencies in 8 instrumental activities of daily living (IADL), which are meal preparation, shopping, housework, laundry, heavy chores, money management, taking medications, and transportation. The 2710 participants in these 11 sites at the end of 1995 had an average of 2.8 ADL dependencies (varying by site from 2.3 to 3.8) and an average of 7.5 IADL dependencies (varying from 6.9 to 7.9 by site). Additionally, these participants had an average of 7.9 medical conditions (varying from 4.9 to 11.0 by site) and an average number of 4.5 errors or unanswered questions (varying from 2.0 to 6.4) on the Short Portable Mental Status Questionnaire used to evaluate mental functioning.

The PACE Fact Book acknowledges the difficulty of maintaining a valid and consistent data set in a multisite project with sites scattered across the country. However, there are many reasons why the data would be expected to show differences across sites. Although the targeted population for all the PACE demonstration sites is individuals who meet the nursing facility level of care, the specific criteria used to determine if an individual needs this level of care vary by State. Actual implementation of the PACE program also differs in other ways across sites to reflect the particular community in which the site is located. Furthermore, marketing efforts vary, as do the maturity of the site and particular staffing arrangements. We are convinced that any means of determining whether individuals have a health status comparable to that of participants in the PACE demonstration programs must take into account variances among sites and differences across patients within a site. Therefore, we have concluded that we could not develop a tool that would more adequately determine health status comparable to individuals in the PACE demonstration programs than the current criteria used by States to determine if an individual needs a nursing facility level of care.

In determining how best to implement this requirement, we also considered other safeguards against selective enrollment. Sections 1894(c)(3) and 1934(c)(3) of the Act include a requirement that participants be recertified annually as requiring a nursing facility level of care. Under the demonstration program, the need for a nursing facility level of care was a one-time certification. Thus, under the demonstration, PACE organizations could continue to serve individuals who had a short-term need for a nursing facility level of care but whose condition had shown significant improvement. The law's annual recertification requirement ensures that participants will continue to need a nursing facility level of care.

Additionally, we are implementing a requirement that PACE organizations must notify HCFA and the State administering agency of enrollment denials. HCFA and State administering agencies may analyze this information to detect selective enrollment. Finally, the quality assurance requirements included in these regulations will allow the monitoring of case-mix profiles across sites. While it might be very difficult to identify situations where organizations engage in selective enrollment on an individual participant basis, the improved quality assurance mechanisms will allow the identification and correction of routine instances through the review of organization-level case-mix profiles.

After weighing both the need to maintain State and organization flexibility to develop programs suitable to the communities in which the PACE organizations will operate and the implementation of other safeguards against selective enrollment, we believe

having a health status comparable to the PACE demonstrations is inherently equivalent to needing a nursing facility level of care. We are satisfied that applying the nursing facility level of care requirement in conjunction with the other safeguards discussed will minimize selective enrollment while preserving program flexibility; however, we invite comments with regard to other ways to implement this provision.

Additionally, the statute requires that an individual meet any other eligibility conditions imposed under the PACE program agreement. Although we are aware that under the demonstration some PACE sites have set their minimum age limits higher than 55, we believe the provision of the law allowing site-specific eligibility requirements allows for additional requirements not the modification of the three requirements specified in the law.

We also caution organizations that these site-specific eligibility requirements are not intended to allow programs to discriminate against individuals with problems such as cognitive deficits, disruptive behavior, or substance abuse. Any site-specific eligibility criteria must be specified in the program agreement, and HCFA will not approve criteria that would serve as a way to selectively enroll individuals whose care is anticipated to be less costly or who are thought to be easier to care for.

The eligibility requirement specified in § 450.150(c) incorporates the Protocol provision that at the point of enrollment an individual's condition must be such that his or her health or safety would not be jeopardized by living in a community setting. We recognize that enrollment in the PACE program is not appropriate for everyone who meets the basic eligibility criteria. Determining whether or not an individual's health or safety would be jeopardized by living in the community setting involves assessing the individual's care support network as well as the individual's health condition. As specified in § 460.152(a)(4), this determination is made by the PACE organization when assessing whether the potential participant can be cared for appropriately in this program. Consequently, we have not included the Protocol requirement regarding assessment by the multidisciplinary team in the eligibility criteria. We believe that the intent of this Protocol requirement is preserved through the intake process requirements in § 460.152.

We have reflected in the regulations the statutory provision in sections 1894(i) and 1934(j) of the Act that PACE program eligibility is not contingent upon an individual's eligibility for Medicare or Medicaid.

Enrollment Process (§ 460.152)

We have established § 460.152 to specify the PACE organization's responsibility during the intake process and actions required in the event a potential PACE participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting.

Although we recognize that the intake process must be flexible, we have specified certain steps that must, at a minimum, be included. These are not intended to be sequential steps and may in fact occur concurrently. Potential participants need reliable, accurate information on the PACE delivery system in order to make a rational decision whether to enroll. There is both a legal and an ethical obligation to inform potential participants about how the PACE organization controls and affects the delivery of health care and other services, albeit in full partnership with the participant. The following discussion describes the information that is made available to the potential participant routinely and upon request. One-on-one assistance is provided throughout the pre-enrollment process. In all situations, the information is provided in a culturally competent manner, including providing information in a language understood by the participant.

The most basic disclosure is that all health care services must be received through the PACE organization. Once that disclosure is made and understood by the potential participant, other key disclosures relate to what is included within and what is excluded from the PACE program, what costs would be borne by the participant, how to access emergency services, and how the grievance and appeals processes work. Other information that should be disclosed upon request includes the process that the PACE organization uses to decide that drugs, devices, and procedures are experimental and whether the PACE organization uses a drug formulary.

The uniqueness of the PACE model depends upon the partnership formed between the participant and the multidisciplinary team. Therefore, a potential participant should be made aware of how the team works, who is on it, and what choices exist for participant selection of a primary care physician. The participant must also know how the organization provides access to services not provided directly by the multidisciplinary team, to contractors who furnish specialty services, to health care facilities such as hospitals and nursing homes, and to home health care. Also, participants may request information regarding whether there are financial incentives to providers. Finally, to the extent that board certification and other credentials, clinical protocols and medical practice guidelines, consumer satisfaction survey results, or the results of the organization's most recent Federal or State review are of particular interest to participants, these must be disclosed upon request.

With regard to specific intake tasks, we have deleted the Protocol requirement for a complete assessment by the multidisciplinary team prior to the denial of enrollment based on health and safety issues. We believe that such a determination can generally be made without a complete multidisciplinary team assessment and that this is consistent with actual practice under the PACE demonstration program. As an additional protection against selective enrollment, we have added a requirement that HCFA and the State administering agency must be notified when potential participants are denied enrollment because the PACE organization has determined that their health or safety would be jeopardized in a community setting. Additional wording and organization changes have been made in this section; however, except where otherwise specifically noted, our intent is to clarify, not change, the enrollment process as described in the Protocol.

If a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in the community, we are requiring the PACE organization to inform the individual in writing of the reason for the denial; as appropriate, refer the individual to alternative services; retain supporting documentation of the reason for the determination; and notify HCFA and the State administering agency as well as make the documentation available for review.

Enrollment Agreement (§ 460.154)

While the program agreement will contain the specific enrollment and disenrollment procedures to be followed by the PACE organization, in § 460.154 we are specifying general requirements which must be met by all PACE organizations. The statute is silent as to any general enrollment requirements; however, it provides that the regulations should incorporate, to the extent possible, the requirements applied to the PACE demonstration waiver programs under the PACE Protocol.

Thus, we are adopting the Protocol enrollment and disenrollment provisions with the exceptions noted below.

We have removed the reference to the Member Handbook because we found the distinction between the Member Handbook and the Enrollment Agreement to be confusing. We have defined the minimum information which must be included in the Enrollment Agreement to incorporate those materials which would generally be expected to be included in a Member Handbook. Although PACE organizations may actually utilize a cover sheet to obtain the participant's signature and a ''handbook'' to provide the required information, the cover sheet alone does not constitute the Enrollment Agreement and must be accompanied by the additional minimum information specified when provided to the participant.

Although this is not a change from current practice, we would like to emphasize that an individual who accepts PACE as his/her sole source of services could not then make an election of hospice care under section 1812(d) of the Act and 42 CFR 418.24 or section 1905(o)(2) of the Act. However, hospice-type services are available from the PACE organization since the PACE model of care is designed to furnish services which meet health care needs along a continuum.

We have added a requirement for the Enrollment Agreement to include notification that Medicaid recipients and individuals dually-eligible for Medicare and Medicaid enrolled in PACE are not liable for any premiums, but they may be held liable for any applicable spenddown liability under 42 CFR 435.121 and 435.831 and any amounts due under the post-eligibility treatment of income process under § 460.184.

We also added a requirement for the Enrollment Agreement to include information on the consequences of subsequent enrollment in other optional Medicare or Medicaid programs following disenrollment from PACE. This is intended to ensure that participants are informed in advance of conditions that might apply if they are disenrolled from PACE and elect, for example, to enroll in another prepayment plan.

We have added a requirement that any changes to the information contained in the Enrollment Agreement must be provided to the participant in writing and be fully discussed with the participant and his or her representative or caregiver. We feel it is essential that all participants be aware of any changes in this information in order to protect and exercise their rights.

Other Enrollment Procedures (§ 460.156)

We have established this section to specify the documentation that must be provided to a PACE participant who signs the enrollment agreement. Specifically, a PACE participant must be given a copy of the Enrollment Agreement, a PACE membership card, emergency information to be posted in his or her home identifying the individual as a PACE participant which includes the phone number of the PACE organization, and when applicable, stickers for the PACE participant's Medicare or Medicaid cards (or both) that indicate the individual is a PACE participant and include the phone number of the PACE organization.

In addition, the PACE organization must submit participant information to HCFA and the State administering agency in accordance with established procedures.

We have also included a requirement that, in the event there are changes in the Enrollment Agreement information at any time during the participant's enrollment, the PACE organization must provide to the participant an updated copy of the information to the participant at least 60 days before any change, and explain the changes to the participant and his or her representative or caregiver in a manner they understand.

Effective Date of Enrollment (§ 460.158)

Consistent with the Protocol, we have established this section to specify that a PACE participant's enrollment in the program is effective the first day of the calendar month following the date the PACE organization receives the signed enrollment agreement.

Continuation of Enrollment (§ 460.160)

In this section we have specified that a PACE participant's enrollment continues until death regardless of changes in health status unless the PACE participant voluntarily disenrolls in accordance with § 460.162, or is involuntarily disenrolled in accordance with § 460.164.

We have incorporated the statutory requirement contained in sections 1894(c)(3) and 1934(c)(3) of the Act for an annual recertification of the need for a nursing facility level of care. We believe that the law contemplated that reevaluations would be conducted by the State administering agency for all participants, whether Medicaid eligible or not.

The statute provides that this annual reevaluation may be waived for those individuals for whom the State administering agency determines there is no reasonable expectation of improvement or significant change in condition. As a waiver could not be granted until the first annual recertification is due, a participant for whom this requirement is waived would have been receiving services under the PACE program for at least a year. We feel it is unlikely, especially in view of the age and frailty of PACE participants as a whole, that a person who has not shown significant improvement in the past year would show significant enough improvement in the future to no longer need a nursing facility level of care. The law permits a waiver ''during a period in accordance with regulations'' in those cases where the State administering agency determines no reasonable expectation of improvement. Therefore, we are providing in regulations that such a waiver should be for the life of the participant; the reasons for the waiver must be explicitly documented in the medical record. We recognize that this regulation as drafted does not provide a mechanism for reinitiating the recertification process once a waiver has been granted, and we invite comments on this issue.

Finally, sections 1894(c)(4) and 1934(c)(4) of the Act allow for the continuing, or deemed, eligibility of those individuals who are determined through the annual recertification process to no longer meet the nursing facility level of care requirement if, in the absence of continued coverage under PACE, the individual would reasonably be expected to again meet the nursing facility level of care within the next 6 months. We feel this determination should be made by the State administering agency, which may solicit input from the PACE organization and that the deemed eligibility should continue until the next annual recertification. While it is the State's responsibility to determine the need for nursing facility level of care, the PACE organization has a detailed knowledge of the day-to-day care and service requirements of the individual participants and would, therefore, be better able to predict a participant's reaction to the loss of PACE services. We invite comments on whether this responsibility should be shared or carried out solely by either the State administering agency or the PACE organization. We also invite comments on whether this deemed eligibility should continue for 12 months (until

the next annual recertification is due) or for a shorter period.

Voluntary Disenrollment (§ 460.162)

In accordance with sections 1894(c)(5)(A) and 1934(c)(5)(A) of the Act, this section specifies that a PACE participant may voluntarily disenroll from the program without cause at any time.

Involuntary Disenrollment (§ 460.164)

In accordance with sections 1894(c)(5)(B) and 1934(c)(5)(B) of the Act, we have established this section to specify the conditions under which a PACE participant can be involuntarily disenrolled from the PACE program. The Protocol, in Part III, section D.1, describes various circumstances under which a participant may be involuntarily disenrolled.

The statutory language at sections 1894(c)(5)(B) and 1934(c)(5)(B) of the Act provides that a participant may only be involuntarily disenrolled for nonpayment of premiums (if applicable) on a timely basis or for engaging in disruptive or threatening behavior. We have incorporated the Protocol requirement that a participant may be involuntarily disenrolled if he/she fails to pay or to make satisfactory arrangements to pay any premium due the PACE organization after a 30-day grace period.

We have incorporated the following reasons for involuntary disenrollment from the Protocol:

a. The participant moves out of the PACE program service area or is out of the service area for more than 30 days unless the PACE organization agrees to a longer absence due to extenuating circumstances;

b. The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

We have also added as a reason for involuntary disenrollment that the PACE organization agreement with HCFA and the State administering agency is not renewed or is terminated. In all of these situations the disenrollment is not a subjective determination made by the PACE organization but is necessary due to outside causes. We also incorporated as a reason for involuntary disenrollment the statutory provision regarding the annual recertification of nursing facility level of care.

We did not incorporate the following reasons for disenrollment from the Protocol: the participant refuses to provide accurate financial information, provides false information or illegally transfers assets. As these situations would affect the determination of Medicaid eligibility, we believe they would actually prevent enrollment in the first place. However, if the individual is already enrolled when these situations occur or are discovered, they may affect the participant's payment responsibility and thus lead to either voluntary disenrollment or involuntary disenrollment based on failure to pay. We also did not incorporate, as a reason for disenrollment, a breakdown in the physician and/or team and participant relationship. Since this relationship and the functioning of the multidisciplinary team are critical to the success of the PACE model, we expect that a breakdown in team function would signal a severe problem that needed attention from HCFA and the State administering agency far surpassing a review of an involuntary disenrollment decision.

In revising the Protocol provisions to incorporate the statutory provision regarding disruptive or threatening behavior, we felt the need to balance two concerns: first, to protect participants who are exhibiting difficult behaviors from being ''dumped'' by the PACE organization but secondly to provide a safeguard which allows the organization to disenroll a competent but noncompliant participant whose behavior disrupts the organization's ability to furnish adequate services to that individual for reasons beyond the organization's control. Therefore, after consulting with State agencies, we have defined a person who engages in disruptive or threatening behavior as:

a. A person whose behavior is jeopardizing his/her health or safety or that of others, or

b. A person with decision-making capacity who consistently refuses to comply with his/her individual plan of care or the terms of the Enrollment Agreement.

However, a PACE organization may not involuntarily disenroll a PACE participant on the grounds that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual unless the individual's behavior is jeopardizing his/her health or safety or that of others. The term ''noncompliant behavior'' includes repeated noncompliance with medical advice and repeated failure to keep appointments.

While we believe this definition provides a necessary safeguard, we are certainly not suggesting that a participant should be disenrolled at the first sign of difficulty. We caution organizations to use this authority only as a last resort when all reasonable remedies (which must be documented in the medical record) have been exhausted.

Based on sections 1894(c)(5)(B)(iii) and 1934(c)(5)(B)(iii) of the Act, we specify that proposed involuntary disenrollments are subject to a timely review and final determination prior to the proposed disenrollment becoming effective. This provision further protects the participant from ''dumping'' by the organization and provides for the continuation of services until a final determination is made. The State administering agencies would review all proposed involuntary disenrollments. We also invite comments on whether the regulations should specify a time frame in which the review must be conducted and, if so, what an appropriate timeframe is.

Effective Date of Disenrollment (§ 460.166)

We are requiring that the PACE organization must use the most expedient process allowed for by Medicare and Medicaid procedures as specified in the program agreement while ensuring that the disenrollment date is coordinated between Medicare and Medicaid (for participants who are dually-eligible for both programs) and that reasonable advance notice is given to the participant. We are further requiring that, until such time the enrollment is terminated, PACE participants must continue to use PACE organization services and remain liable for any premiums, and the PACE organization must continue to furnish all needed services.

Reinstatement in Other Medicare and Medicaid Programs (§ 460.168)

We have established this section to prescribe the PACE organization's responsibility to facilitate a PACE participant's reinstatement in other Medicare and Medicaid programs after disenrollment. We are requiring that the PACE organization make appropriate referrals and ensure medical records are made available to new providers in a timely manner. In addition, we are requiring that the PACE organization work with the State administering agency and HCFA to reinstate the participant in other Medicare and Medicaid programs for which the individual is eligible.

Reinstatement in PACE (§ 460.170)

Section 460.170 provides that a previously disenrolled participant may be reinstated in the PACE program. We did not adopt the protocol provision limiting a participant to a one-time-only

reinstatement following a voluntary disenrollment because we believe that frail elderly individuals may experience living arrangement changes that take them in and out of a PACE organization's service area and result in unavoidable disenrollments. We have retained the Protocol provision that a PACE participant can be reinstated in the PACE program with no break in coverage if the reason for the disenrollment was failure to pay the premiums and the PACE participant pays the premium before the effective date of the disenrollment.

Documentation of Disenrollments (§ 460.172)

We have established § 460.172 to specify that a PACE organization must have a procedure in place to document the reasons for all voluntary and involuntary disenrollments; make the documentation available for review by HCFA and the State administering agency; and use the information on voluntary disenrollments in the PACE organization's internal quality assessment and performance improvement program.

Subpart J—Payment

Sections 1894(d) and 1934(d) of the Act require that payment to a PACE organization be based on a capitation amount. The Medicare capitation amount will be based upon the Medicare+Choice payment rates established under section 1853 of the Act. The Medicaid capitation amount is negotiated between the State and the PACE organization.

The following basic principles distinguish the PACE financing model from traditional Medicare and Medicaid reimbursement:

- Obligation for payments is shared by Medicare, Medicaid, and individuals.
- Medicare, Medicaid, and private payments for acute, long-term care, and other services are pooled.
- The capitation rates paid by Medicare and Medicaid are designed to result in cost savings relative to expenditures that would otherwise be paid for a comparable nursing-facility-eligible population not enrolled under the PACE program.
- The PACE organization accepts the capitation payment amounts described in this section as payment in full from Medicare and Medicaid.

Medicare Payment to PACE Organizations (§ 460.180)

Section 1894(d) of the Act requires us to make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled in the same manner and from the same sources as payments are made to a Medicare+Choice organization under section 1853 of the Act. Payments are to be adjusted in the manner described in section 1853(a)(2) or section 1876(a)(1)(E) of the Act; that is, retroactively adjusted to take into account any difference between the actual number of participants and the estimated number of participants to be enrolled in determining the amount of the advance payment.

Consistent with the basic methodology applied to risk-based HMOs, PACE organizations will receive monthly payments based on an interim per capita rate per participant. Under that methodology, separate rates are established for Part A and Part B. The PACE organization receives payments based on each participant's entitlement to Medicare Part A and B. Therefore, if the participant is entitled to Part A benefits, but is not enrolled under Part B, the PACE organization receives only the monthly capitation rate established for Part A. For Medicare Part A-only participants who are also eligible for Medicaid, the State is obligated to pay Medicare Part B premiums under section 1902(a)(10) of the Act. Therefore, PACE organizations should verify at the time of enrollment whether the participant is dually eligible for Medicare and Medicaid and whether the participant has Medicare Part A and Part B. Payment for a participant will begin with the effective date of enrollment (see § 460.158).

Under section 1894(d)(2) of the Act, the capitation amount should be adjusted to take into account the comparative frailty of PACE participants and other factors the Secretary determines to be appropriate. As explained below, a frailty factor and an adjustment factor for PACE participants who have end-stage renal disease (ESRD) will be applied to the appropriate payment rate.

Frailty Factor

Under the PACE demonstration, the Medicare capitation rate for each PACE organization was calculated using HCFA's standard Adjusted Average Per Capita Cost (AAPCC) methodology developed in accordance with the 1982 Tax Equity and Fiscal Responsibility Act to pay risk-based health maintenance organizations for Medicare enrollees. However, instead of using the usual adjustments for age, sex, welfare status, institutional status, employment status, and disability, there is one frailty adjuster of 2.39 for all PACE participants except those diagnosed with ESRD. As of January 1, 1998, instead of using the AAPCC, the Medicare capitation rate paid to PACE demonstration projects is calculated using the Medicare+Choice rates with the frailty adjuster of 2.39.

This frailty factor was developed for the PACE demonstration sites using information gathered from the ''pre-Channeling'' demonstrations serving the nursing-facility-eligible population and information from the cost experience at On Lok, which began receiving Medicare and Medicaid payments in 1983. (The pre-Channeling demonstration targeted the frail elderly and provided case management and community-based services in order to decrease the use of institutional care.) Studies have been done to examine the accuracy of the 2.39 factor. Researchers at the Bigel Institute for Health Policy did a study in 1990 to estimate the per capita costs of the nursing-facility-eligible population in the period 1984–1985. They linked data from the 1984 National Long-Term Care Survey (which collected health and functional status information on Medicare beneficiaries) to Medicare claims. Their cost estimates suggest that the per capita Medicare costs for the nursing-facility-eligible population averaged 2.42 times the average Medicare costs for the overall elderly population.

In 1998, the University of Wisconsin assessed the adequacy of this factor in relation to the Medicare costs experienced by nursing-facility-eligible populations. The authors found significant variation among States in the manner in which nursing-facility-eligibility is determined. The application of these various definitions of nursing-facility-eligible to available survey data indicates that there is a natural clustering of results, despite the apparent difference among definition formats. Marginal cost differences between nursing-facility-eligible and non-nursing-facility-eligible individuals can be explained in part by key variables: age, sex, functional impairment, and the level of recent health service utilization. With no prior risk adjustment, the data suggest that an average frailty factor of about 200 percent is appropriate. However, this factor should be adjusted for the profile of participants at each site. These studies relate to populations that are nursing-facility-eligible and not specifically to PACE. Consequently, we believe that the 2.39 factor used in the demonstration is an appropriate interim payment measure. As discussed later in this section, we are working to develop a risk adjustment methodology that will account for the relative frailty of the PACE population.

End Stage Renal Disease (ESRD) Adjustment

Under the PACE demonstration, PACE programs have been paid in two ways for Medicare ESRD participants. Each month for each ESRD participant, the PACE program is paid the AAPCC Part A and Part B ESRD rate. The rate is not adjusted by the 2.39 frailty factor. Instead, PACE programs receive additional payment each month for the actual cost of services in excess of the AAPCC ESRD payment rate. However, section 1894(d) of the Act does not contemplate payment of actual cost.

An analysis of 1994 Medicare claims data for ESRD patients shows that Medicare expenditures for ESRD patients who are 75 or older are significantly higher than expenditures for all ESRD patients. This finding has been fairly constant over time. The group of ESRD patients who are 75 or over tend to be very frail and in most cases would be considered nursing-facility-eligible. This group of elderly ESRD patients can be used as a proxy for ESRD patients who are nursing-facility-eligible. ESRD patients who are 75 or over have 46 percent higher Part A expenditures relative to all ESRD patients, while their Part B expenditures are 36 percent higher. We have applied this information to calculate adjusters for ESRD patients enrolled in PACE. Thus, the Part A ESRD adjuster will be 1.46 and the Part B ESRD adjuster will be 1.36. We welcome comments on these adjustment factors. As discussed in more detail below, these adjustment factors are established as an interim measure pending development of a risk adjustment methodology.

Risk Adjustment

Section 1853(a)(3) of the Act requires that payment rates to Medicare+Choice plans be risk-adjusted starting January 1, 2000. At the present time HCFA is developing the risk adjustment methodology and evaluating how to apply the methodology to PACE and other HCFA demonstration projects. The Announcement of Calendar Year 2000 Medicare+Choice Payment Rates, published January 15, 1999 on the HCFA website, displays the risk adjustor rates and methodology that will be effective for Medicare+Choice plans starting January 1, 2000. The demographic rate methodology will be phased out, while a risk methodology using health status will be phased in. By 2003, 80 percent of the capitated payments will be based on health status risk adjustors, while 20 percent will be based on the existing AAPCC rate structure. Specific HCFA demonstrations programs and PACE will not implement the new risk adjustor methodology on January 1, 2000, but will have a one-year deferral. This extension is needed to study the applicability and impact of risk adjustment on capitated payments for the frail.

We anticipate using the encounter data and other types of information collected from Medicare+Choice organizations and PACE organizations to conduct research to evaluate risk adjustment payment options for special populations such as PACE participants and examine the possibility of using a hybrid methodology.

We will require initially that each PACE organization submit inpatient hospital encounter data using the UB–92 to HCFA through a fiscal intermediary (FI), similar to the requirements for Medicare+Choice plans. The PACE organizations will need to establish electronic linkages with the designated FIs and may need to modify their contracts with hospitals to ensure that a completed UB–92 for each hospital discharge of a PACE participant is provided by the hospital to the PACE organization. We will subsequently require PACE organizations to submit additional encounter data consistent with the encounter data requirements for Medicare+Choice plans set forth in 42 CFR 422.257, published in the **Federal Register** on June 26, 1998 (63 FR 35092).

In order to develop a frailty adjustor for payment to PACE organizations, we may also collect and analyze data on functional status of PACE participants to profile participants at each PACE site. PACE demonstration projects are participating in the Health Outcomes Survey. PACE organizations may be required to collect this or similar functional data in order to adjust the Medicare+Choice payment rates. Until we develop a specific risk adjustment methodology for PACE, we will continue to adjust PACE rates using the frailty and ESRD adjustors described above. We welcome comments on this issue.

Medicare Secondary Payer (MSP)

We specify the application of MSP provisions because HCFA cannot pay for PACE services to the extent that Medicare is not the primary payer under section 1862(b) of the Act and 42 CFR part 411. We require the PACE organization to identify payers that are primary to Medicare, determine the amounts payable by those payers, and coordinate its benefits to Medicare participants with the benefits of the primary payers.

Under MSP provisions, the PACE organization may charge other individuals or entities for PACE services covered under Medicare for which Medicare is not the primary payer, as follows:

- If a Medicare participant receives from a PACE organization covered services that are also covered under State or Federal workers' compensation, any no-fault insurance, or any liability insurance policy or plan, including a self-insured plan, the PACE organization may charge—
  + The insurance carrier, the employer, or any other entity that is liable for payment for the services under section 1862(b) of the Act and 42 CFR part 411; and
  + The Medicare participant, to the extent that he or she has been paid by the carrier, employer, or entity.
- If Medicare payment is precluded by section 1862(b) of the Act for services that a PACE organization furnished to a Medicare participant who is covered under a group health plan (GHP) or large group health plan (LGHP), the organization may charge the GHP or LGHP for those services and may charge the Medicare participant to the extent that he or she has been paid by the GHP or LGHP for those services.

Medicaid Payment (§ 460.182)

Section 1934(d) of the Act requires a State to make prospective monthly capitated payments for each PACE program participant eligible for medical assistance under the State plan. The capitation payment amount must be specified in the PACE program agreement and be less, taking into account the frailty of PACE participants, than the amount that would otherwise have been paid under the State plan if the individuals were not enrolled in a PACE program.

A national Medicaid rate-setting methodology for PACE has not been established. Rather, each State which elects PACE as a Medicaid State plan option will develop a payment amount based on the cost of comparable services for the State's nursing-facility-eligible population. Generally, the amounts are based on a blend of the cost of nursing home and community-based care for the frail elderly. The monthly capitation payment amount is negotiated between the PACE organization and the State administering agency and can be renegotiated on an annual basis.

As these statutory requirements do not differ from the Protocol requirements regarding Medicaid payments under the PACE demonstration, the regulations mirror the Protocol requirements.

Post-Eligibility Treatment of Income (§ 460.184)

Section 1934(b)(1)(A)(i) of the Act indicates that a PACE organization shall provide, to eligible individuals, all covered items and services without application of deductibles, copayments, coinsurance, or other cost sharing that would otherwise apply under Medicare or Medicaid. Section 1934(i) of the Act permits States to use post-eligibility treatment of income in the same manner as it is applied for individuals receiving services under a waiver under section 1915(c) of the Act.

The post-eligibility treatment of income provision reduces the amount of Medicaid payments to a PACE organization by the amount remaining after specified deductions are made from the income of the PACE participant. The income remaining after these deductions are applied is the amount a participant is liable to pay toward the cost of the PACE services. Therefore, an argument could be made that sections 1934(b) and (i) of the Act are in conflict since under section 1934(i) PACE participants may incur limited liability for part of the cost of their services. However, we have concluded that the type of Medicaid participant liability permitted by section 1934(i) is not cost sharing prohibited by section 1934(b)(1)(A)(I).

Section 1902(a)(17) of the Act permits an individual (or family) who has more income than allowed for Medicaid eligibility to reduce excess income by incurring expenses for medical and/or remedial care to establish Medicaid eligibility. However, this spenddown process is used in establishing Medicaid eligibility rather than being the type of cost sharing prohibited by section 1934(b)(1)(A)(I).

We interpret section 1934(b)(1)(A)(I) to refer to deductibles, copayments, coinsurance or other cost sharing beyond participant liabilities related to Medicaid eligibility. Any other reading of the law would make section 1934(i) merely surplusage which could not be given meaning. Therefore, to give meaning to each of the sections of the Act at issue here, we are providing in section 460.184, which implements section 1934(i), references to 42 CFR 435.726 and 435.735 which lay out the post-eligibility treatment of income and resource requirements which may be applied here in the same manner as applied to individuals receiving home and community-based services.

Conforming Amendments

The BBA also made conforming amendments to sections 1924(a)(5) and 1903(f)(4)(C) of the Act pertaining to eligibility for medical assistance. Section 1924(a)(5) was revised to indicate that special treatment of income and resources for institutionalized spouses in determining eligibility for medical assistance is applied to individuals receiving services under a PACE program under section 1934 or 1894. Further, section 710 of the Omnibus Appropriation Bill (Pub. L. 105–277), enacted October 21, 1998, permits PACE program eligible individuals enrolled in a PACE program under section 1934 of the Act to be eligible for Medicaid under the optional categorically needy eligibility group at section 1902(a)(10(A)(ii)(IV) of the Act. Under this authority, States can determine eligibility for PACE enrollees using institutional rules, including use of the special income level group at section 1902(a)(10)(A)(ii)(IV) of the Act.

PACE Premiums (§ 460.186)

Neither section 1894 nor section 1934 of the Act addresses the premiums a PACE organization can charge a PACE participant. In accordance with sections 1894(f)(2) and 1934(f)(2) of the Act, we have adopted most of the PACE premium requirements from Part VI, section D, of the Protocol into the regulations.

It is important to note that the term ''premiums'' as used in this regulation does not include spenddown liability under 42 CFR 435.121 and 435.831, or post-eligibility treatment of income under § 460.184. This use of the word is more narrow than the way the word is used in the Protocol, where a participant's ''share of cost'' responsibility under Medicaid is referred to as a type of premium. PACE organizations can continue to collect any liability due them under Medicaid spenddown and post-eligibility processes, but that liability is not a premium.

We specify that a participant's monthly premium responsibility depends upon his or her eligibility under Medicare and Medicaid.

The Protocol says that the premium for Medicare-only participants is equal to the Medicaid capitation amount. Nearly all Medicare participants have both Part A and Part B, and the capitation amount that Medicare pays is the sum of both Part A and Part B capitation rates. However, section 1894(a)(1) of the Act permits an individual who is entitled to Medicare benefits under Part A *or* enrolled under Part B to enroll in the PACE program. For those rare persons who are eligible under only one part, the Medicare capitation amount will be only the portion for that part. Such a participant is required to make up the difference, that is, pay an additional premium amount equal to the missing piece of the Medicare capitation amount. We specify the premiums for Medicare-only participants as follows—

- For a participant who is entitled to Medicare Part A and enrolled under Medicare Part B, but is not eligible for Medicaid, the premium equals the Medicaid capitation amount.
- For a participant who is entitled to Medicare Part A, but is not enrolled under Part B and is not eligible for Medicaid, the premium equals the Medicaid capitation amount plus the Medicare Part B capitation rate.
- For a participant who is enrolled only under Medicare Part B and is not eligible for Medicaid, the premium equals the Medicaid capitation amount plus the Medicare Part A capitation rate.

We specify that no premium may be charged to a participant who is dually eligible for both Medicare and Medicaid or one who is only eligible for Medicaid.

Subpart K—Federal/State Monitoring

Monitoring During Trial Period (§ 460.190)

Sections 1894(e)(4)(A) and 1934(e)(4)(A) of the Act provide for annual close oversight during the trial period, which is a PACE organization's first 3 contract years (see sections 1894(a)(9) and 1934(a)(9) of the Act). We have established § 460.190 to address the law's requirements for review during the trial period. During the trial period, HCFA in cooperation with the State administering agency will conduct comprehensive annual reviews of a PACE organization.

In accordance with the law, the review will include an on-site visit to the PACE organization, a comprehensive assessment of the organization's fiscal soundness, a comprehensive assessment of the organization's capacity to furnish all PACE services to all enrolled participants, a detailed analysis of the organization's substantial compliance with all significant requirements of sections 1894 and 1934 and these regulations, and any other elements that HCFA or the State administering agency find necessary.

We anticipate that on-site reviews would be conducted by a survey team that includes an individual who is experienced in providing care to the frail elderly and is knowledgeable about the PACE service delivery system.

Ongoing Monitoring After Trial Period (§ 460.192)

In accordance with paragraph (e)(4)(B) of sections 1894 and 1934 of the Act, we specify that at the conclusion of the trial period, HCFA, in cooperation with the State administering agency, continues to conduct reviews of a PACE program, as appropriate. These reviews will take into account the performance level of the PACE organization with respect to the quality of care provided and compliance of the organization in meeting the PACE program requirements. Such reviews will include an on-site visit at least every two years.

Corrective Action (§ 460.194)

We require the PACE organization to take action to correct deficiencies identified during the reviews. HCFA or the State administering agency will monitor the effectiveness of corrective actions. Failure to correct deficiencies can result in sanctions or terminations in accordance with subpart D.

Disclosure of Review Results (§ 460.196)

In accordance with paragraph (e)(4)(C) of sections 1894 and 1934 of the Act, we specify requirements for disclosing the results of oversight reviews. HCFA and the State administering agency promptly report the results of reviews under §§ 460.190 and 460.192 to the PACE organization, along with any recommendations for changes to the organization's program. The results are made available to the public upon request. In addition, we are requiring that the PACE organization post a notice of the availability of the results of the most recent review and any plans of correction or responses related to the most recent review. The PACE organization must also make the results available for examination in a place readily accessible to participants.

Subpart L—Data Collection, Record Maintenance and Reporting

Maintenance of Records and Reporting of Data (§ 460.200)

In accordance with sections 1894(e)(3)(A) and 1934(e)(3)(A) of the Act, we are requiring PACE organizations to collect data, maintain records and submit reports. We describe data and records to include participant health outcome data, financial books and records, medical records, and personnel records. We require the documents to be accessible to HCFA and the State administering agency upon request and be stored in a manner consistent with the PACE organization's written policies that protects them from loss, destruction, unauthorized use or inappropriate alteration.

We have established several requirements intended to safeguard the privacy of any information that identifies a particular participant. The PACE organization must establish written policies and implement procedures to ensure that information from, or copies of, records are released only to authorized individuals and that original medical records are released only in accordance with Federal or State laws, court orders, or subpoenas. A participant's written consent must be obtained before the release of identifiable information to persons not otherwise authorized to receive it. A participant's written consent may limit the degree of information and the persons to whom information may be released. Participants are guaranteed timely access to review and copy their own medical records and may request amendments to their records. Finally, the PACE organization must abide by all Federal and State laws regarding confidentiality and disclosure of participant mental health and medical records and other health information.

The Protocol does not specify a minimum record retention timeframe. In order to enable adequate oversight and to be consistent with the requirements established for Medicare+Choice plans, we require PACE organizations to retain records for the longest of the following periods: the period specified by State law; six years from the date of the last entry made in the record; or for medical records of disenrolled participants, six years after the date of disenrollment. If any litigation, claim, financial management review, or audit is started before the expiration of the retention period, we are requiring that those records shall be retained until completion of the litigation, or until claims or audit findings involving the records have been resolved and final action taken.

Participant Health Outcomes Data (§ 460.202)

We have modified the requirement in Part VII, section B of the Protocol for data collection and reporting. We are requiring that PACE organizations maintain a health information system that collects, analyzes, integrates, and reports data necessary to measure their performance and to develop their quality assessment and performance improvement programs. After development of HCFA's collection and reporting strategy, PACE organizations will be expected to collect specific data at specified time intervals. We envision that this information system can be used by HCFA, the State administering agency, PACE organizations, participants and their caregivers, researchers, policy makers, and other professionals furnishing care to PACE participants. This system also will provide information to help PACE organizations, participants, and caregivers make better choices about care and help identify organizations' opportunities for continuous improvement in all participant care processes.

Each PACE organization will collect, evaluate, and report the data as part of managing its quality assessment and performance improvement program. These data will assist the PACE organization in its efforts to identify opportunities to improve participant care and outcomes, to evaluate the results of its performance improvement activities, and to share those results with other PACE organizations.

The data set will focus on items such as functional status, health status, cognitive ability, mental health, medication use, nutritional status, health care utilization, participant and caregiver quality of life, and any other measures of participant care that the PACE organization community believes to be useful both for tracking participant care and for identifying opportunities for improvement. The items in the data set will be essential to the PACE organization for purposes of continuous care planning, for the effective and efficient operation of the organization, and for assisting participants and their caregivers in making informed decisions about their care. Thus, accurate and precise data collected at uniform time points (*i.e.,* from a baseline point such as enrollment, return from hospital, etc.) will be essential. Aggregating the data to a level that makes it useful to PACE organizations for internal quality improvement programs is an important benefit of having a central data system that feeds data back to PACE organizations for comparative purposes on a continuous basis. An aggregated data set is also useful in establishing national improvement efforts.

Given that the core data set is still under development and will not be ready for implementation until sometime in the summer of 2000, PACE organizations should be collecting information on their own to feed into their quality assessment and performance improvement activities. PACE organizations may want to collect the items on DataPACE, which was developed by On Lok and contains information on participant demographics, health and functional status, service utilization, and informal

support. This will allow for the continued collection of data elements collected in the demonstration project for comparison between demonstration sites and permanent PACE organizations. However, if PACE organizations are developing computerized information systems, the systems should be flexible enough to be able to replace, in the future, items now in the system with similar items that are developed as a result of the CHSPR project.

Additionally, we have added a requirement that the PACE organization must furnish data and information in the manner and at the time intervals specified by HCFA and the State administering agency, pertaining to its participant care activities. These data will be used to monitor the quality of care provided to PACE participants, including participant outcomes. The items to be collected will be specified in the PACE program agreement and will be subject to the confidentiality requirements specified in § 460.200. Once the core data set is completed, PACE organizations will be required to submit these data to HCFA and/or the State administering agency. Since this data set is under development, HCFA will require PACE organizations, in the meantime, to submit to HCFA and/or the State administering agency a limited amount of information in order to monitor the quality of care furnished to PACE participants. This information will be specified in the PACE program agreement. The required information will include the number of grievances and appeals; rates and reasons for disenrollment; utilization of the adult day health center, home health, acute hospital, nursing home, transitional housing, rehabilitation unit/facility, mental health services, and outpatient drugs; vaccination rates for flu and pneumonia; percent of participants receiving retinal eye exams and dental exams; and the number of participants with a fracture or decubitus during the reporting period.

We also will require each PACE organization to conduct an annual satisfaction survey of its participants and caregivers. The findings will be reported to HCFA and/or the State administering agency and should be used by the PACE organization to identify opportunities for improvement. Finally, as discussed previously, we will require reporting of inpatient and outpatient encounter data and may require reporting of functional data in order to develop a risk adjustment methodology for PACE.

Financial Record Keeping and Reporting Requirements (§ 460.204)

In § 460.204, Financial Record Keeping and Reporting Requirements, we require that a PACE organization must provide HCFA and the State administering agency with accurate financial reports that are prepared using an accrual basis of accounting and verifiable by auditors.

In addition, we are requiring that the PACE organization maintain an accrual accounting record-keeping system that accurately documents all financial transactions, provides an audit trail to source documents, and generates financial statements.

Further, except as stipulated under Medicare principles of reimbursement as set forth in 42 CFR 413, a PACE organization must follow standardized definitions and accounting, statistical, and reporting practices that are widely accepted in the health care industry.

We are also requiring that a PACE organization must permit HCFA and the State administering agency to audit or inspect any books and records of original entry that pertain to any aspect of services performed, reconciliation of participants' benefit liabilities or determination of Medicare and Medicaid amounts payable.

Under the PACE demonstration, HCFA and the PACE organization had a risk-sharing agreement in which HCFA shared in a portion of the organization's losses during the first 3 years of operations. To monitor each organization's costs and the amount of HCFA's liability, HCFA required the organization to submit monthly budgeted versus actual financial reports during the first year and quarterly reports during subsequent years unless the organization's performance indicated a need for more frequent reporting. In addition, organizations were required to submit quarterly cumulative cost reports for risk-sharing determinations. Annually, organizations were required to submit independently certified cost reports for final risk sharing determinations.

The statute does not provide for risk-sharing arrangements between HCFA and PACE organizations. It places the organization at full financial risk for all services. Since risk sharing is no longer a condition of the agreement, the cost and financial reports described above are no longer needed for this purpose.

Financial Statements (§ 460.208)

HCFA, in cooperation with the State administering agency, has the responsibility of assessing fiscal soundness as described in § 460.80.

The financial information required to assess the fiscal soundness of a PACE organization is information from basic financial statements, the balance sheet, statement of revenues and expenses, and sources and uses of funds statement. An organization that has completed its trial period will be required to submit these basic financial statements, annually. An organization that is in the trial period will be required to submit quarterly financial statements in addition to the annual certified financial statements. An organization may use the ''Annual Statement'' (also known as the ''orange blank'') which was developed by the National Association of Insurance Commissioners of Nashville, Tennessee (615–254–6291) for reporting by HMOs.

Sections 1894(e)(3) and (4) and 1934(e)(3) and (4) of the Act require the Secretary and the State administering agency to work in consultation to determine what data and cost and financial reports the PACE organization must submit so these agencies can monitor the cost and effectiveness of a PACE organization and perform necessary reviews.

In § 460.208, we are requiring that, not later than 180 days after the end of the organization's fiscal year, the PACE organization submit a certified financial statement that includes appropriate footnotes. This financial statement must be certified by an independent certified public accountant. At a minimum, the certified financial statement must include a certification statement, a balance sheet, a statement of revenues and expenses, and a source and use of funds statement.

Throughout the entire duration of the trial period, we are requiring that not later than 45 days after the end of each quarter of the organization's fiscal year, a PACE organization must submit a quarterly financial statement, which is not required to be certified by an independent certified public accountant.

At the conclusion of the trial period, HCFA or the State administering agency may require a PACE organization to submit monthly or quarterly financial statements, or both, if HCFA or the State administering agency determines that an organization's performance requires more frequent monitoring and oversight due to concerns about fiscal soundness. These additional reports do not have to be certified by a certified public accountant.

We consulted with representatives from various State organizations that currently service PACE programs under demonstrations. Initial observations indicate that data collection and

financial reporting requirements vary among the State organizations at the present time. It appears that the data collection and financial reports we require in this interim final regulation can also assist the State administering agency in the monitoring and oversight requirements. Of course, States will still have the authority to request any data and reports that they consider to be necessary in implementing PACE. HCFA will continue to consult with State organizations to develop consistency in reporting requirements in order to minimize the reporting burden for PACE organizations. We welcome comments on this issue.

Medical Records (§ 460.210)

The participant's medical record presents a total picture of the care provided. The medical record is a useful tool in diagnosing, treating and caring for the participant. The medical record: (1) Facilitates communication among the various health care professionals providing services to the participant; (2) provides a focal point for coordinating the actions of the multidisciplinary team; (3) provides an accurate picture of the participant's progress in achieving care goals; and (4) provides the team members with data for evaluating and documenting the quality and appropriateness of care delivered. Because care for this population will be provided by a variety of sources (*i.e.,* center employees, contracted personnel, hospital staff, nursing home staff, etc.), it is critical that all information on the participant be documented in the medical record to ensure quality and continuity of care. As a result, we have retained with few modifications the minimum elements specified in the Protocol to be included in the participant's medical record.

To facilitate continuity of care, we are requiring in § 460.210 that the PACE organization maintain a single comprehensive medical record for each participant at the PACE center he or she attends. Participant medical records should be complete, accurately documented, easily retrievable, systematically organized, and available to all staff. We recognize that a PACE organization may have more than one site. However, participant medical records must be located at the site the participant receives services so that staff have access to pertinent information. This requirement also should prevent time lost in obtaining records and facilitate timely review and documentation of the medical record. We have added appropriate language to address this issue.

At a minimum, the participant medical record must include:

- Appropriate identifying information;
- Documentation of all services furnished, including

+ a summary of emergency care and other inpatient or long-term care services (We included the last phrase to ensure that any services furnished to the participant outside the scope of the center's direct care is documented in the medical record. It is critical to the continuity of care that the center staff be informed of all outside services furnished to the participant. Once the participant returns to the center, the course of treatment can be reevaluated and adjusted based on any changes in the participant's status.);

+ Services furnished by employees of the PACE center; and

+ Services furnished by contractors and their reports (This is intended to ensure that anyone who furnishes services to the participant, as either an employee of the PACE organization or under contract, shares the information with the center staff for documentation in the medical record. Again, this requirement is intended to facilitate communication between providers.);

- Multidisciplinary assessments, reassessments, plans of care, and treatment and progress notes that are signed and dated;
- Laboratory, radiological and other test reports (This change clarifies that all tests should be included in the participant medical record.);
- Medication records;
- Hospital discharge summaries, if applicable;
- Reports of contact with informal support (*e.g.,* care giver, legal guardian, or next of kin);
- Enrollment Agreement signed by the participant;
- Physician orders;
- Disenrollment justification, if applicable;
- Advance directives, if applicable (For example, when a participant has executed an advance directive that fact should be prominently displayed. If the PACE organization cannot implement an advance directive as a matter of conscience that fact also should be prominently displayed.);
- A signed release permitting disclosure of personal information; and
- Accident and incident reports. (Accident and incident reports are included because they may be an indicator of changes in the participant's functional status, problems or changes in the participant's home environment, or physical problems with the center or its staff.)

We also require the PACE organization to provide for the prompt transfer of copies of appropriate medical record information between treatment facilities to ensure continuity of care whenever a participant is temporarily or permanently transferred to another facility. Examples of appropriate medical record information include, but are not limited to, such things as the reason for the transfer, the name and phone number of the attending physician, participants' demographics, active diagnosis and treatment plan including current medications and ADL status, special dietary considerations, etc. It is essential that the medical history and plan of care follow the participant. This requirement is intended to ensure communication between providers. We are soliciting comments on whether a specific timeframe for the transfer of participant medical record information should be required.

We have added a requirement for authentication of the medical record to ensure that the appropriate individuals have reviewed and completed the participant's medical records. All entries must be legible, clear, complete, and appropriately authenticated and dated. Authentication must include signatures or a secured computer entry by a unique identifier of the primary author who has reviewed and approved the entry.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed and the terms and substance of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of

the finding and its reasons in the rule issued.

Section 4803(a) of BBA directed us to promulgate these regulations in a timely manner, so that entities may establish and operate ongoing PACE programs under Medicare and Medicaid for periods beginning not later than August 5, 1998. Section 1894(f)(1) of the Act, as added by section 4801 of BBA, and section 1934(f)(1) of the Act, as added by section 4802 of BBA, authorize the issuance of interim final regulations for this purpose. Thus, the BBA expressly provides that we may implement the PACE program without publication of a notice of proposed rulemaking and a period for public comment.

For these reasons, we find notice-and-comment rulemaking procedures both unnecessary and impracticable. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We are providing a 60-day period for public comment.

Generally, we provide a 30-day delay before effectuation of a final rule unless we find good cause to dispense with that delay (5 U.S.C. section 553(d)). For the same reasons applicable to waiver of proposed rulemaking and in order to allow the current PACE demonstration projects the opportunity to apply for PACE organization status as soon as possible after publication of this interim final rule, we find that the 30-day delay is impracticable and not in the public interest. Therefore, we find good cause to waive the 30-day delay in the effective date of the regulation.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of the information collection requirements (ICRs) summarized and discussed below.

A. The following ICRs and Associated Burden Are Subject to the PRA.

Section 460.12 Application Requirements

Section 460.12(a)(1) states that in order for HCFA to determine whether an entity qualifies as a PACE organization, an individual authorized to act for the entity must submit to HCFA a complete application that describes how the entity meets all requirements in this part.

The burden associated with this requirement is the time and effort to compile and submit application information to HCFA. We estimate that 25 entities will apply per year and that each entity will take 151 hours to complete the requirements of this section for a total annual burden of 3,775 hours.

In summary, section 460.12(a)(2) provides that HCFA will only evaluate applications from entities located in States with approved State plan amendments electing PACE as an optional Medicaid benefit. In addition, 460.12(b) states that an application must be accompanied by an assurance from the State administering agency of the State in which the program is located indicating that the State considers the entity to be qualified to be a PACE organization and is willing to enter into a PACE program agreement with the entity.

The burden associated with these requirements is the time and effort for a State to develop its State plan amendment to elect PACE as an optional Medicaid benefit and to write an assurance to HCFA indicating that the State considers the entity to be qualified to be a PACE organization and that the State is willing to enter into a PACE program agreement with the entity. We estimate that 25 States will each take 20 hours to complete these requirements for a total annual burden of 500 hours.

Section 460.30 Program Agreement Requirement

In summary, § 460.30(a) and (b) state that a PACE organization must have an agreement with HCFA and the State administering agency to operate a PACE program under Medicare and Medicaid. Furthermore, the program agreement must be signed by an authorized official of the organization, HCFA, and the State administering agency.

Since HCFA prepares the program agreement, the burden associated with this requirement is the time and effort of officials to review and sign the agreement. We estimate that organization and State officials will take 2 hours per agreement to complete this requirement. There will be approximately 54 agreements for a total annual burden of 108 hours.

Section 460.70 Contracted Services

In summary, § 460.70(b)(1) requires that a PACE organization contract only with entities that meet all applicable Federal and State requirements.

The burden associated with this requirement to demonstrate that a PACE organization has contracted only with appropriate entities is captured by the initial contracts in section 460.12, application requirements. The remaining burden associated with this section is the ongoing time associated with the PACE organizations' verification, and maintenance of the verification documentation, that any new contractors are qualified entities. We estimate that each organization will spend 5 hours verifying the qualifications of new contractors. There will be approximately 54 PACE organizations for a total annual burden of 270 hours.

Section 460.70(d) states that the PACE organization must furnish a copy of each signed contract for inpatient care to HCFA and the State administering agency.

While the requirement to furnish a copy of each signed contract for inpatient care is subject to the PRA, the initial burden associated with this requirement is captured in § 460.12, application requirements. The remaining burden associated with this requirement is the time and effort associated with furnishing a copy of each new or revised contract for inpatient care to HCFA and the State administering agency. We estimate that each PACE organization will take 30 minutes to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 27 hours.

Section 460.72 Physical Environment

Section 460.72(a)(3) states that a PACE organization must establish, implement, and maintain a written plan to ensure that all equipment is maintained in accordance with the manufacturer's recommendations.

The burden associated with this requirement is the time and effort to establish and maintain a written plan to ensure that all equipment is maintained in accordance with the manufacturer's recommendations. While the requirement to ''establish'' a written

plan is subject to the PRA, the burden associated with that requirement is captured in § 460.12, application requirements. We estimate that each PACE organization will take 1 hour to ''maintain'' a written plan. There will be approximately 54 PACE organizations for a total annual burden of 54 hours.

Section 460.72(c)(5) states that at least annually, a PACE organization must actually test, evaluate, and document the effectiveness of its emergency and disaster plans.

The burden associated with this requirement is the time and effort for a PACE organization to document the effectiveness of its emergency and disaster plans. We estimate that each PACE organization will take 30 minutes to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 27 hours.

Section 460.82 Marketing

Section 460.82(c) states that a PACE organization must furnish printed marketing materials to prospective and current participants in English and in any other principal languages of the community, and in braille if necessary.

While the requirement to ''furnish'' these materials is subject to the PRA, the burden associated with that requirement is captured in § 460.82(a), which is discussed below under paragraph F. The remaining burden associated with this requirement is the time and effort for the PACE organization to prepare printed marketing materials to meet special language requirements. We estimate that 54 PACE organizations will each take 2 hours to prepare and update the material on an annual basis for a total of 108 burden hours.

Section 460.82(f) states that a PACE organization must establish, implement, and maintain a documented marketing plan with measurable enrollment objectives and a system for tracking its effectiveness.

While the requirement to ''establish'' a documented plan and a tracking system is subject to the PRA, the burden associated with that requirement is captured in § 460.12, application requirements. The remaining burden associated with this requirement is the time and effort for a PACE organization to update and maintain a marketing plan and a tracking system. We estimate that each PACE organization will take 16 hours on an annual basis to comply with this requirement. There will be approximately 54 PACE organizations for a total annual burden of 864 hours.

Section 460.102 Multidisciplinary Team

Section 460.102(e) states that the PACE organization must establish, implement, and maintain documented internal procedures governing the exchange of information between team members, contractors, and participants and their caregivers.

While the requirement to ''establish'' the documented procedures is subject to the PRA, the burden associated with that requirement is captured in section 460.12, application requirements. The remaining burden associated with this requirement is the time and effort for the PACE organization to update and maintain documented internal procedures governing the exchange of information. We estimate that each PACE organization will take 1 hour on an annual basis to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 54 hours.

Section 460.104 Participant Assessment

Section 460.104(c)(3)(ii) specifies a timeframe for the multidisciplinary team to perform a reassessment and respond to a participant's (or the participant's designated representative) request for a change in services. The team may extend the timeframe in accordance with § 460.104(c)(3)(iii) if they document its need for information and how the delay is in the interest of the participant.

The burden associated with this requirement is the time and effort for the PACE organization to document the reasons for an extension. We estimate that on average there will be approximately 8 participants per organization who request a reassessment and the team determines they need additional time to respond. Therefore, the burden associated with this requirement is (8 participants × 10 minutes) × 54 PACE organizations = 72 annual hours of burden.

Section 460.116 Explanation of Rights

Section 460.116(c) states that the PACE organization must write the participant rights in English and in any other principal language of the community and display the rights in a prominent place in the PACE center.

The burden associated with this requirement is the time and effort for the PACE organization to (1) write the participant rights in English and in any other principal language of the community; and (2) display the rights in a prominent place in the PACE center. While the ICRs listed above are subject to the PRA, we believe that the burden associated with writing the participant rights in English and in any other principal language of the community is exempt from the PRA in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities. However, we do believe the remaining burden associated with updating and displaying these rights is subject to the PRA. We estimate that, on average, each PACE organization will take 8 hours on an annual basis to comply with these requirements. There will be approximately 54 PACE organizations for a total annual burden of 432 hours.

Section 460.120 Grievance Process

Section 460.120(b) states that upon enrollment, and at least annually thereafter, the organization must give a participant written information on the grievance process.

The burden associated with this requirement is the time and effort for the PACE organization to give a participant written information on the grievance process. We estimate that, on average, there will be 160 participants per organization receiving written information on the grievance process. Therefore, the burden associated with the disclosure of the grievance materials is (160 participants × 5 minutes) × 54 PACE organizations = 720 annual hours of burden.

Section 460.120(e) states that the PACE organization must discuss with, and provide to the participant in writing the specific steps, including timeframes for response, that will be taken to resolve the participant's grievance.

The burden associated with this requirement is the time and effort for the PACE organization to discuss with, and provide to the participant in writing the specific steps, including timeframes for response, that will be taken to resolve the participant's grievance. We estimate that, on average, there will be 8 participants per organization receiving the additional written information on the grievance process. Therefore, the burden associated with the disclosure of the additional grievance materials is (8 participants x 10 minutes) × 54 PACE organizations = 72 annual hours of burden.

Section 460.122 PACE Organization's Appeals Process

Section 460.122(b) states that upon enrollment, and at least annually thereafter, and whenever the multidisciplinary team denies a request

for service or payment, the organization must give a participant written information on the appeals process.

The burden associated with this requirement is the time and effort for a PACE organization to give a participant written information on the appeals process upon enrollment and at least annually thereafter. We estimate that, on average, there will be 160 participants per organization receiving written information on the appeals process. Therefore, the burden associated with the disclosure of the material outlining the appeals process is (160 participants × 5 minutes) × 54 PACE organizations = 720 annual hours of burden.

Section 460.122(h) states that for a determination that is wholly or partially adverse to a participant, at the same time the decision is made, the PACE organization must notify HCFA, the State administering agency, and the participant.

The burden associated with this requirement is the time and effort for a PACE organization to notify HCFA, the State administering agency, and the participant that the PACE organization has made an adverse decision. We estimate that, on average, each organization will be required to notify 4 participants in writing of an adverse decision. Therefore, the burden associated with these disclosure requirements is 1 hour per plan, (4 participant notifications × 5 minutes) + (4 HCFA notifications × 5 minutes) + (4 State notifications × 5 minutes) × 54 organizations = 54 annual hours of burden for all organizations.

Section 460.124 Additional Appeal Rights Under Medicare or Medicaid

Section 460.124 states that a PACE organization must inform a participant in writing of his or her appeal rights under Medicare or Medicaid managed care, or both, assist the participant in choosing which to pursue if both are applicable, and forward the appeal to the appropriate external entity.

The burden associated with this requirement is the time and effort for a PACE organization to provide information to a participant in writing of his or her appeal rights under Medicare or Medicaid, or both, to assist the participant in filing Medicare and Medicaid appeals. We estimate that, on average, there will be two participants per organization receiving written information and assistance related to their appeal rights. Therefore, the burden associated with the disclosure of the material outlining appeals rights and assistance is (two participants × 1 hour) × 54 organizations = 108 annual hours of burden.

Section 460.132 Quality Assessment and Performance Improvement Plan

Section 460.132(b) states that the PACE governing body must review the plan annually and revise it, if necessary.

The burden associated with this requirement is the time and effort for a PACE organization to document that the annual review was conducted and to revise the quality assessment and performance improvement plan if necessary. We estimate that each PACE organization will take 8 hours to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 432 hours.

Section 460.152 Enrollment Process

Section 460.152(a)(3) states that the State administering agency must assess the potential participant, including any individual who is not eligible for Medicaid, to ensure that he or she needs the level of care required under the State Medicaid plan for coverage of nursing facility services.

The burden associated with this requirement is the time and effort necessary for each State administering agency to maintain documentation of each potential participant assessment. We estimate that each State administering agency will take 100 hours to complete this requirement. There are approximately 25 State agencies that will be affected by this requirement for a total annual burden of 2,500 hours.

Section 460.152(b)(4) states that if a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting, the PACE organization must notify HCFA and the State administering agency and make the documentation available for review.

The burden associated with this requirement is the time and effort for the PACE organization to notify HCFA and the State administering agency of the action. We estimate that on average 25 applicants per organization will be denied on an annual basis. The burden associated with notifying HCFA and the State agency is estimated to be 5 minutes each, for a total of (25 applicants × 10 minutes) × 54 organizations = 225 total annual hours.

Section 460.156 Other Enrollment Procedures

Section 460.156(a) states that after the participant signs the Enrollment Agreement, the PACE organization must give the participant the following: (1) A copy of the enrollment agreement; (2) a PACE membership card; (3) emergency information to be posted in his or her home identifying the individual as a PACE participant and explaining how to access emergency services; and (4) stickers for the participant's Medicare and Medicaid cards, when applicable, which indicate that he or she is a PACE participant and include the phone number of the PACE organization.

While the ICRs listed above are subject to the PRA, we believe that the burden associated with items 1, 2, and 3 (above) is exempt from the PRA in accordance with 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with these requirements would be incurred by persons in the normal course of their activities.

The burden associated with item 4 (above) is the time and effort for a PACE organization to give stickers for the participant's Medicare and Medicaid cards, when applicable, which indicate that he or she is a PACE participant and include the phone number of the PACE organization. We estimate each PACE organization will take 1 minute per new enrollee to complete this requirement. There will be approximately 54 organizations that each will spend 1 hour a year for a total annual burden of 54 hours.

Section 460.156(b) states that the PACE organization must submit monthly participant information to HCFA and the State administering agency, in accordance with established procedures.

The burden associated with this requirement is the time and effort for the PACE organization to submit monthly participant information to HCFA and the State administering agency. We estimate that each PACE organization will take 12 hours (1 hour per month) to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 648 hours.

Section 460.160 Continuation of Enrollment

In summary, § 460.160(b) states that at least annually, the State administering agency must reevaluate whether a participant needs the level of care required under the State Medicaid plan for coverage of nursing facility services.

The burden associated with this requirement is the time and effort for the State administering agency to document the annual reevaluation. We estimate that each State agency will take 170 hours to complete this requirement. There are approximately 25 State agencies for a total annual burden of 4,250 hours.

Section 460.164 Involuntary Disenrollment

Section 460.164(e) states that before an involuntary disenrollment is effective, the State administering agency must review the documentation and determine in a timely manner that the PACE organization has adequately documented acceptable grounds for disenrollment.

The burden associated with this requirement is the time and effort for the State administering agency to review and determine that the PACE organization has adequately documented acceptable grounds for disenrollment. We estimate that each State agency will be required to review 17 case files on an annual basis, at 1 hour each, for a total of 17 hours. There are approximately 25 State agencies for a total annual burden of 425 hours.

Section 460.190 Monitoring During Trial Period

Section 460.190(a) states that during the trial period, HCFA, in cooperation with the State administering agency, will conduct comprehensive annual reviews of the operations of a PACE organization to ensure compliance with the requirements of these regulations. The burden associated with this requirement is the time and effort necessary to disclose all materials necessary to demonstrate compliance with the regulations. Given that PACE organizations are obligated under the program agreement and the requirements set forth in these regulations to maintain all information that would be requested as part of the comprehensive review, we estimate the burden to be 8 hours per organization to disclose necessary information to demonstrate compliance. Approximately 42 PACE organizations will be in the trial period. The total burden imposed by this section is 336 hours.

Section 460.196 Disclosure of Review Results

Section 460.196(c) states that the PACE organization must post a notice of the availability of the results of the most recent review and any plans of correction or responses related to the most recent review.

The burden associated with this requirement is the time and effort for a PACE organization to post a notice. We estimate that each PACE organization will take 5 minutes to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 4.5 hours.

Section 460.202 Participant Health Outcomes Data

In summary, § 460.202(a) and (b) state that a PACE organization must establish and maintain a health information system that collects, analyzes, integrates, and reports data necessary to measure the organization's performance, including outcomes of care furnished to participants. Also, a PACE organization must furnish data and information pertaining to its provision of participant care in the manner, and at the time intervals, specified by HCFA and the State administering agency.

The burden associated with this requirement is the time and effort for a PACE organization to demonstrate the establishment of a health information system and to furnish data and information pertaining to its provision of participant care to HCFA and the State administering agency. While the requirement to demonstrate the ''establishment'' of a system is subject to the PRA, the burden associated with that requirement is captured in § 460.12, application requirements. Therefore, the remaining burden associated with this section is the requirement to furnish information specified by HCFA and the State administering agency. We estimate that each PACE organization will take 100 hours (50 hours for HCFA compliance + 50 Hours for State compliance) to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 5,400 hours.

Section 460.208 Financial Statements

Section 460.208(a)(1) states that not later than 180 days after the organization's fiscal year ends, a PACE organization must submit a certified financial statement that includes appropriate footnotes.

The burden associated with this requirement is the time and effort for a PACE organization to submit a certified financial statement. We estimate that each PACE organization will take 4 hours to complete this requirement. There will be approximately 54 PACE organizations for a total annual burden of 216 hours.

Section 460.208(c)(1) states that not later than 45 days after the end of each quarter of the organization's fiscal year throughout the trial period, a PACE organization must submit a quarterly financial statement.

The burden associated with this requirement is the time and effort for a PACE organization to submit a quarterly financial statement. We estimate that each PACE organization will take 16 hours (4 hours per quarter) to complete this requirement. There will be approximately 42 PACE organizations that are affected by this trial period requirement for a total annual burden of 672 hours.

B. The following ICRs Are Subject to the PRA. However, the Burden Associated With These Requirements Is Captured in the Application Requirements Described in § 460.12, Application Requirements (Paragraph A, Above)

Section 460.22 Service Area Designation

Section 460.22(a) states that each entity must state in its application the service area it proposes for its program.

Section 460.32 Content and Terms of PACE Program Agreement

Section 460.32 specifies various information that the PACE organization must furnish so that the information can be included in the PACE program agreement.

Section 460.52 Transitional Care During Termination

Section 460.52(a) states that the PACE organization must develop a detailed written plan for phase-down in the event of termination.

Section 460.60 PACE Organizational Structure

Section 460.60(d)(1) and (2) requires the PACE organization to have a current organizational chart showing officials in the organization and relationships to any other organizational entities; the chart for a corporate entity must indicate the organization's relationship to the corporate board and to any parent, affiliate, or subsidiary corporate entities.

Section 460.68 Program integrity.

Section 460.68(c)(2) states that if an applicant seeking approval as a PACE organization believes a waiver regarding direct or indirect interest is warranted, it must include a request for the waiver in its application.

Section 460.80 Fiscal Soundness

Section 460.80(b) states that the organization must have a documented plan in the event of insolvency, approved by HCFA and the State administering agency.

Section 460.80(c) states that a PACE organization must demonstrate that it has arrangements to cover expenses in the event it becomes insolvent.

Section 460.82 Marketing

Section 460.82(b)(2) states that HCFA reviews initial marketing information as

part of an entity's application for approval as a PACE organization, and approval of the application includes approval of marketing information.

Section 460.102 Multidisciplinary Team

Section 460.102(g)(2) states that if an applicant seeking approval as a PACE organization believes a waiver of restrictions on the multidisciplinary team is warranted, it must include a request for the waiver in its application and describe in detail the circumstances supporting the request.

Section 460.104 Participant Reassessment

Section 460.104(c)(3) states that the PACE orgasnization must establish procedures for timely resolution of requests by a participant to initiate, eliminate, or continue a particular service. We will review the procedures as part of the application approval process.

Section 460.118 Violation of Rights

Section 460.118 states that the PACE organization must have established documented procedures to respond to and rectify a violation of a participant's rights.

Section 460.120 Grievance Process

Section 460.120(a) states that a PACE organization must have a formal written process to evaluate and resolve medical and non-medical grievances by participants, their family members, or representatives.

Section 460.122 PACE Organization's Appeals Process

Section 460.122(a) states that the PACE organization must have a formal written appeals process, with specified time frames for response, which may be used by a participant to address noncoverage or nonpayment of a service.

Section 460.132 Quality Assessment and Performance Improvement Plan

Section 460.132(a) requires a PACE organization to have a written quality assessment and performance improvement plan.

Section 460.200 Maintenance of Records and Reporting of Data

Section 460.200(d) states that a PACE organization must establish written policies and procedures to safeguard all data, books, and records against loss, destruction, unauthorized use, or inappropriate alteration.

C. The Following ICRs Are Subject to the PRA. However, the Burden Associated With These Requirements Is Contained in § 460.132(b), Quality Assessment and Performance Improvement Plan (Paragraph A, Above)

Section 460.120 Grievance Process

Section 460.120(f) states that the PACE organization must maintain, aggregate, and analyze information on grievance proceedings. This information must be used in the internal quality assessment and performance improvement program.

Section 460.122 PACE Organization's Appeals Process

Section 460.122(i) states that a PACE organization must maintain, aggregate, and analyze information on appeal proceedings and use this information in the organization's internal quality assessment and performance improvement program.

D. The following ICRs Are Subject to the PRA. However, the Burden Associated With These Requirements Are Contained in §§ 460.202, Participant Health Outcomes Data, and Statistical Reports, and 460.208, Financial Statements (Paragraph A, Above)

Section 460.200 Maintenance of Records and Reporting of Data

Section 460.200(a) states that a PACE organization must collect data, maintain records, and submit reports as required by HCFA and the State administering agency.

Section 460.200(c) states that a PACE organization must submit to HCFA and the State administering agency all reports that HCFA and the State administering agency require to monitor the operation, cost, quality, and effectiveness of the program and establish payment rates.

E. The following ICRs Are Subject to the PRA. However, the Burden Associated With These Requirements Is Contained in § 460.208, Financial Statements (Paragraph A, Above).

Section 460.204 Financial Recordkeeping and Reporting Requirements

Section 460.204(a) states that a PACE organization must provide HCFA and the State administering agency with accurate financial reports.

F. The Following ICRs Are Subject to the PRA. However, We Believe That the Burden Associated With These ICRs Is Exempt From the PRA in Accordance With 5 CFR 1320.3(b)(2) Because the Time, Effort, and Financial Resources Necessary To Comply With These Requirements Would Be Incurred by Persons in the Normal Course of Their Activities. We Are Soliciting Comments on This Determination and Request Any Data on the Additional Burdens That May Be Imposed by These Requirements.

Section 460.52 Transitional Care During Termination

Section 460.52(b) states that an entity whose PACE program agreement is terminated must provide assistance to each participant in obtaining necessary transitional care through appropriate referrals and making the participant's medical records available to new providers.

Section 460.70 Contracted Services

Section 460.70(a) states that the PACE organization must have a written contract with each outside organization, agency, or individual that furnishes administrative or care-related services not furnished directly by the PACE organization except for emergency services as described in section 460.100.

Section 460.70(c) states that a list of contractors must be on file at the PACE center and a copy must be provided to anyone upon request.

Section 460.72 Physical Environment

Section 460.72(c)(1) states that the PACE organization must establish, implement, and maintain documented procedures to manage medical and nonmedical emergencies and disasters that are likely to threaten the health or safety of the participants, staff or the public.

Section 460.72(c)(4) states that the organization must have a documented plan to obtain emergency medical assistance from sources outside the center when needed.

Section 460.74 Infection Control

Section 460.74(b) states that the PACE organization must establish, implement, and maintain a documented infection control plan.

Section 460.82 Marketing

Section 460.82(a) states that a PACE organization must inform the public about its program and give prospective participants the following written information: an adequate description of the PACE organization's enrollment and disenrollment policies and requirements; PACE enrollment procedures; description of benefits and services; premiums; and other information necessary for prospective

participants to make an informed decision about enrollment.

Section 460.82(d) states that marketing materials must inform a potential participant that he or she must receive all needed health care, including primary care and specialist physician services (other than emergency services), from the PACE organization or from an entity authorized by the PACE organization. All marketing materials must state clearly that PACE participants may be fully and personally liable for the costs of unauthorized or out-of-PACE program agreement services.

Section 460.98 Service Delivery

Section 460.98(a) states that a PACE organization must establish and implement a written plan to provide care that meets the needs of each participant in all care settings 24 hours a day, every day of the year.

Section 460.100 Emergency Care

Section 460.100(a) states that a PACE organization must establish and maintain a written plan to handle emergency care.

Section 460.102 Multidisciplinary Team

In summary, § 460.102(d) states that the multidisciplinary team is responsible for the initial assessment, periodic reassessments, plan of care, and coordination of 24 hour care delivery. Each team member must regularly inform the multidisciplinary team of the medical, functional, and psychosocial condition of each participant; and document changes in a participant's condition in the participant's medical record.

Section 460.104 Participant Assessment

In summary, § 460.104 states that the multidisciplinary team must explain why it denys a participant's request for services, inform participants of additional appeal processes available, and document all assessment and reassessment information in the participant's medical record.

Section 460.106 Plan of Care

Section 460.106(f) states that the team must document the plan of care, and any changes made to it, in the participant's medical record.

Section 460.110 Bill of Rights

Section 460.110(a) states that a PACE organization must have a written participant bill of rights designed to protect and promote the rights of each participant.

Section 460.110(b) states that, upon enrollment, the organization must inform a participant in writing of her or his rights and responsibilities, and all rules and regulations governing participation.

Section 460.112 Specific Rights to Which a Participant Is Entitled

Section 460.112(b)(1) states that a participant has the right to be fully informed in writing of the services available from the PACE organization.

Section 460.112(b)(2) states that a participant has the right to have the enrollment agreement fully explained in a manner understood by the participant.

Section 460.112(e)(3) states that a participant has the right to be fully informed of his or her health and functional status by the multidisciplinary team and to participate in the development and implementation of the plan of care.

Section 460.112(e)(2) states that a participant has the right to have the PACE organization explain advance directives and to establish them, if the participant so desires.

Section 460.112(e)(6) states that a participant has the right to be given reasonable advance notice, in writing, of any transfer to another treatment setting, and the justification for it, due to medical reasons or for the participant's welfare, or that of other participants. The PACE organization must document the justification in the participant's medical record.

Section 460.116 Explanation of Rights

Section 460.116(a) states that a PACE organization must have written policies and implement procedures to ensure that the participant, his or her representative, if any, and staff understand these rights.

Section 460.116(b) states that upon enrollment, the staff must fully explain the rights to the participant and his or her representative, if any, in a manner understood by the participant.

Section 460.122 PACE Organization's Appeals Process

Section 460.122(d) states that a PACE organization must give all parties involved in the appeal appropriate written notification and a reasonable opportunity to present evidence related to the dispute in person, as well as in writing.

Section 460.152 Enrollment Process

Section 460.152(a)(1) requires that at a minimum, the intake process must include the following steps: the PACE staff must explain to the potential participant and his or her representative or caregiver: the PACE program; the requirement that the PACE organization is the participant's sole service provider; monthly premiums, if any; and any Medicaid spenddown obligations.

Section 460.152(a)(2) states that the potential participant must sign a release to allow the PACE organization to obtain his or her medical and financial information and eligibility status for Medicare and Medicaid.

Section 460.152(b)(1) states that if a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting, the PACE organization must notify the individual in writing of the reason for denial.

Section 460.152(b)(2) states that if a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting, the PACE organization must refer the individual to alternative services, as appropriate.

Section 460.152(b)(3) states that if a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting, the PACE organization must maintain supporting documentation of the reason for the determination.

Section 460.154 Enrollment Agreement

In summary, § 460.154 states that if the potential participant meets the eligibility requirements and wants to enroll, he or she must sign an enrollment agreement in accordance with the requirements in this section.

Section 460.156 Other Enrollment Procedures

Section 460.156(c) states that if there are changes in the enrollment agreement information at any time during the participant's enrollment, the PACE organization must give an updated copy of the information to the participant; and explain the changes to the participant and his or her representative or caregiver in a manner they understand.

§ 460.164 Involuntary Disenrollment

Section 460.164(c) states that if a PACE organization proposes to disenroll a participant who is disruptive or threatening, the organization must document in the participant's medical record the reasons for proposing to disenroll the participant; and all efforts to remedy the situation.

Section 460.168 Reinstatement in Other Medicare and Medicaid Programs

Section 460.168(a) states that in order to facilitate a participant's reinstatement in other Medicare and Medicaid programs after disenrollment, the PACE organization must make appropriate referrals and ensure medical records are made available to new providers in a timely manner.

Section 460.172 Documentation of Disenrollment

Section 460.172(a) states that a PACE organization must have a procedure in place to document the reasons for all voluntary and involuntary disenrollments.

Section 460.200 Maintenance of Records and Reporting of Data

Section 460.200(e) states that a PACE organization must maintain the confidentiality of any information that identifies a particular participant; establish and implement procedures that govern the use and release of a participant's information; and obtain a participant's consent before releasing personal information that is not required by law to be released. Section 460.200(f)(1) states that a PACE organization must retain records for the longest of the following periods: the period of time specified in State law; six years from the last entry date; or for medical records of disenrolled participants, six years after the date of disenrollment.

Section 460.204 Financial Recordkeeping and Reporting Requirements

Section 460.204(b) states that a PACE organization must maintain an accrual accounting recordkeeping system.

Section 460.210 Medical Records

Section 460.210(a) states that a PACE organization must maintain a single, comprehensive medical record for each participant, in accordance with accepted professional standards.

Section 460.210(c) states that a the organization must promptly transfer copies of medical record information between treatment facilities.

Section 460.210(d) states that all entries must be legible, clear, complete, and appropriately authenticated and dated. Authentication must include signatures or a secured computer entry by a unique identifier of the primary author who has reviewed and approved the entry.

G. We Believe the Following Requirements Are Not Subject to the PRA in Accordance With 5 CFR 1320.3(c)(4) Since They Do Not Require Information From Ten or More Entities on an Annual Basis. We Are Soliciting Comments on This Determination and Request Any Data on the Additional Burdens That May Be Imposed by These Requirements.

Section 460.20 Special Consideration

Section 460.20(b) states that an application from an entity seeking special consideration must include documentation of those formal activities.

Section 460.60 PACE Organizational Structure

Section 460.60(d)(3) states that A PACE organization planning a change in organizational structure must notify HCFA and the State administering agency, in writing, at least 60 days before the change takes effect.

Section 460.82 Marketing

Section 460.82(b)(3) states that once a PACE organization is under a PACE program agreement, any revisions to existing marketing information and new information are subject to the following: HCFA approves or disapproves marketing information within 45 days after receipt from the organization.

H. In Accordance With 5 CFR 1320.4(a)(2), We Believe the Following ICRs Are Exempt From the PRA Since It Is in Response to an Administrative Action, Investigation, or Audit Against Specific Individuals or Entities.

Section 460.68 Program Integrity

Section 460.68(d) states that a PACE organization must have a formal process in place to gather information related to paragraphs (a) and (b) of this section, and must be able to respond in writing to a request for information from HCFA within a reasonable amount of time.

Section 460.172 Documentation of Disenrollment

Section 460.172(b) states that a PACE organization must make documentation available for review by HCFA and the State administering agency.

Section 460.192 Ongoing Monitoring After Trial Period

Section 460.192(a) states that at the conclusion of the trial period, HCFA, in cooperation with the State administering agency, continues to conduct reviews of a PACE organization, as appropriate, taking into account the performance level of the organization with respect to the quality of care provided and compliance of the organization with all requirements of this part.

Section 460.194 Corrective Action

Section 460.194(a) states that a PACE organization must take action to correct deficiencies identified during reviews.

Section 460.200 Maintenance of Records and Reporting of Data

Section 460.200(f)(2) states that if litigation, a claim, a financial management review, or an audit arising from the operation of the PACE program is started before the expiration of the retention period, specified in paragraph (f)(1) of this section, the PACE organization must retain the records until the completion of the litigation, or resolution of the claims or audit findings.

Section 460.204 Financial Recordkeeping and Reporting Requirements

Section 460.204(d) states that a PACE organization must permit HCFA and the State administering agency to audit or inspect any books and records of original entry that pertain to the following: any aspect of services performed; reconciliation of participant's benefit liabilities; and/or determination of Medicare and Medicaid amounts payable.

Section 460.208 Financial Statements

Section 460.208(c)(2) states that if HCFA or the State administering agency determines that an organization's performance requires more frequent monitoring and oversight due to concerns about fiscal soundness, HCFA or the State administering agency may require a PACE organization to submit monthly or quarterly financial statements, or both.

We have submitted a copy of this interim final with comment rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke, HCFA–1903–IFC, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive

Office Building, Washington, DC 20503, Attn: Allison Eydt, HCFA Desk Officer.

VI. Regulatory Impact Statement

We have examined the impacts of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and government agencies. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $5 million or less annually. For purposes of the RFA, all PACE providers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Section 1102(b) of the Social Security Act, (the Act) requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. This rule will not affect a significant number of small rural hospitals.

This interim final rule will affect a very limited number of small non-profit entities that are operating, or seek to operate, a PACE program. We are authorized to approve no more than 40 such programs as of August 5, 1997, and the ceiling increases by an additional 20 each year as of each succeeding August 5th (*e.g.,* we can approve no more than 60 by August 5, 1998 and no more than 80 by August 5, 1999). The rule will indirectly affect Medicare beneficiaries and Medicaid recipients who could qualify for a PACE program and who might wish to enroll in one in their geographic area, because it will affect the availability of those programs. A typical PACE program maintains an enrollment of about 200–300 individuals.

Non-profit entities that wish to receive Medicare and Medicaid payment for their PACE services must comply with the requirements in this rule. Due to the all-inclusive nature of the services and the concomitant expense of providing such care, entities that do not qualify for Medicare and Medicaid funding are unlikely to be financially viable.

The requirements contained in this rule are largely similar to the requirements that have been applicable to the existing PACE demonstration project sites through the Protocol (described in section I.C of this document). Other entities that have contemplated or already have started developing PACE programs have been aware of those requirements and would have designed their potential programs to comply with them. Because the basic effect of this rule is to codify prevailing industry standards, its impact is not significant.

While we do not have data on which to base an estimate of overall costs or savings to the Medicare and Medicaid programs, we believe that any incremental difference would be so small as to be negligible. PACE services substitute for services that would otherwise be covered, and payment rates are adjusted so that the total payment level is less than the projected payment that would have been made if the participants were not enrolled in PACE. Thus, the overall result should be a slight savings for this small population.

If this rule were not issued, PACE programs could not be approved as ongoing programs under Medicare or Medicaid. Sections 4801 and 4802 of BBA require us to promulgate regulations to carry out those sections and approve PACE programs. Section 4803(d) of BBA specifies that the PACE demonstration authority remains in effect until the effective date of these regulations, and a transition period from demonstration status to ongoing status begins on that date.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Federalism

Under Executive Order 13132, this regulation will not significantly affect the States beyond what is required and provided for under the BBA. It follows the intent and letter of the law and does not usurp State authority beyond what the BBA requires. This regulation describes the processes that must be undertaken by HCFA, the States, and PACE organizations in order to implement the PACE program.

As noted previously, sections 4801 and 4802 of the BBA clearly describe a cooperative relationship between the Secretary and the States in the development, implementation, and administration of the PACE program. The following are some examples of areas in which we engaged in partnership with States to establish policy and procedures:

1. Establishing procedures for entering into, extending, and terminating PACE agreements—1894(e)(1)(A) and 1934(e)(1)(A).

2. Establishing procedures for excluding service areas already covered under other PACE provider agreements in order to avoid unnecessary duplication of services and also to avoid impairing the financial and service viability of the existing program—1894(e)(2)(B) and 1934(e)(2)(B).

3. Establishing procedure for the PACE provider to make available PACE program data—1894(e)(3)(A)(i)(III) and 1934(e)(2)(A)(i)(III).

4. In conjunction with the PACE provider, developing and implementing health status and quality of life outcome measures—1894(e)(3)(B) and 1934 (e)(3)(B).

5. The statute requires the Secretary and State to conduct a comprehensive annual review—1894(e)(4)(A) and 1934(e)(4)(A).

6. Establishing the frequency of the on-sight review—1894(e)(4)(B) and 1934(e)(4)(B).

7. Establishing a mechanism for communicating of the Secretary's findings and State action when a PACE provider is failing to comply with Federal requirements; i.e., enforcement authority—1894(e)(6)(A) and 1934(e)(6)(A).

8. Establishing the entity responsible for the annual eligibility recertification—1894(c)(3) and 1934(c)(3); and continuation of eligibility requirements—1894(c)(4) and 1934(c)(4).

For this reason, we obtained State input in the early stages of policy development through conference calls with State Medicaid Agency representatives. The BBA requires the States to designate the agency of the State responsible for the administration of the PACE program. Although the State may designate the State Medicaid Agency to administer the PACE program, another agency may be named. The 8 agencies that volunteered to participate in these discussions represented a balanced view of States;

some with PACE demonstration site experience and some who were not yet involved with PACE, but were interested in providing input to establish a new long term care optional benefit. The calls were very productive in understanding the variety of State concerns inherent in implementing a new program. In addition, in order to formulate processes to operationalize the PACE program, we have maintained ties with State representatives through monthly conference calls to obtain information on a variety of topics including the applications review and approval process, data collection needs, and enrollment/disenrollment issues.

We are committed to continuing this dialogue with States after publication of the regulation to ensure this cooperative atmosphere continues as we implement the PACE program and transition the current PACE demonstration sites to full provider status. We expect that States would take responsibility for site selection and participate in provider approval and ongoing monitoring activities. States may also determine how many sites to authorize and how many participants each site may serve. In recognition of the unique relationship between the Secretary and the States for the PACE program, we have directed potential PACE organizations to first contact their State administering agency to verify that the State has elected PACE as an optional benefit under its State Medicaid Plan, determine whether the State has established additional requirements for PACE organizations, and obtain technical assistance.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 460

Aged, Health Incorporation by reference, Medicare, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 462

Grant programs-health, Health care, Health professions, Peer Review Organizations (PRO).

42 CFR Part 466

Grant programs-health, Health care, Health facilities, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR Part 473

Administrative practice and procedure, Health care, Health professions, Peer Review Organizations (PRO), Reporting and recordkeeping requirements.

42 CFR Part 476

Health care, Health professional, Health record, Peer Review Organizations (PRO), Penalties, Privacy, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 42 CFR Chapter IV is amended as follows:

SUBCHAPTER D [Redesignated]

1. Subchapter D is redesignated as subchapter F; a new subchapter D is added and reserved; and parts 462, 466, 473, and 476 are redesignated as parts 475, 476, 478 and 480, respectively.

SUBCHAPTER E [Redesignated]

2. Subchapter E is redesignated as Subchapter G.

3. A new subchapter E, consisting of part 460 is added to read as follows:

SUBCHAPTER E—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

PART 460—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

Subpart A—Basis, Scope, and Definitions

Sec.
460.2 Basis.
460.4 Scope and purpose.
460.6 Definitions.

Subpart B—PACE Organization Application and Evaluation

460.10 Purpose.
460.12 Application requirements.
460.14 Priority consideration.
460.16 Special consideration.
460.18 HCFA evaluation of applications.
460.20 Notice of HCFA determination.
460.22 Service area designation.
460.24 Limit on number of PACE program agreements.

Subpart C—PACE Program Agreement

460.30 Program agreement requirement.
460.32 Content and terms of PACE program agreement.
460.34 Duration of PACE program agreement.

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Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395).

Subpart A—Basis, Scope, and Definitions

§ 460.2 Basis

This part implements sections 1894, 1905(a), and 1934 of the Act, which authorize the following:

(a) Medicare payments to, and coverage of benefits under, PACE.

(b) The establishment of PACE as a State option under Medicaid to provide for Medicaid payments to, and coverage of benefits under, PACE.

§ 460.4 Scope and purpose.

(a) *General.* This part sets forth the following:

(1) The requirements that an entity must meet to be approved as a PACE organization that operates a PACE program under Medicare and Medicaid.

(2) How individuals may qualify to enroll in a PACE program.

(3) How Medicare and Medicaid payments will be made for PACE services.

(4) Provisions for Federal and State monitoring of PACE programs.

(5) Procedures for sanctions and terminations.

(b) *Program purpose.* PACE provides pre-paid, capitated, comprehensive health care services designed to meet the following objectives:

(1) Enhance the quality of life and autonomy for frail, older adults.

(2) Maximize dignity of, and respect for, older adults.

(3) Enable frail, older adults to live in the community as long as medically and socially feasible.

(4) Preserve and support the older adult's family unit.

§ 460.6 Definitions.

As used in this part, unless the context indicates otherwise, the following definitions apply:

Contract year means the term of a PACE program agreement, which is a calendar year, except that a PACE organization's initial contract year may be from 12 to 23 months, as determined by HCFA.

Medicare beneficiary means an individual who is entitled to Medicare Part A benefits or enrolled under Medicare Part B, or both.

Medicaid participant means an individual determined eligible for Medicaid who is enrolled in a PACE program.

Medicare participant means a Medicare beneficiary who is enrolled in a PACE program.

PACE stands for programs of all-inclusive care for the elderly.

PACE center means a facility operated by a PACE organization where primary care is furnished to participants.

PACE organization means an entity that has in effect a PACE program agreement to operate a PACE program under this part.

PACE program agreement means an agreement between a PACE organization, HCFA, and the State administering agency for the operation of a PACE program.

Participant means an individual who is enrolled in a PACE program.

Services includes both items and services.

State administering agency means the State agency responsible for administering the PACE program agreement.

Trial period means the first 3 contract years in which a PACE organization operates under a PACE program agreement, including any contract year during which the entity operated under a PACE demonstration waiver program.

Subpart B—PACE Organization Application and Evaluation

§ 460.10 Purpose.

This subpart sets forth application requirements for an entity that seeks approval from HCFA as a PACE organization.

§ 460.12 Application requirements.

(a) *General.* (1) An individual authorized to act for the entity must submit to HCFA a complete application that describes how the entity meets all requirements in this part.

(2) HCFA evaluates only complete applications from entities located in States with approved State plan amendments electing PACE as an optional Medicaid benefit.

(3) HCFA accepts applications from entities that seek approval as PACE organizations beginning on February 22, 2000 except for the following:

(i) Beginning on November 24, 1999, HCFA accepts applications from entities that meet the requirements for priority consideration in processing of applications, as provided in § 460.14.

(ii) Beginning on January 10, 2000, HCFA accepts applications from entities that meet the requirements for special consideration in processing applications, as provided in § 460.16.

(b) *State assurance.* An entity's application must be accompanied by an assurance from the State administering agency of the State in which the program is located indicating that the State—

(1) Considers the entity to be qualified to be a PACE organization; and

(2) Is willing to enter into a PACE program agreement with the entity.

§ 460.14 Priority consideration.

Until August 5, 2000, HCFA gives priority consideration in processing applications for PACE organization status to an entity that meets either of the following criteria:

(a) Is operating under PACE demonstration waivers under one of the following authorities:

(1) Section 603(c) of the Social Security Amendments of 1983, as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(2) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986.

(b) Has applied to operate under a PACE demonstration under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 as of May 1, 1997.

§ 460.16 Special consideration.

Until August 5, 2000, HCFA gives special consideration in processing applications to an entity that meets the following conditions:

(a) Indicated, by May 1, 1997, a specific intent to become a PACE organization through formal activities.

(b) Includes documentation of its formal activities.

§ 460.18 HCFA evaluation of applications.

HCFA evaluates an application for approval as a PACE organization on the basis of the following information:

(a) Information contained in the application.

(b) Information obtained through onsite visits conducted by HCFA or the State administering agency.

(c) Information obtained by the State administering agency.

§ 460.20 Notice of HCFA determination.

(a) *Time limit for notification of determination.* Within 90 days after an

entity submits a complete application to HCFA, HCFA takes one of the following actions:

(1) Approves the application.

(2) Denies the application and notifies the entity in writing of the basis for the denial and the process for requesting reconsideration of the denial.

(3) Requests additional information needed to make a final determination.

(b) *Additional information requested.* If HCFA requests from an entity additional information needed to make a final determination, within 90 days after HCFA receives all requested information from the entity, HCFA takes one of the following actions:

(1) Approves the application.

(2) Denies the application and notifies the entity in writing of the basis for the denial and the process for requesting reconsideration of the denial.

(c) *Deemed approval.* An application is deemed approved if HCFA fails to act on the application within 90 days after one of the following dates:

(1) The date the application is submitted by the organization.

(2) The date HCFA receives all requested additional information.

(d) *Date of submission.* For purposes of the 90-day time limit described in this section, the date that an application is submitted to HCFA is the date on which the application is delivered to the address designated by HCFA.

§ 460.22 Service area designation.

(a) An entity must state in its application the service area it proposes for its program.

(b) HCFA, in consultation with the State administering agency, may exclude from designation an area that is already covered under another PACE program agreement to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

§ 460.24 Limit on number of PACE program agreements.

(a) *Numerical limit.* Except as specified in paragraph (b) of this section, HCFA does not permit the number of PACE organizations with which agreements are in effect under this part or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, to exceed the following:

(1) As of August 5, 1997—40.

(2) As of each succeeding August 5, the numerical limit for the preceding year plus 20, without regard to the actual number of agreements in effect on a previous anniversary date. (For example, the limit is 60 on August 5, 1998 and 80 on August 5, 1999.)

(b) *Exception.* The numerical limit does not apply to a private, for-profit PACE organization that meets the following conditions:

(1) Is operating under a demonstration project waiver under section 1894(h) and 1934(h) of the Act.

(2) Was operating under a waiver and subsequently qualifies for PACE organization status in accordance with sections 1894(a)(3)(B)(ii) and 1934(a)(3)(B)(ii) of the Act.

Subpart C—PACE Program Agreement

§ 460.30 Program agreement requirement.

(a) A PACE organization must have an agreement with HCFA and the State administering agency for the operation of a PACE program by the PACE organization under Medicare and Medicaid.

(b) The agreement must be signed by an authorized official of the PACE organization.

§ 460.32 Content and terms of PACE program agreement.

(a) *Required content.* A PACE program agreement must include the following information:

(1) A designation of the service area of the organization's program. The area may be identified by county, zip code, street boundaries, census tract, block, or tribal jurisdictional area, as applicable. HCFA and the State administering agency must approve any change in the designated service area.

(2) The organization's commitment to meet all applicable requirements under Federal, State, and local laws and regulations, including provisions of the Civil Rights Act, the Age Discrimination Act, and the Americans With Disabilities Act.

(3) The effective date and term of the agreement.

(4) A description of the organizational structure of the PACE organization and information on administrative contacts, including the following:

(i) Name and phone number of the program director.

(ii) Name of all governing body members.

(iii) Name and phone number of a contact person for the governing body.

(5) A participant bill of rights approved by HCFA and an assurance that the rights and protections will be provided.

(6) A description of the process for handling participant grievances and appeals.

(7) A statement of the organization's policies on eligibility, enrollment, voluntary disenrollment, and involuntary disenrollment.

(8) A description of services available to participants.

(9) A description of the organization's quality assessment and performance improvement program.

(10) A statement of the levels of performance required by HCFA on standard quality measures.

(11) A statement of the data and information required by HCFA and the State administering agency to be collected on participant care.

(12) The capitation rates for Medicare and Medicaid.

(13) A description of procedures that the organization will follow if the PACE program agreement is terminated.

(b) *Optional content.* (1) An agreement may provide additional requirements for individuals to qualify as PACE program eligible individuals, in accordance with § 460.150(b)(4).

(2) An agreement may contain any additional terms and conditions agreed to by the parties if the terms and conditions are consistent with sections 1894 and 1934 of the Act and regulations in this part.

§ 460.34 Duration of PACE program agreement.

An agreement is effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate.

Subpart D—Sanctions, Enforcement Actions, and Termination

§ 460.40 Violations for which HCFA may impose sanctions.

In addition to other remedies authorized by law, HCFA may impose any of the sanctions specified in §§ 460.42 and 460.46 if HCFA determines that a PACE organization commits any of the following violations:

(a) Fails substantially to provide to a participant medically necessary items and services that are covered PACE services, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the participant.

(b) Involuntarily disenrolls a participant in violation of § 460.164.

(c) Discriminates in enrollment or disenrollment among Medicare beneficiaries or Medicaid recipients, or both, who are eligible to enroll in a PACE program, on the basis of an individual's health status or need for health care services.

(d) Engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment, except as permitted by § 460.150, by Medicare beneficiaries or Medicaid recipients whose medical condition or history indicates a need for substantial future medical services.

(e) Imposes charges on participants enrolled under Medicare or Medicaid

for premiums in excess of the premiums permitted.

(f) Misrepresents or falsifies information that is furnished—

(1) To HCFA or the State under this part; or

(2) To an individual or any other entity under this part.

(g) Prohibits or otherwise restricts a covered health care professional from advising a participant who is a patient of the professional about the participant's health status, medical care, or treatment for the participant's condition or disease, regardless of whether the PACE program provides benefits for that care or treatment, if the professional is acting within his or her lawful scope of practice.

(h) Operates a physician incentive plan that does not meet the requirements of section 1876(i)(8) of the Act.

(i) Employs or contracts with any individual who is excluded from participation in Medicare or Medicaid under section 1128 or section 1128A of the Act (or with any entity that employs or contracts with that individual) for the provision of health care, utilization review, medical social work, or administrative services.

§ 460.42 Suspension of enrollment or payment by HCFA.

(a) *Enrollment.* If a PACE organization commits one or more violations specified in § 460.40, HCFA may suspend enrollment of Medicare beneficiaries after the date HCFA notifies the organization of the violation.

(b) *Payment.* If a PACE organization commits one or more violations specified in § 460.40, for individuals enrolled after the date HCFA notifies the PACE organization of the violation, HCFA may take the following actions:

(1) Suspend Medicare payment to the PACE organization.

(2) Deny payment to the State for medical assistance for services furnished under the PACE program agreement.

(c) *Term of suspension.* A suspension or denial of payment remains in effect until HCFA is satisfied that the following conditions are met:

(1) The PACE organization has corrected the cause of the violation.

(2) The violation is not likely to recur.

§ 460.46 Civil money penalties.

(a) HCFA may impose civil money penalties up to the following maximum amounts:

(1) For each violation regarding enrollment or disenrollment specified in § 460.40 (c) or (d), $100,000 plus $15,000 for each individual not enrolled as a result of the PACE organization's discrimination in enrollment or disenrollment or practice that would deny or discourage enrollment.

(2) For each violation regarding excessive premiums specified in § 460.40(e), $25,000 plus double the excess amount above the permitted premium charged a participant by the PACE organization. (The excess amount charged is deducted from the penalty and returned to the participant).

(3) For each misrepresentation or falsification of information, specified in § 460.40(f)(1), $100,000.

(4) For any other violation specified in § 460.40, $25,000.

(b) The provisions of section 1128A of the Act (other than subsections (a) and (b)) apply to a civil money penalty under this section in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a).

§ 460.48 Additional actions by HCFA or the State.

After consultation with the State administering agency, if HCFA determines that the PACE organization is not in substantial compliance with requirements in this part, HCFA or the State administering agency may take one or more of the following actions:

(a) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.

(b) Withhold some or all payments under the PACE program agreement until the organization corrects the deficiency.

(c) Terminate the PACE program agreement.

§ 460.50 Termination of PACE program agreement.

(a) *Termination of agreement by HCFA or State.* HCFA or a State administering agency may terminate at any time a PACE program agreement for cause, including, but not limited to the circumstances in paragraphs (b) or (c) of this section.

(b) *Termination due to uncorrected deficiencies.* HCFA or the State administering agency may terminate a PACE program agreement if HCFA or the State administering agency determines that both of the following circumstances exist:

(1) Either—

(i) There are significant deficiencies in the quality of care furnished to participants; or

(ii) The PACE organization failed to comply substantially with conditions for a PACE program or PACE organization under this part, or with terms of its PACE program agreement.

(2) Within 30 days of the date of the receipt of written notice of a determination made under paragraph (b)(1) of this section, the PACE organization failed to develop and successfully initiate a plan to correct the deficiencies, or failed to continue implementation of the plan of correction.

(c) *Termination due to health and safety risk.* HCFA or a State administering agency may terminate a PACE program agreement if HCFA or the State administering agency determines that the PACE organization cannot ensure the health and safety of its participants. This determination may result from the identification of deficiencies that HCFA or the State administering agency determines cannot be corrected.

(d) *Termination of agreement by PACE organization.* A PACE organization may terminate an agreement after timely notice to HCFA, the State administering agency, and participants, as follows:

(1) To HCFA and the State administering agency, 90 days before termination.

(2) To participants, 60 days before termination.

§ 460.52 Transitional care during termination.

(a) The PACE organization must develop a detailed written plan for phase-down in the event of termination, which describes how the organization plans to take the following actions:

(1) Inform participants, the community, HCFA and the State administering agency in writing about termination and transition procedures.

(2) Assist participants to obtain reinstatement of conventional Medicare and Medicaid benefits.

(3) Transition participants' care to other providers.

(4) Terminate marketing and enrollment activities.

(b) An entity whose PACE program agreement is in the process of being terminated must provide assistance to each participant in obtaining necessary transitional care through appropriate referrals and making the participant's medical records available to new providers.

§ 460.54 Termination procedures.

(a) Except as provided in paragraph (b) of this section, if HCFA terminates an agreement with a PACE organization, it furnishes the PACE organization with the following:

(1) A reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies

that were the basis of HCFA's determination that cause exists for termination.

(2) Reasonable notice and opportunity for hearing (including the right to appeal an initial determination) before terminating the agreement.

(b) HCFA may terminate an agreement without invoking the procedures described in paragraph (a) of this section if HCFA determines that a delay in termination, resulting from compliance with these procedures before termination, would pose an imminent and serious risk to the health of participants enrolled with the organization.

Subpart E—PACE Administrative Requirements

§ 460.60 PACE organizational structure.

(a) A PACE organization must be, or be a distinct part of, one of the following:

(1) An entity of city, county, State, or Tribal government.

(2) A private not-for-profit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986. The entity may be a corporation, a subsidiary of a larger corporation, or a department of a corporation.

(b) *Program director.* The organization must employ a program director who is responsible for oversight and administration of the entity.

(c) *Medical director.* The organization must employ a medical director who is responsible for the delivery of participant care, for clinical outcomes, and for the implementation, as well as oversight, of the quality assessment and performance improvement program.

(d) *Organizational chart.* (1) The PACE organization must have a current organizational chart showing officials in the PACE organization and relationships to any other organizational entities.

(2) The chart for a corporate entity must indicate the PACE organization's relationship to the corporate board and to any parent, affiliate, or subsidiary corporate entities.

(3) A PACE organization planning a change in organizational structure must notify HCFA and the State administering agency, in writing, at least 60 days before the change takes effect.

(4) Changes in organizational structure must be approved in advance by HCFA and the State administering agency.

(5) Changes in organizational structure approved by HCFA and the State administering agency must be forwarded to the consumer advisory committee described in § 460.62(c) of this part for dissemination to participants as appropriate.

§ 460.62 Governing body.

(a) *Governing body.* A PACE organization must be operating under the control of an identifiable governing body (for example, a board of directors) or a designated person functioning as a governing body with full legal authority and responsibility for the following:

(1) Governance and operation of the organization.

(2) Development of policies consistent with the mission.

(3) Management and provision of all services, including the management of contractors.

(4) Establishment of personnel policies that address adequate notice of termination by employees or contractors with direct patient care responsibilities.

(5) Fiscal operations.

(6) Development of policies on participant health and safety, including a comprehensive, systemic operational plan to ensure the health and safety of participants.

(7) Quality assessment and performance improvement program.

(b) *Community representation.* A PACE organization must ensure community representation on issues related to participant care. This may be achieved by having a community representative on the governing body.

(c) *Consumer advisory committee.* A PACE organization must establish a consumer advisory committee to provide advice to the governing body on matters of concern to participants. Participants and representatives of participants must constitute a majority of the membership of this committee.

§ 460.64 Personnel qualifications.

(a) *General qualification requirements.* Except as specified in paragraphs (b) and (c) of this section, each member of the staff (employee or contractor) of the PACE organization must meet the following conditions:

(1) Be legally authorized (currently licensed or, if applicable, certified or registered) to practice in the State in which he or she performs the function or actions.

(2) Only act within the scope of his or her authority to practice.

(b) *Federally-defined qualifications for physician.* (1) A physician must meet the qualifications and conditions in § 410.20 of this chapter.

(2) A primary care physician must have a minimum of 1 year's experience working with a frail or elderly population.

(c) *Qualifications when no State licensing laws, State certification, or registration requirements exist.* If there are no State licensing laws, State certification, or registration applicable to the profession, the following requirements must be met:

(1) *Registered nurse.* A registered nurse must meet the following requirements:

(i) Be a graduate of a school of professional nursing.

(ii) Have a minimum of 1 year's experience working with a frail or elderly population.

(2) *Social worker.* A social worker must meet the following requirements:

(i) Have a master's degree in social work from an accredited school of social work.

(ii) Have a minimum of 1 year's experience working with a frail or elderly population.

(3) *Physical therapist.* A physical therapist must meet the following requirements:

(i) Be a graduate of a physical therapy curriculum approved by one of the following:

(A) The American Physical Therapy Association.

(B) The Committee on Allied Health Education and Accreditation of the American Medical Association.

(C) The Council on Medical Education of the American Medical Association and the American Physical Therapy Association.

(D) Other equivalent organizations approved by the Secretary.

(ii) Have a minimum of 1 year's experience working with a frail or elderly population.

(4) *Occupational therapist.* An occupational therapist must meet the following requirements:

(i) Be a graduate of an occupational therapy curriculum accredited jointly by the Committee on Allied Health Education and Accreditation of the American Medical Association and the American Occupational Therapy Association or other equivalent organizations approved by the Secretary.

(ii) Be eligible for the National Registration Examination of the American Occupational Therapy Association.

(iii) Have 2 years of appropriate experience as an occupational therapist and have achieved a satisfactory grade on a proficiency examination conducted, approved, or sponsored by the U.S. Public Health Service, except that the determination of proficiency does not apply with respect to persons initially licensed by a State or seeking initial qualification as an occupational therapist after December 31, 1977.

(iv) Have a minimum of 1 year's experience working with a frail or elderly population.

(5) *Recreation therapist or activities coordinator.* A recreation therapist or activities coordinator must have 2 years experience in a social or recreational program providing and coordinating services for a frail or elderly population within the last 5 years, one of which was full-time in a patient activities program in a health care setting.

(6) *Dietitian.* A dietitian must meet the following requirements:

(i) Have a baccalaureate or advanced degree from an accredited college with major studies in food and nutrition or dietetics.

(ii) Have a minimum of 1 year's experience working with a frail or elderly population.

(7) *Drivers.* A PACE center driver must meet the following requirements:

(i) Have a valid driver's license to operate a van or bus in the State of operation.

(ii) Be capable of, and experienced in, transporting individuals with special mobility needs.

§ 460.66 Training.

(a) The PACE organization must provide training to maintain and improve the skills and knowledge of each staff member with respect to the individual's specific duties that results in his or her continued ability to demonstrate the skills necessary for the performance of the position.

(b) The PACE organization must develop a training program for each personal care attendant to establish the individual's competency in furnishing personal care services and specialized skills associated with specific care needs of individual participants.

§ 460.68 Program integrity.

(a) *Persons with criminal convictions.* A PACE organization must not employ individuals or contract with organizations or individuals—

(1) Who have been excluded from participation in the Medicare or Medicaid programs;

(2) Who have been convicted of criminal offenses related to their involvement in Medicaid, Medicare, other health insurance or health care programs, or social service programs under title XX of the Act; or

(3) In any capacity where an individual's contact with participants would pose a potential risk because the individual has been convicted of physical, sexual, drug, or alcohol abuse.

(b) *Direct or indirect interest in contracts.* Except as provided in paragraph (c) of this section, no member of the PACE organization's governing body or any immediate family member may have a direct or indirect interest in any contract that supplies any administrative or care-related service or materials to the PACE organization.

(c) *Waiver.* (1) HCFA and the State administering agency may waive the requirement in paragraph (b) of this section for PACE organizations in the following communities:

(i) Rural.

(ii) Tribal.

(iii) Urban Indian.

(2) If an applicant seeking approval as a PACE organization believes a waiver under this paragraph is warranted, it must include a request for the waiver in its application that meets the following requirements:

(i) Identifies the rural, tribal, or urban Indian community.

(ii) Establishes recusal restrictions for each member of the PACE organization governing body or immediate family member to which the exception would apply.

(iii) Establishes a process to record recusal actions on a case-by-case basis.

(iv) Establishes a process to make available to the public the general recusal restrictions and record of actions.

(3) HCFA and the State administering agency may grant a waiver if they determine the following:

(i) There is insufficient availability in the PACE organization's service area of individuals who could meet the requirement.

(ii) The proposed alternative does not adversely affect the availability of care or the quality of care that is provided to participants.

(d) *Disclosure requirements.* A PACE organization must have a formal process in place to gather information related to paragraphs (a) and (b) of this section and must be able to respond in writing to a request for information from HCFA within a reasonable amount of time.

§ 460.70 Contracted services.

(a) *General rule.* The PACE organization must have a written contract with each outside organization, agency, or individual that furnishes administrative or care-related services not furnished directly by the PACE organization except for emergency services as described in § 460.100.

(b) *Contract requirements.* A contract between a PACE organization and a contractor must meet the following requirements:

(1) The PACE organization must contract only with an entity that meets all applicable Federal and State requirements, including, but not limited to, the following:

(i) An organizational contractor, such as a hospital, must meet Medicare or Medicaid participation requirements.

(ii) A practitioner or supplier must meet Medicare or Medicaid requirements applicable to the services it furnishes.

(iii) A contractor must comply with the requirements of this part with respect to service delivery, participant rights, and quality assessment and performance improvement activities.

(2) A contractor must be accessible to participants, located either within or near the PACE organization's service area.

(3) A PACE organization must designate an official liaison to coordinate activities between contractors and the organization.

(c) *List of contractors.* A current list of contractors must be on file at the PACE center and a copy must be provided to anyone upon request.

(d) *Copies of signed contracts.* The PACE organization must furnish a copy of each signed contract for inpatient care to HCFA and the State administering agency.

(e) *Content of contract.* Each contract must be in writing and include the following information:

(1) Name of contractor.

(2) Services furnished.

(3) Payment rate and method.

(4) Terms of the contract, including beginning and ending dates, methods of extension, renegotiation, and termination.

(5) Contractor agreement to do the following:

(i) Furnish only those services authorized by the PACE multidisciplinary team.

(ii) Accept payment from the PACE organization as payment in full, and not bill participants, HCFA, the State administering agency, or private insurers.

(iii) Hold harmless HCFA, the State, and PACE participants if the PACE organization does not pay for services performed by the contractor in accordance with the contract.

(iv) Not assign the contract or delegate duties under the contract unless it obtains prior written approval from the PACE organization.

(v) Submit reports required by the PACE organization.

§ 460.72 Physical environment.

(a) *Space and equipment*—(1) *Safe design.* A PACE center must meet the following requirements:

(i) Be designed, constructed, equipped, and maintained to provide for the physical safety of participants, personnel, and visitors.

(ii) Ensure a safe, sanitary, functional, accessible, and comfortable environment for the delivery of services that protects the dignity and privacy of the participant.

(2) *Primary care clinic.* The PACE center must include sufficient suitable space and equipment to provide primary medical care and suitable space for team meetings, treatment, therapeutic recreation, restorative therapies, socialization, personal care, and dining.

(3) *Equipment maintenance.* A PACE organization must establish, implement, and maintain a written plan to ensure that all equipment is maintained in accordance with the manufacturer's recommendations.

(b) *Fire Safety.* (1) Except as provided in paragraph (b)(2) of this section, a PACE center must meet the occupancy provisions of the 1997 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference) that apply to the type of setting in which the center is located. Incorporation by reference of the Life Safety Code, 1997 edition, was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Life Safety Code is available for inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Washington, D.C. Copies of the Life Safety Code may be obtained from the National Fire Protection Code (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101. If any changes in the Life Safety Code, 1997 edition, are also to be incorporated by reference, notice to that effect will be published in the **Federal Register**.

(2) *Exceptions.* (i) The Life Safety Code provisions do not apply in a State in which HCFA determines that a fire and safety code imposed by State law adequately protects participants and staff.

(ii) HCFA may waive specific provisions of the Life Safety Code that, if rigidly applied, would result in unreasonable hardship on the center, but only if the waiver does not adversely affect the health and safety of the participants and staff.

(c) *Emergency and disaster preparedness*—(1) *Procedures.* The PACE organization must establish, implement, and maintain documented procedures to manage medical and nonmedical emergencies and disasters that are likely to threaten the health or safety of the participants, staff, or the public.

(2) *Emergencies defined.* Emergencies include, but are not limited, to the following:

(i) Fire.

(ii) Equipment, water, or power failure.

(iii) Care-related emergencies.

(iv) Natural disasters likely to occur in the organization's geographic area. (An organization is not required to develop emergency plans for natural disasters that typically do not affect its geographic location.)

(3) *Emergency training.* A PACE organization must provide appropriate training and periodic orientation to all staff (employees and contractors) and participants to ensure that staff demonstrate a knowledge of emergency procedures, including informing participants what to do, where to go, and whom to contact in case of an emergency.

(4) *Availability of emergency equipment.* Emergency equipment, including easily portable oxygen, airways, suction, and emergency drugs, along with staff who know how to use the equipment, must be on the premises of every center at all times and be immediately available. The organization must have a documented plan to obtain emergency medical assistance from sources outside the center when needed.

(5) *Annual test of emergency and disaster plan.* At least annually, a PACE organization must actually test, evaluate, and document the effectiveness of its emergency and disaster plans.

§ 460.74 Infection control.

(a) *Standard procedures.* The PACE organization must follow accepted policies and standard procedures with respect to infection control, including at least the standard precautions developed by the Centers for Disease Control and Prevention.

(b) *Infection control plan.* The PACE organization must establish, implement, and maintain a documented infection control plan that meets the following requirements:

(1) Ensures a safe and sanitary environment.

(2) Prevents and controls the transmission of disease and infection.

(c) *Contents of infection control plan.* The infection control plan must include, but is not limited to, the following:

(1) Procedures to identify, investigate, control, and prevent infections in every center and in each participant's place of residence.

(2) Procedures to record any incidents of infection.

(3) Procedures to analyze the incidents of infection to identify trends and develop corrective actions related to the reduction of future incidents.

§ 460.76 Transportation services.

(a) *Safety, accessibility, and equipment.* A PACE organization's transportation services must be safe, accessible, and equipped to meet the needs of the participant population.

(b) *Maintenance of vehicles.* (1) If the PACE organization owns, rents, or leases transportation vehicles, it must maintain these vehicles in accordance with the manufacturer's recommendations.

(2) If a contractor provides transportation services, the PACE organization must ensure that the vehicles are maintained in accordance with the manufacturer's recommendations.

(c) *Communication with PACE center.* The PACE organization must ensure that transportation vehicles are equipped to communicate with the PACE center.

(d) *Training.* The PACE organization must train all transportation personnel (employees and contractors) in the following:

(1) Managing the special needs of participants.

(2) Handling emergency situations.

(e) *Changes in care plan.* As part of the multidisciplinary team process, PACE organization staff (employees and contractors) must communicate relevant changes in a participant's care plan to transportation personnel.

§ 460.78 Dietary services.

(a) *Meal requirements.* (1) Except as specified in paragraphs (a)(2) or (a)(3) of this section, the PACE organization must provide each participant with a nourishing, palatable, well-balanced meal that meets the daily nutritional and special dietary needs of each participant. Each meal must meet the following requirements:

(i) Be prepared by methods that conserve nutritive value, flavor, and appearance.

(ii) Be prepared in a form designed to meet individual needs.

(iii) Be prepared and served at the proper temperature.

(2) The PACE organization must provide substitute foods or nutritional supplements that meet the daily nutritional and special dietary needs of any participant who has any of the following problems:

(i) Refuses the food served.

(ii) Cannot tolerate the food served.

(iii) Does not eat adequately.

(3) The PACE organization must provide nutrition support to meet the daily nutritional needs of a participant, if indicated by his or her medical condition or diagnosis. Nutrition support consists of tube feedings, total parenteral nutrition, or peripheral parenteral nutrition.

(b) *Sanitary conditions.* The PACE organization must do the following:

(1) Procure foods (including nutritional supplements and nutrition support items) from sources approved, or considered satisfactory, by Federal, State, Tribal, or local authorities with jurisdiction over the service area of the organization.

(2) Store, prepare, distribute, and serve foods (including nutritional supplements and nutrition support items) under sanitary conditions.

(3) Dispose of garbage and refuse properly.

§ 460.80 Fiscal soundness.

(a) *Fiscally sound operation.* A PACE organization must have a fiscally sound operation, as demonstrated by the following:

(1) Total assets greater than total unsubordinated liabilities.

(2) Sufficient cash flow and adequate liquidity to meet obligations as they become due.

(3) A net operating surplus or a financial plan for maintaining solvency that is satisfactory to HCFA and the State administering agency.

(b) *Insolvency plan.* The organization must have a documented plan in the event of insolvency, approved by HCFA and the State administering agency, which provides for the following:

(1) Continuation of benefits for the duration of the period for which capitation payment has been made.

(2) Continuation of benefits to participants who are confined in a hospital on the date of insolvency until their discharge.

(3) Protection of participants from liability for payment of fees that are the legal obligation of the PACE organization.

(c) *Arrangements to cover expenses.* (1) A PACE organization must demonstrate that it has arrangements to cover expenses in the amount of at least the sum of the following in the event it becomes insolvent:

(i) One month's total capitation revenue to cover expenses the month before insolvency.

(ii) One month's average payment to all contractors, based on the prior quarter's average payment, to cover expenses the month after the date it declares insolvency or ceases operations.

(2) Arrangements to cover expenses may include, but are not limited to, the following:

(i) Insolvency insurance or reinsurance.

(ii) Hold harmless arrangement.

(iii) Letters of credit, guarantees, net worth, restricted State reserves, or State law provisions.

§ 460.82 Marketing.

(a) *Information that a PACE organization must include in its marketing materials.* (1) A PACE organization must inform the public about its program and give prospective participants the following written information:

(i) An adequate description of the PACE organization's enrollment and disenrollment policies and requirements.

(ii) PACE enrollment procedures.

(iii) Description of benefits and services.

(iv) Premiums.

(v) Other information necessary for prospective participants to make an informed decision about enrollment.

(2) Marketing information must be free of material inaccuracies, misleading information, or misrepresentations.

(b) *Approval of marketing information.* (1) HCFA must approve all marketing information before distribution by the PACE organization, including any revised or updated material.

(2) HCFA reviews initial marketing information as part of an entity's application for approval as a PACE organization, and approval of the application includes approval of marketing information.

(3) Once a PACE organization is under a PACE program agreement, any revisions to existing marketing information and new information are subject to the following:

(i) *Time period for approval.* HCFA approves or disapproves marketing information within 45 days after HCFA receives the information from the organization.

(ii) *Deemed approval.* Marketing information is deemed approved, and the organization can distribute it, if HCFA and the State administering agency do not disapprove the marketing material within the 45-day review period.

(c) *Special language requirements.* A PACE organization must furnish printed marketing materials to prospective and current participants as specified below:

(1) In English and in any other principal languages of the community.

(2) In Braille, if necessary.

(d) *Information on restriction of services.* (1) Marketing materials must inform a potential participant that he or she must receive all needed health care, including primary care and specialist physician services (other than emergency services), from the PACE organization or from an entity authorized by the PACE organization.

(2) All marketing materials must state clearly that PACE participants may be fully and personally liable for the costs of unauthorized or out-of-PACE program agreement services.

(e) *Prohibited marketing practices.* A PACE organization must ensure that its employees or its agents do not use prohibited marketing practices which includes the following:

(1) Discrimination of any kind, except that marketing may be directed to individuals eligible for PACE by reason of their age.

(2) Activities that could mislead or confuse potential participants, or misrepresent the PACE organization, HCFA, or the State administering agency.

(3) Gifts or payments to induce enrollment.

(4) Contracting outreach efforts to individuals or organizations whose sole responsibility involves direct contact with the elderly to solicit enrollment.

(5) Unsolicited door-to-door marketing.

(f) *Marketing Plan.* A PACE organization must establish, implement, and maintain a documented marketing plan with measurable enrollment objectives and a system for tracking its effectiveness.

Subpart F—PACE Services

§ 460.90 PACE benefits under Medicare and Medicaid.

If a Medicare beneficiary or Medicaid recipient chooses to enroll in a PACE program, the following conditions apply:

(a) Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, copayments, coinsurance, or other cost-sharing do not apply.

(b) The participant, while enrolled in a PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization.

§ 460.92 Required services.

The PACE benefit package for all participants, regardless of the source of payment, must include the following:

(a) All Medicaid-covered services, as specified in the State's approved Medicaid plan.

(b) Multidisciplinary assessment and treatment planning.

(c) Primary care, including physician and nursing services.

(d) Social work services.

(e) Restorative therapies, including physical therapy, occupational therapy, and speech-language pathology services.

(f) Personal care and supportive services.

(g) Nutritional counseling.

(h) Recreational therapy.

(i) Transportation.
(j) Meals.
(k) Medical specialty services including, but not limited to the following:
(1) Anesthesiology.
(2) Audiology.
(3) Cardiology.
(4) Dentistry.
(5) Dermatology.
(6) Gastroenterology.
(7) Gynecology.
(8) Internal medicine.
(9) Nephrology.
(10) Neurosurgery.
(11) Oncology.
(12) Ophthalmology.
(13) Oral surgery.
(14) Orthopedic surgery.
(15) Otorhinolaryngology.
(16) Plastic surgery.
(17) Pharmacy consulting services.
(18) Podiatry.
(19) Psychiatry.
(20) Pulmonary disease.
(21) Radiology.
(22) Rheumatology.
(23) General surgery.
(24) Thoracic and vascular surgery.
(25) Urology.
(l) Laboratory tests, x-rays and other diagnostic procedures.
(m) Drugs and biologicals.
(n) Prosthetics, orthotics, durable medical equipment, corrective vision devices, such as eyeglasses and lenses, hearing aids, dentures, and repair and maintenance of these items.
(o) Acute inpatient care, including the following:
(1) Ambulance.
(2) Emergency room care and treatment room services.
(3) Semi-private room and board.
(4) General medical and nursing services.
(5) Medical surgical/intensive care/coronary care unit.
(6) Laboratory tests, x-rays and other diagnostic procedures.
(7) Drugs and biologicals.
(8) Blood and blood derivatives.
(9) Surgical care, including the use of anesthesia.
(10) Use of oxygen.
(11) Physical, occupational, respiratory therapies, and speech-language pathology services.
(12) Social services.
(p) Nursing facility care.
(1) Semi-private room and board.
(2) Physician and skilled nursing services.
(3) Custodial care.
(4) Personal care and assistance.
(5) Drugs and biologicals.
(6) Physical, occupational, recreational therapies, and speech-language pathology, if necessary.
(7) Social services.
(8) Medical supplies and appliances.
(q) Other services determined necessary by the multidisciplinary team to improve and maintain the participant's overall health status.

§ 460.94 Required services for Medicare participants.

(a) Except for Medicare requirements that are waived for the PACE program, as specified in paragraph (b) of this section, the PACE benefit package for Medicare participants must include the following services:
(1) The scope of hospital insurance benefits described in part 409 of this chapter.
(2) The scope of supplemental medical insurance benefits described in part 410 of this chapter.
(b) *Waivers of Medicare coverage requirements.* The following Medicare requirements are waived for purposes of the PACE program and do not apply:
(1) The provisions of subpart F of part 409 of this chapter that limit coverage of institutional services.
(2) The provisions of subparts G and H of part 409 of this chapter, and parts 412 through 414 of this chapter that relate to payment for benefits.
(3) The provisions of subparts D and E of part 409 of this chapter that limit coverage of extended care services or home health services.
(4) The provisions of subpart D of part 409 of this chapter that impose a 3-day prior hospitalization requirement for coverage of extended care services.
(5) Sections 411.15(g) and (k) of this chapter that may prevent payment for PACE program services to PACE participants.

§ 460.96 Excluded services.

The following services are excluded from coverage under PACE:
(a) Any service that is not authorized by the multidisciplinary team, even if it is a required service, unless it is an emergency service.
(b) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and nonmedical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the multidisciplinary team as part of the participant's plan of care).
(c) Cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed part of the body resulting from an accidental injury or for reconstruction following mastectomy.
(d) Experimental medical, surgical, or other health procedures.
(e) Services furnished outside of the United States, except as follows:
(1) In accordance with §§ 424.122 through 424.124 of this chapter.
(2) As permitted under the State's approved Medicaid plan.

§ 460.98 Service delivery.

(a) *Plan.* A PACE organization must establish and implement a written plan to furnish care that meets the needs of each participant in all care settings 24 hours a day, every day of the year.
(b) *Provision of services.* (1) The PACE organization must furnish comprehensive medical, health, and social services that integrate acute and long-term care.
(2) These services must be furnished in at least the PACE center, the home, and inpatient facilities.
(3) The PACE organization may not discriminate against any participant in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, or source of payment.
(c) *Minimum services furnished at each PACE center.* At a minimum, the following services must be furnished at each PACE center:
(1) Primary care, including physician and nursing services.
(2) Social services.
(3) Restorative therapies, including physical therapy and occupational therapy.
(4) Personal care and supportive services.
(5) Nutritional counseling.
(6) Recreational therapy.
(7) Meals.
(d) *Center operation.* (1) A PACE organization must operate at least one PACE center either in, or contiguous to, its defined service area with sufficient capacity to allow routine attendance by participants.
(2) A PACE organization must ensure accessible and adequate services to meet the needs of its participants. If necessary, a PACE organization must increase the number of PACE centers, staff, or other PACE services.
(3) If a PACE organization operates more than one center, each center must offer the full range of services and have sufficient staff to meet the needs of participants.
(e) *Center attendance.* The frequency of a participant's attendance at a center is determined by the multidisciplinary team, based on the needs and preferences of each participant.

§ 460.100 Emergency care.

(a) *Written plan.* A PACE organization must establish and maintain a written plan to handle emergency care. The

plan must ensure that HCFA, the State, and PACE participants are held harmless if the PACE organization does not pay for emergency services.

(b) *Emergency care.* Emergency care is appropriate when services are needed immediately because of an injury or sudden illness and the time required to reach the PACE organization or one of its contract providers, would cause risk of permanent damage to the participant's health. Emergency services include inpatient and outpatient services that meet the following requirements:

(1) Are furnished by a qualified emergency services provider, other than the PACE organization or one of its contract providers, either in or out of the PACE organization's service area.

(2) Are needed to evaluate or stabilize an emergency medical condition.

(c) An emergency medical condition means a condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

(1) Serious jeopardy to the health of the participant.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction of any bodily organ or part.

(d) *Explanation to participant.* The organization must ensure that the participant or caregiver, or both, understand when and how to get access to emergency services.

(e) *On-call providers.* The plan must provide for the following:

(1) An on-call provider, available 24-hours per day to address participant questions about emergency services and respond to requests for authorization of urgently needed out-of-network services and post stabilization care services following emergency services.

(2) Coverage of urgently needed out-of-network and post-stabilization care services when either of the following conditions are met:

(i) The services are preapproved by the PACE organization.

(ii) The services are not preapproved by the PACE organization because the PACE organization did not respond to a request for approval within 1 hour after being contacted or cannot be contacted for approval.

§ 460.102 Multidisciplinary team.

(a) *Basic requirement.* A PACE organization must meet the following requirements:

(1) Establish a multidisciplinary team at each center to comprehensively assess and meet the individual needs of each participant.

(2) Assign each participant to a multidisciplinary team functioning at the PACE center that the participant attends.

(b) *Composition of multidisciplinary team.* The multidisciplinary team must be composed of at least the following members:

(1) Primary care physician.

(2) Registered nurse.

(3) Social worker.

(4) Physical therapist.

(5) Occupational therapist.

(6) Recreational therapist or activity coordinator.

(7) Dietitian.

(8) PACE center manager.

(9) Home care coordinator.

(10) Personal care attendant or his or her representative.

(11) Driver or his or her representative.

(c) *Primary care physician.* (1) Primary medical care must be furnished to a participant by a PACE primary care physician.

(2) Each primary care physician is responsible for the following:

(i) Managing a participant's medical situations.

(ii) Overseeing a participant's use of medical specialists and inpatient care.

(d) *Responsibilities of multidisciplinary team.* (1) The multidisciplinary team is responsible for the initial assessment, periodic reassessments, plan of care, and coordination of 24 hour care delivery.

(2) Each team member is responsible for the following:

(i) Regularly informing the multidisciplinary team of the medical, functional, and psychosocial condition of each participant.

(ii) Remaining alert to pertinent input from other team members, participants, and caregivers.

(iii) Documenting changes in a participant's condition in the participant's medical record.

(3) Except as specified in paragraph (g) of this section, the members of the multidisciplinary team must serve primarily PACE participants.

(e) *Exchange of information between team members.* The PACE organization must establish, implement, and maintain documented internal procedures governing the exchange of information between team members, contractors, and participants and their caregivers consistent with the requirements for confidentiality in § 460.200(e).

(f) *Organization employees.* Except as specified in paragraph (g) of this section, at least the following members of the multidisciplinary team must be employees of the PACE organization:

(1) Primary care physician.

(2) Registered nurse.

(3) Social worker.

(4) Recreational therapist or activity coordinator.

(5) PACE center manager.

(6) Home care coordinator.

(7) PACE center personal care attendant.

(g) *Waivers.* (1) HCFA and the State administering agency may waive either or both of the following:

(i) The requirement in paragraph (d)(3) of this section that members of the multidisciplinary team must serve primarily PACE participants.

(ii) The requirement in paragraph (f)(1) of this section that the primary care physician must be an employee of the PACE organization.

(2) If an applicant seeking approval as a PACE organization believes a waiver under this paragraph is warranted, it must include a request for the waiver in its application and describe in detail the circumstances supporting the request.

(3) HCFA and the State administering agency may grant a waiver if they determine the following:

(i) There is insufficient availability in the PACE organization's service area of individuals who meet the requirements, or State licensing laws make it inappropriate for the organization to employ physicians.

(ii) The proposed alternative does not adversely affect the availability of care or the quality of care that is furnished to participants.

§ 460.104 Participant assessment.

(a) *Initial comprehensive assessment*—(1) *Basic requirement.* The multidisciplinary team must conduct an initial comprehensive assessment on each participant. The assessment must be completed promptly following enrollment.

(2) As part of the initial comprehensive assessment, each of the following members of the multidisciplinary team must evaluate the participant in person, at appropriate intervals, and develop a discipline-specific assessment of the participant's health and social status:

(i) Primary care physician.

(ii) Registered nurse.

(iii) Social worker.

(iv) Physical therapist or occupational therapist, or both.

(v) Recreational therapist or activity coordinator.

(vi) Dietitian.

(vii) Home care coordinator.

(3) At the recommendation of individual team members, other

professional disciplines (for example, speech-language pathology, dentistry, or audiology) may be included in the comprehensive assessment process.

(4) *Comprehensive assessment criteria.* The comprehensive assessment must include, but is not limited to, the following:

(i) Physical and cognitive function and ability.

(ii) Medication use.

(iii) Participant and caregiver preferences for care.

(iv) Socialization and availability of family support.

(v) Current health status and treatment needs.

(vi) Nutritional status.

(vii) Home environment, including home access and egress.

(viii) Participant behavior.

(ix) Psychosocial status.

(x) Medical and dental status.

(xi) Participant language.

(b) *Development of plan of care.* The multidisciplinary team must promptly consolidate discipline-specific assessments into a single plan of care for each participant through discussion in team meetings and consensus of the entire multidisciplinary team. In developing the plan of care, female participants must be informed that they are entitled to choose a qualified specialist for women's health services from the PACE organization's network to furnish routine or preventive women's health services.

(c) *Periodic reassessment*—(1) *Semiannual reassessment.* On at least a semiannual basis, or more often if a participant's condition dictates, the following members of the multidisciplinary team must conduct an in-person reassessment:

(i) Primary care physician.

(ii) Registered nurse.

(iii) Social worker.

(iv) Recreational therapist or activity coordinator.

(v) Other team members actively involved in the development or implementation of the participant's plan of care, for example, home care coordinator, physical therapist, occupational therapist, or dietitian.

(2) *Annual reassessment.* On at least an annual basis, the following members of the multidisciplinary team must conduct an in-person reassessment:

(i) Physical therapist or occupational therapist, or both.

(ii) Dietitian.

(iii) Home care coordinator.

(3) *Reassessment based on change in participant status or at the request of the participant or designated representative.* If the health or psychosocial status of a participant changes or if a participant (or his or her designated representative) believes that the participant needs to initiate, eliminate, or continue a particular service, the members of the multidisciplinary team, listed in paragraph (a)(2) of this section, must conduct an in-person reassessment.

(i) The PACE organization must have explicit procedures for timely resolution of requests by a participant or his or her designated representative to initiate, eliminate, or continue a particular service.

(ii) Except as provided in paragraph (c)(3)(iii) of this section, the multidisciplinary team must notify the participant or designated representative of its decision to approve or deny the request from the participant or designated representative as expeditiously as the participant's condition requires, but no later than 72 hours after the date the multidisciplinary team receives the request for reassessment.

(iii) The multidisciplinary team may extend the 72-hour timeframe for notifying the participant or designated representative of its decision to approve or deny the request by no more than 5 additional days for either of the following reasons:

(A) The participant or designated representative requests the extension.

(B) The team documents its need for additional information and how the delay is in the interest of the participant.

(iv) The PACE organization must explain any denial of a request to the participant or the participant's designated representative orally and in writing. The PACE organization must provide the specific reasons for the denial in understandable language.

(v) If the participant or designated representative is dissatisfied with the decision on the request, the PACE organization is responsible for the following:

(A) Informing the participant or designated representative of his or her right to appeal the decision as specified in § 460.122.

(B) Describing both the standard and expedited appeals processes, including the right to, and conditions for, obtaining expedited consideration of an appeal of a denial of services as specified in § 460.122.

(C) Describing the right to, and conditions for, continuation of appealed services through the period of an appeal as specified in § 460.122(e).

(D) If the multidisciplinary team fails to provide the participant with timely notice of the resolution of the request or does not furnish the services required by the revised plan of care, this failure constitutes an adverse decision, and the participant's request must be automatically processed by the PACE organization as an appeal in accordance with § 460.122.

(d) *Changes to plan of care.* Team members who conduct a reassessment must meet the following requirements:

(1) Reevaluate the participant's plan of care.

(2) Discuss any changes in the plan with the multidisciplinary team.

(3) Obtain approval of the revised plan from the multidisciplinary team and the participant (or designated representative).

(4) Furnish any services included in the revised plan of care as a result of a reassessment to the participant as expeditiously as the participant's health condition requires.

(e) *Documentation.* Multidisciplinary team members must document all assessment and reassessment information in the participant's medical record.

§ 460.106 Plan of care.

(a) *Basic requirement.* The multidisciplinary team must promptly develop a comprehensive plan of care for each participant.

(b) *Content of plan of care.* The plan of care must meet the following requirements:

(1) Specify the care needed to meet the participant's medical, physical, emotional, and social needs, as identified in the initial comprehensive assessment.

(2) Identify measurable outcomes to be achieved.

(c) *Implementation of the plan of care.* (1) The team must implement, coordinate, and monitor the plan of care whether the services are furnished by PACE employees or contractors.

(2) The team must continuously monitor the participant's health and psychosocial status, as well as the effectiveness of the plan of care, through the provision of services, informal observation, input from participants or caregivers, and communications among members of the multidisciplinary team and other providers.

(d) *Evaluation of plan of care.* On at least a semi-annual basis, the multidisciplinary team must reevaluate the plan of care, including defined outcomes, and make changes as necessary.

(e) *Participant and caregiver involvement in plan of care.* The team must develop, review, and reevaluate the plan of care in collaboration with the participant or caregiver, or both, to ensure that there is agreement with the

plan of care and that the participant's concerns are addressed.

(f) *Documentation.* The team must document the plan of care, and any changes made to it, in the participant's medical record.

Subpart G—Participant Rights

§ 460.110 Bill of rights.

(a) *Written bill of rights.* A PACE organization must have a written participant bill of rights designed to protect and promote the rights of each participant. Those rights include, at a minimum, the ones specified in § 460.112.

(b) *Explanation of rights.* The organization must inform a participant upon enrollment, in writing, of his or her rights and responsibilities, and all rules and regulations governing participation.

(c) *Protection of rights.* The organization must protect and provide for the exercise of the participant's rights.

§ 460.112 Specific rights to which a participant is entitled.

(a) *Respect and nondiscrimination.* Each participant has the right to considerate, respectful care from all PACE employees and contractors at all times and under all circumstances. Each participant has the right not to be discriminated against in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability, or source of payment. Specifically, each participant has the right to the following:

(1) To receive comprehensive health care in a safe and clean environment and in an accessible manner.

(2) To be treated with dignity and respect, be afforded privacy and confidentiality in all aspects of care, and be provided humane care.

(3) Not to be required to perform services for the PACE organization.

(4) To have reasonable access to a telephone.

(5) To be free from harm, including physical or mental abuse, neglect, corporal punishment, involuntary seclusion, excessive medication, and any physical or chemical restraint imposed for purposes of discipline or convenience and not required to treat the participant's medical symptoms.

(6) To be encouraged and assisted to exercise rights as a participant, including the Medicare and Medicaid appeals processes as well as civil and other legal rights.

(7) To be encouraged and assisted to recommend changes in policies and services to PACE staff.

(b) *Information disclosure.* Each PACE participant has the right to receive accurate, easily understood information and to receive assistance in making informed health care decisions. Specifically, each participant has the following rights:

(1) To be fully informed in writing of the services available from the PACE organization, including identification of all services that are delivered through contracts, rather than furnished directly by the PACE organization at the following times:

(i) Before enrollment.

(ii) At enrollment.

(iii) When there is a change in services.

(2) To have the enrollment agreement, described in § 460.154, fully explained in a manner understood by the participant.

(3) To examine, or upon reasonable request, to be assisted to examine the results of the most recent review of the PACE organization conducted by HCFA or the State administering agency and any plan of correction in effect.

(c) *Choice of providers.* Each participant has the right to a choice of health care providers, within the PACE organization's network, that is sufficient to ensure access to appropriate high-quality health care. Specifically, each participant has the right to the following:

(1) To choose his or her primary care physician and specialists from within the PACE network.

(2) To request that a qualified specialist for women's health services furnish routine or preventive women's health services.

(3) To disenroll from the program at any time.

(d) *Access to emergency services.* Each participant has the right to access emergency health care services when and where the need arises without prior authorization by the PACE multidisciplinary team.

(e) *Participation in treatment decisions.* Each participant has the right to participate fully in all decisions related to his or her treatment. A participant who is unable to participate fully in treatment decisions has the right to designate a representative. Specifically, each participant has the following rights:

(1) To have all treatment options explained in a culturally competent manner and to make health care decisions, including the right to refuse treatment, and be informed of the consequences of the decisions.

(2) To have the PACE organization explain advance directives and to establish them, if the participant so desires, in accordance with §§ 489.100 and 489.102 of this chapter.

(3) To be fully informed of his or her health and functional status by the multidisciplinary team.

(4) To participate in the development and implementation of the plan of care.

(5) To request a reassessment by the multidisciplinary team.

(6) To be given reasonable advance notice, in writing, of any transfer to another treatment setting and the justification for the transfer (that is, due to medical reasons or for the participant's welfare, or that of other participants). The PACE organization must document the justification in the participant's medical record.

(f) *Confidentiality of health information.* Each participant has the right to communicate with health care providers in confidence and to have the confidentiality of his or her individually identifiable health care information protected. Each participant also has the right to review and copy his or her own medical records and request amendments to those records. Specifically, each participant has the following rights:

(1) To be assured of confidential treatment of all information contained in the health record, including information contained in an automated data bank.

(2) To be assured that his or her written consent will be obtained for the release of information to persons not otherwise authorized under law to receive it.

(3) To provide written consent that limits the degree of information and the persons to whom information may be given.

(g) *Complaints and appeals.* Each participant has the right to a fair and efficient process for resolving differences with the PACE organization, including a rigorous system for internal review by the organization and an independent system of external review. Specifically, each participant has the following rights:

(1) To be encouraged and assisted to voice complaints to PACE staff and outside representatives of his or her choice, free of any restraint, interference, coercion, discrimination, or reprisal by the PACE staff.

(2) To appeal any treatment decision of the PACE organization, its employees, or contractors through the process described in § 460.122.

§ 460.114 Restraints.

(a) The PACE organization must limit use of restraints to the least restrictive and most effective method available. The term restraint includes either a

physical restraint or a chemical restraint.

(1) A physical restraint is any manual method or physical or mechanical device, materials, or equipment attached or adjacent to the participant's body that he or she cannot easily remove that restricts freedom of movement or normal access to one's body.

(2) A chemical restraint is a medication used to control behavior or to restrict the participant's freedom of movement and is not a standard treatment for the participant's medical or psychiatric condition.

(b) If the multidisciplinary team determines that a restraint is needed to ensure the participant's physical safety or the safety of others, the use must meet the following conditions:

(1) Be imposed for a defined, limited period of time, based upon the assessed needs of the participant.

(2) Be imposed in accordance with safe and appropriate restraining techniques.

(3) Be imposed only when other less restrictive measures have been found to be ineffective to protect the participant or others from harm.

(4) Be removed or ended at the earliest possible time.

(c) The condition of the restrained participant must be continually assessed, monitored, and reevaluated.

§ 460.116 Explanation of rights.

(a) *Written policies.* A PACE organization must have written policies and implement procedures to ensure that the participant, his or her representative, if any, and staff understand these rights.

(b) *Explanation of rights.* The PACE organization must fully explain the rights to the participant and his or her representative, if any, at the time of enrollment in a manner understood by the participant.

(c) *Display.* The PACE organization must meet the following requirements:

(1) Write the participant rights in English and in any other principal languages of the community.

(2) Display the participant rights in a prominent place in the PACE center.

§ 460.118 Violation of rights.

The PACE organization must have established documented procedures to respond to and rectify a violation of a participant's rights.

§ 460.120 Grievance process.

For purposes of this part, a grievance is a complaint, either written or oral, expressing dissatisfaction with service delivery or the quality of care furnished.

(a) *Process to resolve grievances.* A PACE organization must have a formal written process to evaluate and resolve medical and nonmedical grievances by participants, their family members, or representatives.

(b) *Notification to participants.* Upon enrollment, and at least annually thereafter, the PACE organization must give a participant written information on the grievance process.

(c) *Minimum requirements.* At a minimum, the PACE organization's grievance process must include written procedures for the following:

(1) How a participant files a grievance.

(2) Documentation of a participant's grievance.

(3) Response to, and resolution of, grievances in a timely manner.

(4) Maintenance of confidentiality of a participant's grievance.

(d) *Continuing care during grievance process.* The PACE organization must continue to furnish all required services to the participant during the grievance process.

(e) *Explaining the grievance process.* The PACE organization must discuss with and provide to the participant in writing the specific steps, including timeframes for response, that will be taken to resolve the participant's grievance.

(f) *Analyzing grievance information.* The PACE organization must maintain, aggregate, and analyze information on grievance proceedings. This information must be used in the PACE organization's internal quality assessment and performance improvement program.

§ 460.122 PACE organization's appeals process.

For purposes of this section, an appeal is a participant's action taken with respect to the PACE organization's noncoverage of, or nonpayment for, a service.

(a) *PACE organization's written appeals process.* The PACE organization must have a formal written appeals process, with specified timeframes for response, to address noncoverage or nonpayment of a service.

(b) *Notification of participants.* Upon enrollment, at least annually thereafter, and whenever the multidisciplinary team denies a request for services or payment, the PACE organization must give a participant written information on the appeals process.

(c) *Minimum requirements.* At a minimum, the PACE organization's appeals process must include written procedures for the following:

(1) Timely preparation and processing of a written denial of coverage or payment as provided in § 460.104(c)(3).

(2) How a participant files an appeal.

(3) Documentation of a participant's appeal.

(4) Appointment of an appropriately credentialed and impartial third party who was not involved in the original action and who does not have a stake in the outcome of the appeal to review the participant's appeal.

(5) Responses to, and resolution of, appeals as expeditiously as the participant's health condition requires, but no later than 30 calendar days after the organization receives an appeal.

(6) Maintenance of confidentiality of appeals.

(d) *Notification.* A PACE organization must give all parties involved in the appeal the following:

(1) Appropriate written notification.

(2) A reasonable opportunity to present evidence related to the dispute, in person, as well as in writing.

(e) *Services furnished during appeals process.* During the appeals process, the PACE organization must meet the following requirements:

(1) For a Medicaid participant, continue to furnish the disputed services until issuance of the final determination if the following conditions are met:

(i) The PACE organization is proposing to terminate or reduce services currently being furnished to the participant.

(ii) The participant requests continuation with the understanding that he or she may be liable for the costs of the contested services if the determination is not made in his or her favor.

(2) Continue to furnish to the participant all other required services, as specified in subpart F of this part.

(f) *Expedited appeals process.* (1) A PACE organization must have an expedited appeals process for situations in which the participant believes that his or her life, health, or ability to regain maximum function would be seriously jeopardized, absent provision of the service in dispute.

(2) Except as provided in paragraph (f)(3) of this section, the PACE organization must respond to the appeal as expeditiously as the participant's health condition requires, but no later than 72 hours after it receives the appeal.

(3) The PACE organization may extend the 72-hour timeframe by up to 14 calendar days for either of the following reasons:

(i) The participant requests the extension.

(ii) The organization justifies to the State administering agency the need for additional information and how the delay is in the interest of the participant.

(g) Determination in favor of participant. A PACE organization must furnish the disputed service as expeditiously as the participant's health condition requires if a determination is made in favor of the participant on appeal.

(h) Determination adverse to participant. For a determination that is wholly or partially adverse to a participant, at the same time the decision is made, the PACE organization must notify the following:

(1) HCFA.

(2) The State administering agency.

(3) The participant.

(i) *Analyzing appeals information.* A PACE organization must maintain, aggregate, and analyze information on appeal proceedings and use this information in the organization's internal quality assessment and performance improvement program.

§ 460.124 Additional appeal rights under Medicare or Medicaid.

A PACE organization must inform a participant in writing of his or her appeal rights under Medicare or Medicaid managed care, or both, assist the participant in choosing which to pursue if both are applicable, and forward the appeal to the appropriate external entity.

Subpart H—Quality Assessment and Performance Improvement

§ 460.130 General rule.

(a) A PACE organization must develop, implement, maintain, and evaluate an effective, data-driven quality assessment and performance improvement program.

(b) The program must reflect the full range of services furnished by the PACE organization.

(c) A PACE organization must take actions that result in improvements in its performance in all types of care.

§ 460.132 Quality assessment and performance improvement plan.

(a) *Basic rule.* A PACE organization must have a written quality assessment and performance improvement plan.

(b) *Annual review.* The PACE governing body must review the plan annually and revise it, if necessary.

(c) *Minimum plan requirements.* At a minimum, the plan must specify how the PACE organization proposes to meet the following requirements:

(1) Identify areas to improve or maintain the delivery of services and patient care.

(2) Develop and implement plans of action to improve or maintain quality of care.

(3) Document and disseminate to PACE staff and contractors the results from the quality assessment and performance improvement activities.

§ 460.134 Minimum requirements for quality assessment and performance improvement program.

(a) *Minimum program requirements.* A PACE organization's quality assessment and performance improvement program must include, but is not limited to, the use of objective measures to demonstrate improved performance with regard to the following:

(1) Utilization of PACE services, such as decreased inpatient hospitalizations and emergency room visits.

(2) Caregiver and participant satisfaction.

(3) Outcome measures that are derived from data collected during assessments, including data on the following:

(i) Physiological well being.

(ii) Functional status.

(iii) Cognitive ability.

(iv) Social/behavioral functioning.

(v) Quality of life of participants.

(4) Effectiveness and safety of staff-provided and contracted services, including the following:

(i) Competency of clinical staff.

(ii) Promptness of service delivery.

(iii) Achievement of treatment goals and measurable outcomes.

(5) Nonclinical areas, such as grievances and appeals, transportation services, meals, life safety, and environmental issues.

(b) *Basis for outcome measures.* Outcome measures must be based on current clinical practice guidelines and professional practice standards applicable to the care of PACE participants.

(c) *Minimum levels of performance.* The PACE organization must meet or exceed minimum levels of performance, established by HCFA and the State administering agency, on standardized quality measures, such as influenza immunization rates, which are specified in the PACE program agreement.

(d) *Accuracy of data.* The PACE organization must ensure that all data used for outcome monitoring are accurate and complete.

§ 460.136 Internal quality assessment and performance improvement activities.

(a) *Quality assessment and performance improvement requirements.* A PACE organization must do the following:

(1) Use a set of outcome measures to identify areas of good or problematic performance.

(2) Take actions targeted at maintaining or improving care based on outcome measures.

(3) Incorporate actions resulting in performance improvement into standards of practice for the delivery of care and periodically track performance to ensure that any performance improvements are sustained over time.

(4) Set priorities for performance improvement, considering prevalence and severity of identified problems, and give priority to improvement activities that affect clinical outcomes.

(5) Immediately correct any identified problem that directly or potentially threatens the health and safety of a PACE participant.

(b) *Quality assessment and performance improvement coordinator.* A PACE organization must designate an individual to coordinate and oversee implementation of quality assessment and performance improvement activities.

(c) *Involvement in quality assessment and performance improvement activities.* (1) A PACE organization must ensure that all multidisciplinary team members, PACE staff, and contract providers are involved in the development and implementation of quality assessment and performance improvement activities and are aware of the results of these activities.

(2) The quality improvement coordinator must encourage a PACE participant and his or her caregivers to be involved in quality assessment and performance improvement activities, including providing information about their satisfaction with services.

§ 460.138 Committees with community input.

A PACE organization must establish one or more committees, with community input, to do the following:

(a) Evaluate data collected pertaining to quality outcome measures.

(b) Address the implementation of, and results from, the quality assessment and performance improvement plan.

(c) Provide input related to ethical decisionmaking, including end-of-life issues and implementation of the Patient Self-Determination Act.

§ 460.140 Additional quality assessment activities.

A PACE organization must meet external quality assessment and reporting requirements, as specified by HCFA or the State administering agency, in accordance with § 460.202.

Subpart I—Participant Enrollment and Disenrollment

§ 460.150 Eligibility to enroll in a PACE program.

(a) *General rule.* To enroll in a PACE program, an individual must meet eligibility requirements specified in this section. To continue to be eligible for PACE, an individual must meet the annual recertification requirements specified in § 460.160.

(b) *Basic eligibility requirements.* To be eligible to enroll in PACE, an individual must meet the following requirements:

(1) Be 55 years of age or older.

(2) Be determined by the State administering agency to need the level of care required under the State Medicaid plan for coverage of nursing facility services, which indicates that the individual's health status is comparable to the health status of individuals who have participated in the PACE demonstration waiver programs.

(3) Reside in the service area of the PACE organization.

(4) Meet any additional program specific eligibility conditions imposed under the PACE program agreement. These additional conditions may not modify the requirements of paragraph (b)(1) through (b)(3) of this section.

(c) *Other eligibility requirements.* (1) At the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety.

(2) The criteria used to determine if an individual's health or safety would be jeopardized by living in a community setting must be specified in the program agreement.

(d) *Eligibility under Medicare and Medicaid.* Eligibility to enroll in a PACE program is not restricted to an individual who is either a Medicare beneficiary or Medicaid recipient. A potential PACE enrollee may be, but is not required to be, any or all of the following:

(1) Entitled to Medicare Part A.

(2) Enrolled under Medicare Part B.

(3) Eligible for Medicaid.

§ 460.152 Enrollment process.

(a) *Intake process.* Intake is an intensive process during which PACE staff members make one or more visits to a potential participant's place of residence and the potential participant makes one or more visits to the PACE center. At a minimum, the intake process must include the following activities:

(1) The PACE staff must explain to the potential participant and his or her representative or caregiver the following information:

(i) The PACE program, using a copy of the enrollment agreement described in § 460.154, specifically references the elements of the agreement including but not limited to § 460.154(e), (i) through (m), and (r).

(ii) The requirement that the PACE organization would be the participant's sole service provider and clarification that the PACE organization guarantees access to services, but not to a specific provider.

(iii) A list of the employees of the PACE organization who furnish care and the most current list of contracted health care providers under § 460.70(c).

(iv) Monthly premiums, if any.

(v) Any Medicaid spenddown obligations.

(2) The potential participant must sign a release to allow the PACE organization to obtain his or her medical and financial information and eligibility status for Medicare and Medicaid.

(3) The State administering agency must assess the potential participant, including any individual who is not eligible for Medicaid, to ensure that he or she needs the level of care required under the State Medicaid plan for coverage of nursing facility services, which indicates that the individual's health status is comparable to the health status of individuals who have participated in the PACE demonstration waiver programs.

(4) PACE staff must assess the potential participant to ensure that he or she can be cared for appropriately in a community setting and that he or she meets all requirements for PACE eligibility specified in this part.

(b) *Denial of Enrollment.* If a prospective participant is denied enrollment because his or her health or safety would be jeopardized by living in a community setting, the PACE organization must meet the following requirements:

(1) Notify the individual in writing of the reason for the denial.

(2) Refer the individual to alternative services, as appropriate.

(3) Maintain supporting documentation of the reason for the denial.

(4) Notify HCFA and the State administering agency and make the documentation available for review.

§ 460.154 Enrollment agreement.

If the potential participant meets the eligibility requirements and wants to enroll, he or she must sign an enrollment agreement which contains, at a minimum, the following information:

(a) Applicant's name, sex, and date of birth.

(b) Medicare beneficiary status (Part A, Part B, or both) and number, if applicable.

(c) Medicaid recipient status and number, if applicable.

(d) Other health insurance information, if applicable.

(e) Conditions for enrollment and disenrollment in PACE.

(f) Description of participant premiums, if any, and procedures for payment of premiums.

(g) Notification that a Medicaid participant and a participant who is eligible for both Medicare and Medicaid are not liable for any premiums, but may be liable for any applicable spenddown liability under §§ 435.121 and 435.831 of this chapter and any amounts due under the post-eligibility treatment of income process under § 460.184.

(h) Notification that a Medicare participant may not disenroll from PACE at a social security office.

(i) Notification that enrollment in PACE results in disenrollment from any other Medicare or Medicaid prepayment plan or optional benefit. Electing enrollment in any other Medicare or Medicaid prepayment plan or optional benefit, including the hospice benefit, after enrolling as a PACE participant is considered a voluntary disenrollment from PACE.

(j) Information on the consequences of subsequent enrollment in other optional Medicare or Medicaid programs following disenrollment from PACE.

(k) Description of PACE services available, including all Medicare and Medicaid covered services, and how services are obtained from the PACE organization.

(l) Description of the procedures for obtaining emergency and urgently needed out-of-network services.

(m) The participant bill of rights.

(n) Information on the process for grievances and appeals and Medicare/Medicaid phone numbers for use in appeals.

(o) Notification of a participant's obligation to inform the PACE organization of a move or lengthy absence from the organization's service area.

(p) An acknowledgment by the applicant or representative that he or she understands the requirement that the PACE organization must be the applicant's sole service provider.

(q) A statement that the PACE organization has an agreement with HCFA and the State administering agency that is subject to renewal on a periodic basis and, if the agreement is

not renewed, the program will be terminated.

(r) The applicant's authorization for disclosure and exchange of personal information between HCFA, its agents, the State administering agency, and the PACE organization.

(s) The effective date of enrollment.

(t) The applicant's signature and the date.

§ 460.156 Other enrollment procedures.

(a) *Items a PACE organization must give a participant upon enrollment.* After the participant signs the enrollment agreement, the PACE organization must give the participant the following:

(1) A copy of the enrollment agreement.

(2) A PACE membership card.

(3) Emergency information to be posted in his or her home identifying the individual as a PACE participant and explaining how to access emergency services.

(4) Stickers for the participant's Medicare and Medicaid cards, as applicable, which indicate that he or she is a PACE participant and include the phone number of the PACE organization.

(b) *Submittal of participant information to HCFA and the State.* The PACE organization must submit participant information to HCFA and the State administering agency, in accordance with established procedures.

(c) *Changes in enrollment agreement information.* If there are changes in the enrollment agreement information at any time during the participant's enrollment, the PACE organization must meet the following requirements:

(1) Give an updated copy of the information to the participant.

(2) Explain the changes to the participant and his or her representative or caregiver in a manner they understand.

§ 460.158 Effective date of enrollment.

A participant's enrollment in the program is effective on the first day of the calendar month following the date the PACE organization receives the signed enrollment agreement.

§ 460.160 Continuation of enrollment.

(a) *Duration of enrollment.* Enrollment continues until the participant's death, regardless of changes in health status, unless either of the following actions occur:

(1) The participant voluntarily disenrolls.

(2) The participant is involuntarily disenrolled, as described in § 460.164.

(b) *Annual recertification requirement.* At least annually, the State administering agency must reevaluate whether a participant needs the level of care required under the State Medicaid plan for coverage of nursing facility services.

(1) *Waiver of annual requirement.* (i) The State administering agency may permanently waive the annual recertification requirement for a participant if it determines that there is no reasonable expectation of improvement or significant change in the participant's condition because of the severity of a chronic condition or the degree of impairment of functional capacity.

(ii) The PACE organization must retain in the participant's medical record the documentation of the reason for waiving the annual recertification requirement.

(2) *Deemed continued eligibility.* If the State administering agency determines that a PACE participant no longer meets the State Medicaid nursing facility level of care requirements, the participant may be deemed to continue to be eligible for the PACE program until the next annual reevaluation, if, in the absence of continued coverage under this program, the participant reasonably would be expected to meet the nursing facility level of care requirement within the next 6 months.

(3) *Continued eligibility criteria.* (i) The State administering agency, in consultation with the PACE organization, makes a determination of continued eligibility based on a review of the participant's medical record and plan of care.

(ii) The criteria used to make the determination of continued eligibility must be specified in the program agreement.

§ 460.162 Voluntary disenrollment.

A PACE participant may voluntarily disenroll from the program without cause at any time.

§ 460.164 Involuntary disenrollment.

(a) *Reasons for involuntary disenrollment.* A participant may be involuntarily disenrolled for any of the following reasons:

(1) The participant fails to pay, or to make satisfactory arrangements to pay, any premium due the PACE organization after a 30-day grace period.

(2) The participant engages in disruptive or threatening behavior, as described in paragraph (b) of this section.

(3) The participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances.

(4) The participant is determined to no longer meet the State Medicaid nursing facility level of care requirements and is not deemed eligible.

(5) The PACE program agreement with HCFA and the State administering agency is not renewed or is terminated.

(6) The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

(b) *Disruptive or threatening behavior.* For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:

(1) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or

(2) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.

(c) *Documentation of disruptive or threatening behavior.* If a PACE organization proposes to disenroll a participant who is disruptive or threatening, the organization must document the following information in the participant's medical record:

(1) The reasons for proposing to disenroll the participant.

(2) All efforts to remedy the situation.

(d) *Noncompliant behavior.* (1) A PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others.

(2) For purposes of this section, noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

(e) *State administering agency review and final determination.* Before an involuntary disenrollment is effective, the State administering agency must review it and determine in a timely manner that the PACE organization has adequately documented acceptable grounds for disenrollment.

§ 460.166 Effective date of disenrollment.

(a) In disenrolling a participant, the PACE organization must take the following actions:

(1) Use the most expedient process allowed under Medicare and Medicaid procedures, as set forth in the PACE program agreement.

(2) Coordinate the disenrollment date between Medicare and Medicaid (for a participant who is eligible for both Medicare and Medicaid).

(3) Give reasonable advance notice to the participant.

(b) Until the date enrollment is terminated, the following requirements must be met:

(1) PACE participants must continue to use PACE organization services and remain liable for any premiums.

(2) The PACE organization must continue to furnish all needed services.

§ 460.168 Reinstatement in other Medicare and Medicaid programs.

To facilitate a participant's reinstatement in other Medicare and Medicaid programs after disenrollment, the PACE organization must do the following:

(a) Make appropriate referrals and ensure medical records are made available to new providers in a timely manner.

(b) Work with HCFA and the State administering agency to reinstate the participant in other Medicare and Medicaid programs for which the participant is eligible.

§ 460.170 Reinstatement in PACE.

(a) A previously disenrolled participant may be reinstated in a PACE program.

(b) If the reason for disenrollment is failure to pay the premium and the participant pays the premium before the effective date of disenrollment, the participant is reinstated in the PACE program with no break in coverage.

§ 460.172 Documentation of disenrollment.

A PACE organization must meet the following requirements:

(a) Have a procedure in place to document the reasons for all voluntary and involuntary disenrollments.

(b) Make documentation available for review by HCFA and the State administering agency.

(c) Use the information on voluntary disenrollments in the PACE organization's internal quality assessment and performance improvement program.

Subpart J—Payment

§ 460.180 Medicare payment to PACE organizations.

(a) *Principle of payment.* Under a PACE program agreement, HCFA makes a prospective monthly payment to the PACE organization of a capitation amount for each Medicare participant in a payment area based on the rate it pays to a Medicare+Choice organization.

(b) *Determination of rate.* (1) The PACE program agreement specifies the monthly capitation amount for each year applicable to a PACE organization.

(2) Except as specified in paragraph (b)(4) of this section, the monthly capitation amount is based on the aged Part A and Part B payment rates established for purposes of payment to Medicare+Choice organizations. As used in this section, ''Medicare+Choice rates'' means the Part A and Part B rates calculated by HCFA for making payment to Medicare+Choice organizations under section 1853 of the Act.

(3) The rates specified in paragraph (b)(2) of this section are adjusted by a frailty factor necessary to ensure comparability between PACE participants and the reference population in the Medicare system. The factor is specified in the PACE program agreement.

(4) For Medicare participants who require ESRD services, the monthly capitation amount is based on the Medicare+Choice State ESRD rate. The monthly rate is adjusted by a factor to recognize the frailer and older ESRD population being served by the PACE organization. The PACE program agreement specifies this factor.

(5) HCFA may adjust the monthly capitation amount to take into account other factors HCFA determines to be appropriate.

(6) The monthly capitation payment is a fixed amount, regardless of changes in the participant's health status.

(7) The monthly capitation payment amount is an all-inclusive payment for Medicare benefits provided to participants. A PACE organization must not seek any additional payment from Medicare. The only additional payment that a PACE organization may collect from, or on behalf of, a Medicare participant for PACE services is the following:

(i) Any applicable premium amount specified in § 460.186.

(ii) Any charge permitted under paragraph (d) of this section when Medicare is not the primary payer.

(iii) Any payment from the State, as specified in § 460.182, for a participant who is eligible for both Medicare and Medicaid.

(iv) Payment with respect to any applicable spenddown liability under §§ 435.121 and 435.831 of this chapter and any amount due under the post-eligibility treatment of income process under § 460.184 for a participant who is eligible for both Medicare and Medicaid.

(8) HCFA computes the Medicare monthly capitation payment amount under a PACE program agreement so that the total payment level for all participants is less than the projected payment under Medicare for a comparable population not enrolled under a PACE program.

(c) *Adjustments to payments.* If the actual number of Medicare participants differs from the estimated number of participants on which the amount of the prospective monthly payment was based, HCFA adjusts subsequent monthly payments to account for the difference.

(d) *Application of Medicare secondary payer provisions.* (1) *Basic rule.* HCFA does not pay for services to the extent that Medicare is not the primary payer under part 411 of this chapter.

(2) *Responsibilities of the PACE organization.* The PACE organization must do the following:

(i) Identify payers that are primary to Medicare under part 411 of this chapter.

(ii) Determine the amounts payable by those payers.

(iii) Coordinate benefits to Medicare participants with the benefits of the primary payers.

(3) *Charges to other entities.* The PACE organization may charge other individuals or entities for PACE services covered under Medicare for which Medicare is not the primary payer, as specified in paragraphs (d)(4) and (5) of this section.

(4) *Charge to other insurers or the participant.* If a Medicare participant receives from a PACE organization covered services that are also covered under State or Federal workers' compensation, any no-fault insurance, or any liability insurance policy or plan, including a self-insured plan, the PACE organization may charge any of the following:

(i) The insurance carrier, the employer, or any other entity that is liable for payment for the services under part 411 of this chapter.

(ii) The Medicare participant, to the extent that he or she has been paid by the carrier, employer, or other entity.

(5) *Charge to group health plan (GHP) or large group health plan (LGHP).* If Medicare is not the primary payer for services that a PACE organization furnished to a Medicare participant who is covered under a GHP or LGHP, the organization may charge the following:

(i) GHP or LGHP for those services.

(ii) Medicare participant to the extent that he or she has been paid by the GHP or LGHP for those services.

§ 460.182 Medicaid payment.

(a) Under a PACE program agreement, the State administering agency makes a prospective monthly payment to the PACE organization of a capitation amount for each Medicaid participant.

(b) The monthly capitation payment amount is negotiated between the PACE organization and the State administering agency, and specified in the PACE program agreement. The amount represents the following:

(1) Is less than the amount that would otherwise have been paid under the State plan if the participants were not enrolled under the PACE program.

(2) Takes into account the comparative frailty of PACE participants.

(3) Is a fixed amount regardless of changes in the participant's health status.

(4) Can be renegotiated on an annual basis.

(c) The PACE organization must accept the capitation payment amount as payment in full for Medicaid participants and may not bill, charge, collect, or receive any other form of payment from the State administering agency or from, or on behalf of, the participant, except as follows:

(1) Payment with respect to any applicable spenddown liability under §§ 435.121 and 435.831 of this chapter and any amounts due under the post-eligibility treatment of income process under § 460.184.

(2) Medicare payment received from HCFA or from other payers, in accordance with § 460.180(d).

(d) State procedures for the enrollment and disenrollment of participants in the State's system, including procedures for any adjustment to account for the difference between the estimated number of participants on which the prospective monthly payment was based and the actual number of participants in that month, are included in the PACE program agreement.

§ 460.184 Post-eligibility treatment of income.

(a) A State may provide for post-eligibility treatment of income for Medicaid participants in the same manner as a State treats post-eligibility income for individuals receiving services under a waiver under section 1915(c) of the Act.

(b) Post-eligibility treatment of income is applied as it is under a waiver of section 1915(c) of the Act, as specified in §§ 435.726 and 435.735 of this chapter, and section 1924 of the Act.

§ 460.186 PACE premiums.

The amount that a PACE organization can charge a participant as a monthly premium depends on the participant's eligibility under Medicare and Medicaid, as follows:

(a) *Medicare Parts A and B.* For a participant who is entitled to Medicare Part A, enrolled under Medicare Part B, but not eligible for Medicaid, the premium equals the Medicaid capitation amount.

(b) *Medicare Part A only.* For a participant who is entitled to Medicare Part A, not enrolled under Medicare Part B, and not eligible for Medicaid, the premium equals the Medicaid capitation amount plus the Medicare Part B capitation rate.

(c) *Medicare Part B only.* For a participant who is enrolled only under Medicare Part B and not eligible for Medicaid, the premium equals the Medicaid capitation amount plus the Medicare Part A capitation rate.

(d) *Medicaid, with or without Medicare.* A PACE organization may not charge a premium to a participant who is eligible for both Medicare and Medicaid, or who is only eligible for Medicaid.

Subpart K—Federal/State Monitoring

§ 460.190 Monitoring during trial period.

(a) *Trial period review.* During the trial period, HCFA, in cooperation with the State administering agency, conducts comprehensive annual reviews of the operations of a PACE organization to ensure compliance with the requirements of this part.

(b) *Scope of review.* The review includes the following:

(1) An onsite visit to the PACE organization, which may include, but is not limited to, the following:

(i) Review of participants' charts.

(ii) Interviews with staff.

(iii) Interviews with participants and caregivers.

(iv) Interviews with contractors.

(v) Observation of program operations, including marketing, participant services, enrollment and disenrollment procedures, grievances, and appeals.

(2) A comprehensive assessment of an organization's fiscal soundness.

(3) A comprehensive assessment of the organization's capacity to furnish all PACE services to all participants.

(4) Any other elements that HCFA or the State administering agency find necessary.

§ 460.192 Ongoing monitoring after trial period.

(a) At the conclusion of the trial period, HCFA, in cooperation with the State administering agency, continues to conduct reviews of a PACE organization, as appropriate, taking into account the quality of care furnished and the organization's compliance with all of the requirements of this part.

(b) Reviews include an on-site visit at least every 2 years.

§ 460.194 Corrective action.

(a) A PACE organization must take action to correct deficiencies identified during reviews.

(b) HCFA or the State administering agency monitors the effectiveness of corrective actions.

(c) Failure to correct deficiencies may result in sanctions or termination, as specified in subpart D of this part.

§ 460.196 Disclosure of review results.

(a) HCFA and the State administering agency promptly report the results of reviews under §§ 460.190 and 460.192 to the PACE organization, along with any recommendations for changes to the organization's program.

(b) HCFA and the State administering agency make the results of reviews available to the public upon request.

(c) The PACE organization must post a notice of the availability of the results of the most recent review and any plans of correction or responses related to the most recent review.

(d) The PACE organization must make the review results available for examination in a place readily accessible to participants.

Subpart L—Data Collection, Record Maintenance, and Reporting

§ 460.200 Maintenance of records and reporting of data.

(a) *General rule.* A PACE organization must collect data, maintain records, and submit reports as required by HCFA and the State administering agency.

(b) *Access to data and records.* A PACE organization must allow HCFA and the State administering agency access to data and records including, but not limited to, the following:

(1) Participant health outcomes data.

(2) Financial books and records.

(3) Medical records.

(4) Personnel records.

(c) *Reporting.* A PACE organization must submit to HCFA and the State administering agency all reports that HCFA and the State administering agency require to monitor the operation, cost, quality, and effectiveness of the program and establish payment rates.

(d) *Safeguarding data and records.* A PACE organization must establish written policies and implement procedures to safeguard all data, books, and records against loss, destruction, unauthorized use, or inappropriate alteration.

(e) *Confidentiality of health information.* A PACE organization must establish written policies and

implement procedures to do the following:

(1) Safeguard the privacy of any information that identifies a particular participant. Information from, or copies of, records may be released only to authorized individuals. Original medical records are released only in accordance with Federal or State laws, court orders, or subpoenas.

(2) Maintain complete records and relevant information in an accurate and timely manner.

(3) Grant each participant timely access, upon request, to review and copy his or her own medical records and to request amendments to those records.

(4) Abide by all Federal and State laws regarding confidentiality and disclosure for mental health records, medical records, and other participant health information.

(f) *Retention of records.* (1) A PACE organization must retain records for the longest of the following periods:

(i) The period of time specified in State law.

(ii) Six years from the last entry date.

(iii) For medical records of disenrolled participants, 6 years after the date of disenrollment.

(2) If litigation, a claim, a financial management review, or an audit arising from the operation of the PACE program is started before the expiration of the retention period, specified in paragraph (f)(1) of this section, the PACE organization must retain the records until the completion of the litigation, or resolution of the claims or audit findings.

§ 460.202 Participant health outcomes data.

(a) A PACE organization must establish and maintain a health information system that collects, analyzes, integrates, and reports data necessary to measure the organization's performance, including outcomes of care furnished to participants.

(b) A PACE organization must furnish data and information pertaining to its provision of participant care in the manner, and at the time intervals, specified by HCFA and the State administering agency. The items collected are specified in the PACE program agreement.

§ 460.204 Financial recordkeeping and reporting requirements.

(a) *Accurate reports.* A PACE organization must provide HCFA and the State administering agency with accurate financial reports that are—

(1) Prepared using an accrual basis of accounting; and

(2) Verifiable by qualified auditors.

(b) *Accrual accounting.* A PACE organization must maintain an accrual accounting recordkeeping system that does the following:

(1) Accurately documents all financial transactions.

(2) Provides an audit trail to source documents.

(3) Generates financial statements.

(c) *Accepted reporting practices.* Except as specified under Medicare principles of reimbursement, as defined in part 413 of this chapter, a PACE organization must follow standardized definitions, accounting, statistical, and reporting practices that are widely accepted in the health care industry.

(d) *Audit or inspection.* A PACE organization must permit HCFA and the State administering agency to audit or inspect any books and records of original entry that pertain to the following:

(1) Any aspect of services furnished.

(2) Reconciliation of participants' benefit liabilities.

(3) Determination of Medicare and Medicaid amounts payable.

§ 460.208 Financial statements.

(a) *General rule.* (1) Not later than 180 days after the organization's fiscal year ends, a PACE organization must submit a certified financial statement that includes appropriate footnotes.

(2) The financial statement must be certified by an independent certified public accountant.

(b) *Contents.* At a minimum, the certified financial statement must consist of the following:

(1) A certification statement.

(2) A balance sheet.

(3) A statement of revenues and expenses.

(4) A source and use of funds statement.

(c) *Quarterly financial statement*—(1) *During trial period.* A PACE organization must submit a quarterly financial statement throughout the trial period within 45 days after the last day of each quarter of the PACE organization's fiscal year.

(2) *After trial period.* If HCFA or the State administering agency determines that an organization's performance requires more frequent monitoring and oversight due to concerns about fiscal soundness, HCFA or the State administering agency may require a PACE organization to submit monthly or quarterly financial statements, or both.

§ 460.210 Medical records.

(a) *Maintenance of medical records.* (1) A PACE organization must maintain a single, comprehensive medical record for each participant, in accordance with accepted professional standards.

(2) The medical record for each participant must meet the following requirements:

(i) Be complete.

(ii) Accurately documented.

(iii) Readily accessible.

(iv) Systematically organized.

(v) Available to all staff.

(vi) Maintained and housed at the PACE center where the participant receives services.

(b) *Content of medical records.* At a minimum, the medical record must contain the following:

(1) Appropriate identifying information.

(2) Documentation of all services furnished, including the following:

(i) A summary of emergency care and other inpatient or long-term care services.

(ii) Services furnished by employees of the PACE center.

(iii) Services furnished by contractors and their reports.

(3) Multidisciplinary assessments, reassessments, plans of care, treatment, and progress notes that include the participant's response to treatment.

(4) Laboratory, radiological and other test reports.

(5) Medication records.

(6) Hospital discharge summaries, if applicable.

(7) Reports of contact with informal support (for example, caregiver, legal guardian, or next of kin).

(8) Enrollment Agreement.

(9) Physician orders.

(10) Discharge summary and disenrollment justification, if applicable.

(11) Advance directives, if applicable.

(12) A signed release permitting disclosure of personal information.

(13) Accident and incident reports.

(c) *Transfer of medical records.* The organization must promptly transfer copies of medical record information between treatment facilities.

(d) *Authentication of medical records.* (1) All entries must be legible, clear, complete, and appropriately authenticated and dated.

(2) Authentication must include signatures or a secured computer entry by a unique identifier of the primary author who has reviewed and approved the entry.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 6, 1999.

Nancy-Ann DeParle,

Administrator, Health Care Financing Administration.

Approved: July 8, 1999.

Donna E. Shalala,

Secretary.

Note: This Addendum A will not appear in the Code of Federal Regulations.

Addendum A

PACE Protocol

Overview

The following document describes the minimum requirements for PACE (Program of All-inclusive Care for the Elderly) providers as well as core operational procedures and processes. This definition document, the PACE Protocol, was first developed in 1990 as part of a cooperative effort involving staff from Health Care Financing Administration's (HCFA) Office of Research and Demonstrations, states participating in the PACE replication, and PACE sites, including On Lok Senior Health Services.

Originally authorized by Congress in 1986, the PACE demonstration was designed to determine if the community-based long term care model developed by On Lok Senior Health Services in San Francisco, California could be replicated. Since 1990, ten sites have successfully implemented PACE. For those sites, the protocol served as the specific legal instrument for implementation of the demonstration and the regulatory framework for operations in the absence of formal regulation.

In preparation for moving PACE beyond demonstration status, a work group comprised of PACE site representatives began the process of updating the protocol in December 1993 to incorporate the experience existing PACE providers have had in implementation. With comments from HCFA and State Medicaid agency representatives, the document has now been finalized and is intended to serve as the basic standard for PACE providers.

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Introduction

This document describes the minimum requirements for PACE (Program of All-inclusive Care for the Elderly) providers as well as core operational procedures and processes. The requirements outlined are applicable to PACE providers in varying degree depending upon whether the provider is in its initial trial period, as defined below, or if it has completed that period and attained permanent provider status. It is intended that this document outline the basic standards for PACE providers except as may be subsequently modified by law or regulation.

Definitions

1. *PACE provider:* In this document, the term ''PACE provider'' means a private not-for-profit or public entity (or a distinct part of such an entity) which:

(a) is primarily engaged in providing participants a comprehensive range of acute and long-term care services as described in Part IV. of this document; and

(b) meets the requirements defined in this document and includes PACE providers with permanent status and PACE providers in the trial period.

2. *Trial Period*: A period of up to three years in length during which the PACE provider meets all the requirements in operating a PACE program except that financial risk is shared between the provider and the federal and state governments based on the arrangement developed by HCFA. At the conclusion of this period, providers may opt for permanent provider status under Medicare and Medicaid.

3. *Participant:* An individual who meets the eligibility requirements outlined in Part II and enrolls in a PACE program as described. This individual may also be called an enrollee.

4. *Contract:* In this document, contract, when referring to the contract between the PACE provider and the federal and state governments, may be in the form of a cooperative agreement or a contract.

Part I: Organization

A. Philosophy Statement

The PACE provider must include in its mission statement or philosophy statement the following values:

1. To enhance the quality of life and autonomy for frail, older adults;

2. To maximize dignity and respect of older adults;

3. To enable frail, older adults to live in their homes and in the community as long as medically and socially feasible; and

4. To preserve and support the older adult's family unit.

B. Organizational Structure

1. The PACE provider must be a public or private not-for-profit 501(c)(3) organization and may meet this requirement in any of the following ways:

a. A free-standing 501(c)(3) corporation;

b. A 501(c)(3) subsidiary of a larger organization;

c. A department of a 501(c)(3) corporation; or

d. Governmental entities at the city, county, or state level.

2. As a community-based model of care, the PACE provider must ensure that community representation is provided on issues of program management and participant care. This representation may be achieved through participation on the board of the PACE provider or through advisory committees.

3. The PACE provider must make available a current organizational chart displaying corporate officers and relationships to any parent or other corporate subsidiaries or affiliates, and indicating the PACE provider's relationship to the corporate board. A PACE provider considering a change in organizational structure must notify HCFA and the State Medicaid agency at least 60 days before the anticipated change. Changes must be approved by Health Care Financing Administration (HCFA) and the State Medicaid agency.

C. Organizational Requirements

The PACE provider shall have the organizational, administrative and service delivery ability to effectively organize and guide operations and meet the contractual obligations which include, but are not limited to:

1. A policymaking body which oversees operations and devotes resources sufficient to effectively plan, organize, administer and evaluate the PACE provider's operation;

2. Ability to provide the complete PACE service package, including the full scope of Medicare and Medicaid benefits on a capitation basis regardless of the frequency, extent, or level of services provided to any participant;

3. Project Director whose responsibilities and duties are described in writing;

4. Medical Director whose responsibilities and duties are defined in writing;

5. Staff to directly provide PACE Center services, including primary medical care;

6. A standing multidisciplinary team based in the PACE Center composed of medical and health-related professionals and para-professionals, all of whom meet applicable

state licensing and certification requirements and who provide direct care and services appropriate to participant need;

7. Demonstrated separation of medical, social and supportive services from fiscal and administrative management sufficient to assure that medical decisions will not be unduly influenced by fiscal and administrative management;

8. Staff to maintain financial records and books of accounts on an accrual basis;

9. Staff to report data required for management, as well as the Federal and State governments;

10. Facilities and equipment that meet applicable State requirements;

11. A system for informing employees and contract providers about all relevant provider requirements including coverage and appeal procedures.

D. Service Area

The PACE provider must serve a defined service area identified by county, zip code and street boundaries. Changes in the service area must be pre-approved by HCFA and the State Medicaid Agency.

E. Conflict of Interest

1. The PACE provider must not have any agents or management staff who have been convicted of criminal offenses related to their involvement in Medicaid, Medicare and/or other health insurance and health care programs.

2. No member of the PACE provider's policymaking body or any immediate family member thereof shall have any direct or indirect interest in any contract for supplying service or materials to the PACE provider.

F. Fiscal Soundness

1. During the trial period, the PACE provider must prepare an annual budget by month or by quarter that is acceptable to HCFA and the State Medicaid agency. The budget shall be based on the cost center accounting structure provided by HCFA and the State Medicaid agency.

The provider must have an insolvency plan approved by HCFA and the State Medicaid agency, which in the event of insolvency, provides for:

a. The continuation of benefits for the duration of the contract period for which capitation payment has been made;

b. The continuation of benefits to participants who are confined in a hospital on the date of insolvency until their discharge; and

c. Arrangements to protect participants from incurring liability for payment of any fees which are the legal obligation of the PACE provider.

2. By the end of the trial period, each PACE provider shall have a fiscally sound operation as demonstrated by total assets being greater than total unsubordinated liabilities, sufficient cash flow and adequate liquidity to meet obligations as they become due, a net operating surplus and a plan for handling insolvency that includes the provisions listed as 1.a–c. above. Furthermore, the PACE program must demonstrate that it has arrangements in place in the amount of at least the sum of the following to cover expenses in the event it becomes insolvent:

a. One month's total capitation revenue to cover expenses the month prior to insolvency; and

b. One month's average payment to subcontractors, including providers of emergency services, to cover potential expenses the month after the date insolvency has been declared or operations cease.

Arrangements to cover expenses may include but are not limited to: Insolvency insurance, hold harmless arrangement, continuation of benefits provisions, letters of credit, guarantees, net worth, restricted state reserves, state law provisions.

3. Providers are required to submit financial reports as specified in their contracts with HCFA and the State Medicaid agency.

Part II: Participant Rights

A. Participant Bill of Rights

The PACE provider has a formal Participant Bill of Rights designed to protect and promote the rights of each participant to be treated with dignity and respect.

1. These rights, which may be exercised by the participant or his/her representative, if necessary, include the rights:

a. To have the ''Enrollment Agreement'' fully discussed and explained;

b. To be fully informed in writing prior to and at the time of enrollment (as well as during participation) of the services available from the PACE provider;

c. To be fully informed of rights and responsibilities as a participant and/or all rules and regulations governing participation;

d. To be encouraged and assisted to exercise rights as a participant, as well as civil and legal rights.

e. To be encouraged and assisted to voice grievances and recommend changes in policies and services to PACE staff and outside representatives of his/her choice. There will be no restraint, interference, coercion, discrimination or reprisal by the PACE staff towards participants exercising this right;

f. To be fully informed by the multidisciplinary team of health and functional status;

g. To participate in the development and implementation of the treatment plan designed to promote functional ability to the optimal level and to encourage independence;

h. To receive treatment and rehabilitative services;

i. To have dignity, privacy, and humane care;

j. To be free from harm, including unnecessary physical restraint or isolation, excessive medication, physical or mental abuse or neglect;

k. To be free from hazardous procedures;

l. Not to be required to perform services for the provider that are not included for therapeutic purposes in the individual treatment plan;

m. To be given reasonable advance notice of any transfer to another part of the program for medical reasons or for the participant's welfare or that of other participants. Such actions will be documented in the health record;

n. To have reasonable access to telephones;

o. To be assured of confidential treatment of all information contained in the health record, including information contained in any automated data bank. Written consent is required for the release of information to persons not otherwise authorized under law to receive it. Participants may provide written consent which limits the degree of information and the persons to whom information may be given;

p. To refuse treatment and be informed of the consequences of such refusal;

q. To disenroll from the program at any time subject to the terms of this agreement; and

r. To establish advance directives and make health care decisions.

2. Written policies or established procedures identify mechanisms for ensuring that the participant and family members understand their rights including items listed above.

a. Staff must orally review the Participant Bill of Rights with the participant and family at enrollment in a language understood by the participant. A copy of the Bill of Rights is included in the member handbook given to participants at enrollment.

b. Participant rights must be posted in a prominent place in the PACE center in English and any other predominant language of the community.

B. Complaints, Grievances and Appeals

The PACE provider must have internal procedures, approved by HCFA and the State Medicaid agency, which provide participants and their family members a process for expressing dissatisfaction with the services provided by PACE, whether medical or non-medical in nature, and which allow for orderly resolution of any complaint or grievance. Furthermore, all involuntary disenrollments, other than those resulting from participants moving out of the PACE provider's geographic catchment area, are considered participant grievances and are subject to these procedures.

1. The PACE provider must have written internal grievance procedures which describe the process by which participants can make appeals, and give the time frames for the PACE provider's response to participants.

2. The PACE provider must inform all participants of the grievance procedures in writing (i.e., in member handbooks).

3. In cases where grievances are not resolved to the participant's satisfaction (e.g., denial of payment for claim or refusal of services), the PACE provider must state the specific reasons for its determination and inform the participant of his/her right to appeal. The PACE provider must process grievances in a timely manner.

4. Reconsideration of grievances must be made by a person or persons who were not involved in making the initial determination. The PACE provider must give the parties to the reconsideration reasonable opportunity to present evidence related to the issue in dispute, in person as well as in writing.

5. All determinations that are wholly or partially adverse to the participant must be forwarded to HCFA and the State Medicaid agency. If on appeal a judgment is made in favor of the participant, the PACE provider

must take appropriate action in a timely manner.

Part III: Eligibility, Enrollment, Disenrollment

A. Eligibility

1. To be eligible for enrollment in PACE, an individual must be:

a. At least fifty-five years of age;

b. A resident in the PACE provider's service area;

c. Assessed by the PACE provider's multidisciplinary team; and

d. Certified by the State Medicaid Agency as eligible for nursing home level of care.

2. The contracts between the PACE provider, HCFA and the State Medicaid agency will include site-specific eligibility criteria including minimum age limit, service area and health status requirements of the State Medicaid agency for nursing home level of care.

3. The PACE provider may choose not to enroll participants whose condition is such at the point of enrollment that their health and safety would be jeopardized by remaining in their home and community.

B. Marketing

1. *Marketing Activities.* The PACE provider may inform the general public of its program through appropriate activities and media. The PACE provider must ensure that prohibited marketing activities are not conducted by its employees or its agents. Prohibited practices are:

a. Discrimination of any kind aside from PACE eligibility requirements;

b. Activities that could mislead or confuse potential participants, or misrepresent the PACE provider, HCFA or the State Medicaid agency;

c. Gifts or payments to induce enrollment; and

d. Subcontracting outreach efforts to individuals or organizations whose sole responsibility involves direct contact with elderly to solicit enrollment.

2. *Marketing Materials.* a. The PACE provider must provide prospective participants adequate written descriptions of the PACE provider's enrollment requirements, procedures, benefits, fees and other charges, services and other information necessary for prospective participants to make an informed decision about enrollment.

b. All written marketing information distributed to PACE participants to encourage or prolong enrollment must be approved by HCFA, the State Medicaid agency, and other agencies, if required. Approval or denial shall be granted in 30 days. No response in 30 days constitutes approval.

Distribution of marketing materials before HCFA and the State Medicaid agency approval or expiration of the 30 day period is prohibited.

c. Marketing and enrollment materials which must be approved include, but are not limited to, marketing brochures, enrollment agreement, member handbook, and disenrollment forms.

3. *Marketing Plan.* The PACE provider shall have an active marketing plan, with measurable enrollment objectives and a system for tracking its effectiveness.

C. Enrollment

1. Participants enrolled in PACE must accept PACE as his/her sole service provider and its multidisciplinary team as his/her sole case manager (the ''lock-in'' provision).

2. Following referral to the program, PACE provider staff schedule a screening visit with the potential participant and/or his/her significant others or legal guardians to explain:

a. PACE;

b. the ''lock-in'' provision; and

c. monthly fees, if any.

3. Following this explanation, the potential participant must sign a release of his/her medical and financial information.

4. The potential participant is assessed by the PACE provider to determine eligibility.

5. All participants, including Medicare-only eligibles, shall be reviewed by the State Medicaid agency for a one-time only certification at enrollment that the participant meets State Medicaid health status requirements for nursing home level of care. Procedures for enrollment, including level of care certification, shall be included in the contract between HCFA and the State Medicaid agency.

6. If the potential participant is certified as nursing home eligible and is willing to join PACE, he/she must sign an Enrollment Agreement which contains the following information:

a. Applicant's name, sex, date of birth, health insurance claim numbers, Medicare eligibility status (Part A and/or Part B) and number, Medicaid number or none;

b. Description of benefits available, including all Medicare and Medicaid covered services, and how services are allocated or can be obtained from the PACE provider;

c. Explanation of participant premiums and procedures for payment, if any;

d. Effective date of enrollment;

e. Explanation of participant rights, grievance procedures, conditions for enrollment and disenrollment and Medicare and Medicaid contacts in appeal situations;

f. Notification of participant's obligation to notify PACE provider of a move or absence from the provider's service area;

g. Explanation of the ''lock-in'' requirement and an acknowledgment on the part of the applicant that he/she understands that all services must be received through the PACE provider;

h. Explanation of procedures for obtaining emergency services and urgent care;

i. Requirement to maintain their own Medicare and Medicaid eligibility including Medicare Part B eligibility through the payment of required premiums;

j. Statement that the private premium can only be raised once a year;

k. Statement that PACE provider has a contract with HCFA and the State Medicaid agency which is subject to renewal on a periodic basis and failure of the PACE provider to renew the contract will result in termination of enrollment in the program;

l. Explanation that the Medicare member may not disenroll from PACE at a social security office; and

m. Explanation that enrollment in PACE will result in automatic disenrollment from any other Medicare or Medicaid prepayment health plan;

n. Applicant's authorization for the disclosure and exchange of information between HCFA, its agent, the State Medicaid agency and the PACE provider;

o. Applicant's signature and date.

7. The participant's enrollment in the program is effective the first day of the calendar month following the signing date of the Enrollment Agreement.

8. Once the participant signs the Enrollment Agreement, he/she is given:

a. A copy of the Enrollment Agreement;

b. The Member Handbook (Combined Contract and Evidence of Coverage), if different from the Enrollment Agreement;

c. A PACE membership card;

d. An emergency sticker to be posted in his/her home in case of emergency; and

e. A sticker for his/her Medicare card and, if applicable, a Medicaid card which indicates that he/she is a PACE participant.

9. The PACE provider will submit enrollment documents to HCFA and the State Medicaid agency in accordance with established procedures.

10. Enrollment continues as long as desired by the participant, regardless of changes in health status, until death, voluntary disenrollment, or involuntary disenrollment as described in Section D.

11. If, after complete assessment by the multidisciplinary team, a prospective participant is denied enrollment based on Part III, Section A.3., the PACE provider shall provide written notification explaining the reason for denial and refer the individual to alternative services as appropriate.

D. Disenrollment Process

1. A PACE participant may either voluntarily or involuntarily disenroll from the program. A participant may be involuntarily disenrolled if he/she:

a. Moves out of the PACE program service area;

b. Is a person with decision making capacity who consistently does not comply with his/her individual plan of care and poses a significant risk to him/herself or others;

c. Experiences a breakdown in the physician and/or team-participant relationship such that the PACE provider's ability to furnish services to either the participant or other participants is seriously impaired;

d. Refuses services and/or is unwilling to meet conditions of participation as they appear in the Enrollment Agreement;

e. Refuses to provide accurate financial information, provides false information or illegally transfers assets;

f. Fails to pay or to make satisfactory arrangements to pay any amount due the PACE provider after a 30-day grace period;

g. Is out of the PACE provider service area for more than 30 days (unless other arrangements have been made); or

h. Is enrolled in a PACE program that loses its contracts and/or licenses enabling it to offer health care services.

2. For voluntary disenrollments, the PACE provider shall use the most expedient process allowed for by Medicare and Medicaid procedures while ensuring a coordinated disenrollment date. The PACE provider disenrollment procedures shall be

included in the contracts with HCFA and the State Medicaid agency. Until enrollment is terminated, PACE participants are required to continue using the PACE provider services and remain liable for any premiums. The PACE provider shall continue to provide all needed services until the date of termination.

3. To facilitate a participant's reinstatement in the fee-for-service system, the PACE provider must:

a. Assist a participant who wishes to return to the fee-for-service system by making appropriate referrals and by making medical records available to new providers; and

b. Work with HCFA and the State Medicaid agency to reinstate his/her benefits in the fee-for-service system.

4. Renewal provisions. *a.* If the reason for disenrollment is due to failure to pay, payment of the monthly fee before the end of the month of disenrollment will result in reinstatement as of the first day of succeeding month. b. In the case of a voluntary disenrollment, a one time only reinstatement will be allowed if the participant meets eligibility criteria.

5. All voluntary and involuntary disenrollments must be documented and available for review by HCFA and the State Medicaid agency.

Part IV: Service Coverage and Arrangement

A. Service Coverage

1. The PACE service package includes, but is not limited to, all current Medicare and Medicaid services. All usual limitations and conditions for covered services are waived.

2. The PACE provider must provide its participants with access to medical care and other services, as applicable, 24 hours per day, 7 days a week, 365 days per year.

3. At a minimum each PACE provider shall provide the following services:

a. Multidisciplinary assessment and treatment planning;

b. Primary care services including physician and nursing services;

c. Social work services;

d. Restorative therapies, including physical therapy, occupational therapy and speech therapy;

e. Personal care and supportive services;

f. Nutritional counseling;

g. Recreational therapy;

h. Transportation;

i. Meals;

j. Medical specialty services including, but not limited to: anesthesiology, audiology, cardiology, dentistry, dermatology, gastroenterology, gynecology, internal medicine, nephrology, neurosurgery, oncology, ophthalmology, oral surgery, orthopedic surgery, otorhinolaryngology, plastic surgery, pharmacy consulting services, podiatry, psychiatry, pulmonary disease, radiology, rheumatology, surgery, thoracic and vascular surgery, urology;

k. Laboratory tests, x-rays and other diagnostic procedures;

l. Drugs and biologicals;

m. Prosthetics and durable medical equipment, corrective vision devices such as eyeglasses and lenses, hearing aids, dentures, and repairs and maintenance for these items;

n. Acute inpatient care:

i. Ambulance;

ii. Emergency room care and treatment room services;

iii. Semi-private room and board;

iv. General medical and nursing services;

v. Medical surgical/intensive care/coronary care unit, as necessary;

vi. Laboratory tests, x-rays and other diagnostic procedures;

vii. Drugs and biologicals;

viii. Blood and blood derivatives;

ix. Surgical care, including the use of anesthesia;

x. Use of oxygen;

xi. Physical, speech, occupational, and respiratory therapies; and

xii. Social services.

o. Nursing facility care:

i. Semi-private room and board;

ii. Physician and skilled nursing services;

iii. Custodial care;

iv. Personal care and assistance;

v. Drugs and biologicals;

vi. Physical, speech, occupational, and recreational therapies, if necessary;

vii. Social services; and

viii. Medical supplies and appliances.

p. Additional services determined necessary by the multidisciplinary team.

4. Emergency Care. Emergency services are defined as covered inpatient or outpatient services that are furnished in or out of the PACE provider's service area by a source other than the PACE provider or its contract providers and:

a. Are needed immediately because of an injury or sudden illness; and

b. The time required to reach the PACE provider staff and/or contract providers would have meant risk of permanent damage to the participant's health.

5. Urgent Care. Urgently needed services are covered services required in order to prevent a serious deterioration of a participant's health that results from an unforeseen illness or injury if:

a. The participant is temporarily absent from the provider's service area; and

b. The receipt of health care services cannot be delayed until the participant returns to the provider's service area.

6. Excluded services are:

a. Any service which has not been authorized by the multidisciplinary team, even if it is listed as a covered benefit;

b. Services rendered in a non-emergency setting or for a non-emergency reason without authorization;

c. Prescription and over-the-counter drugs not prescribed by the PACE provider physician;

d. In inpatient facilities, private room and private duty nursing, unless medically necessary, and non-medical items for personal convenience such as telephone charges, radio or television rental;

e. Cosmetic surgery unless required for improved functioning of a malformed part of the body resulting from an accidental injury or for reconstruction following mastectomy;

f. Experimental medical, surgical or other health procedures or procedures not generally available;

g. Care in a government hospital (VA, federal/State hospital) unless authorized;

h. Service in any county hospital for the treatment of tuberculosis or chronic, medically uncomplicated drug dependency or alcoholism; and

i. Any services rendered outside of the United States.

B. Service Arrangement

1. PACE is a comprehensive health and social services delivery system which integrates acute and long-term care services. The PACE staff provides these services in all settings which may include, but are not limited to, the PACE Center, the home, and inpatient facilities.

2. The PACE Center is the focal point for coordination and provision of most PACE services. The PACE Center is a facility which includes a primary care clinic, and areas for therapeutic recreation, restorative therapies, socialization, personal care and dining.

a. At a minimum, the following services are provided in the PACE Center:

i. Primary care services including physician and nursing services;

ii. Social services;

iii. Restorative therapies, including physical therapy and occupational therapy;

iv. Personal care and supportive services;

v. Nutritional counseling;

vi. Recreational therapy; and

vii. Meals.

b. The PACE provider must operate at least one PACE Center in its defined service area with sufficient capacity to allow routine attendance by its enrolled population.

c. The frequency of attendance is determined by the multidisciplinary team based on each participant's needs.

d. The PACE Center is designed, equipped and maintained to provide for the physical safety of participants, personnel or visitors and to ensure a safe and sanitary environment.

3. Each participant is assigned a multidisciplinary team based at the PACE Center. Responsibility for assessment, treatment planning and care delivery rests with the multidisciplinary team which coordinates and delivers care on a 24-hour basis. The multidisciplinary team is composed of at least the following members:

a. Primary care physician;

b. Nurse;

c. Social worker;

d. Physical therapist;

e. Occupational therapist;

f. Recreational therapist or activity coordinator;

g. Dietitian;

h. PACE Center supervisor;

i. Home care liaison;

j. Health workers/aides or their representatives; and

k. Drivers or their representatives.

4. The multidisciplinary team authorizes PACE covered services which meet the specific needs of the participant.

5. As part of the initial assessment process, the following members of the multidisciplinary team conduct individual, in-person assessments of the participant's health and social status and develop discipline specific treatment plans which are documented in the participant's medical record:

a. Primary care physician;

b. Nurse;

c. Social worker;

d. Physical therapist and/or occupational therapist;

e. Recreational therapist or activity coordinator;

f. Dietitian; and

g. Home care liaison.

6. On at least a semi-annual basis, the following members of the multidisciplinary team conduct individual, in-person assessments of the participant's health and social status and develop discipline specific treatment plans which are documented in the participant's medical record:

a. Primary care physician;

b. Nurse;

c. Social worker;

d. Recreational therapist or activity coordinator; and

e. Team members actively involved in the plan of care, *i.e.*, home care liaison, physical therapist, occupational therapist, dietitian.

7. On at least an annual basis, the following members of the multidisciplinary team conduct individual, in-person assessments of the participant's health and social status and develop discipline specific treatment plans which are documented in the participant's medical record:

a. Physical therapist and/or occupational therapist;

b. Dietitian; and

c. Home care liaison.

8. The treatment planning process consists of the following:

a. On at least a semi-annual basis, the discipline specific plans are consolidated into a single plan of care for the participant through discussion and consensus of the entire multidisciplinary team, including members (e.g., health workers/aides, drivers, PACE Center supervisor) who are not required to conduct quarterly assessments. The treatment plan is then discussed and finalized with the participant and/or his/her significant others.

b. At the recommendation of individual team members, other professional disciplines (e.g., speech therapy, dentistry, audiology, *etc.*) can be included in the assessment and treatment planning process.

9. When the health status or psycho-social situation of a participant changes, he/she is reassessed by the team or by selected members of the team to develop a new treatment plan. Changes in the treatment plan during the quarter are discussed and approved by the multidisciplinary team.

10. Ultimate responsibility for management of medical situations rests with the PACE primary care physician. The physician keeps the multidisciplinary team informed of the medical condition of each participant and remains alert to pertinent input from other team members.

11. The team implements the treatment plan by providing services directly and supervising the delivery of services provided by contract providers.

12. The participant's health status and psycho-social conditions as well as the effectiveness of the treatment plan are monitored continuously through direct provision of services, informal observation, input from participants and their significant others, and communications among members of the multidisciplinary team and other providers.

13. The multidisciplinary team is instrumental in controlling the delivery, quality and continuity of care.

a. The following members of the team must be employees of the PACE provider or PACE Center:

i. Primary care physician;

ii. Nurse;

iii. Social worker;

iv. Recreational therapist or activity coordinator;

v. PACE Center supervisor;

vi. Home care liaison; and

vii. PACE Center health workers/aides.

b. The members of the multidisciplinary team must serve primarily PACE participants.

c. The effective delivery of services depends on a consistent multidisciplinary team whose members are knowledgeable of individual participant's needs.

14. The PACE provider must ensure accessible and adequate service capacity to meet the needs of the enrolled population. As enrollment increases, the number of PACE Centers, multidisciplinary teams and other PACE services must increase accordingly.

15. Primary medical care is provided by the PACE primary care physician(s) to all participants. The primary care physician is the gatekeeper to the participant's use of medical specialists and inpatient care and is an integral member of the multidisciplinary team.

16. Since PACE services may be provided in the home, the coordination of in-home services with PACE Center and primary care services is critical to effective service delivery. The PACE provider shall designate a home care liaison to supervise and coordinate home care services whether these services are provided directly by the PACE provider or through a contract vendor.

17. All other PACE covered services can be provided either directly or on a contractual basis with related or unrelated organizations, agencies, or providers.

18. Medical Records. a. To facilitate continuity of care, the PACE provider must maintain a single comprehensive medical record for each participant at the PACE Center which contains:

i. Appropriate identifying information

ii. Documentation of all services provided;

iii. Multidisciplinary assessments, reassessments, plans of care, treatment and progress notes, signed and dated;

iv. Lab reports;

v. Medications record;

vi. Hospital discharge summaries;

vii. Reports from contracted providers;

viii. Contacts with informal support;

ix. Enrollment Agreements;

x. Physician orders.

xi. Discharge summary and disenrollment agreement, if applicable;

xii. Information on advance directives; and

xiii. Disclosure of release of information.

b. Chart organization and documentation shall meet professional and other applicable requirements.

c. Policies to ensure confidentiality, storage and retention must be in place in accordance with professional and other applicable requirements.

19. Program Flexibility. At the request of a PACE provider, HCFA and the State Medicaid agency shall have the authority to waive specific requirements in this Section provided that in their judgment, the intent of the requirement is met by the proposed alternative, and safe and quality care will be provided. Such requests must be submitted in writing by the PACE provider and be approved by HCFA and the State Medicaid agency prior to implementation of the proposed alternative.

Part V: Quality Assurance

A. The PACE multidisciplinary team is a critical element of quality assurance. The process of service delivery in this model requires the team to identify participant problems, determine appropriate treatment objectives, select interventions and evaluate efficiencies of care on an individual participant basis. This activity becomes the foundation for all subsequent quality assurance activities.

B. The PACE provider must have a written plan of Quality Assurance and Improvement which provides for a system of ongoing assessment, implementation, evaluation, and revision of activities related to overall program administration and services. The plan should include, at the minimum, the following essential elements:

1. Standards that are performance benchmarks, established by the provider, and are incorporated into the provider Policy and Procedure Manual. The provider standards must be based on the PACE protocol, applicable PACE standards and applicable licensing and certification criteria.

2. Goals and objectives that provide a framework for quality improvement activities, evaluation and corrective action. These goals and objectives will be reviewed periodically.

3. Quality indicators that are objective and measurable variables related to the entire range of services provided by the PACE provider. The methodology should assure that all demographic groups, all care settings (e.g., inpatient, PACE Center and in-home) will be included in the scope of the quality assurance review.

Quality indicators should be selected for review on the basis of high volume, high risk diagnosis or procedure, adverse outcomes, or some other problem-focused method consistent with the state of the art.

4. Process to review the effectiveness of the PACE multidisciplinary team in its ability to assess participant's care needs, identify the participant's treatment goals, assess effectiveness of interventions, evaluate adequacy and appropriateness of service utilization and reorganize plan as necessary.

5. Policies and procedures related to establishing committees with community input to (1) evaluate data collected pertaining to quality indicators, (2) address the process and outcomes of the quality improvement plan, and (3) provide input related to ethical decision making including end-of-life issues and implementation of the Patient Self-Determination Act (PSDA).

a. These procedures will define a process for taking appropriate action to resolve problems identified as part the quality assurance activities.

b. Policies will be established that define professional qualifications of individuals participating on these committees.

6. Participant involvement in program QA plan and evaluation of satisfaction with services.

7. Board level accountability for overall oversight of program activities and review of the QA plan, annual review and approval of the quality assurance plan by the program board with periodic feedback to Board on review process by oversight committees.

8. The PACE provider shall designate an individual to coordinate and oversee implementation of quality assurance activities.

Part VI: Reimbursement

A. PACE Reimbursement Overview

PACE is not limited to individuals on the basis of their eligibility for Medicare and/or Medicaid. The majority of PACE participants are eligible for Medicare, however, because PACE enrolls an elderly population. Medicaid eligibility is also common just as it is in a nursing home population. As financing for long-term care services becomes more widely available, PACE providers will negotiate capitation payments from payers of those services.

B. Medicare Payment

1. For a Medicare entitled participant, the monthly capitation rate paid by HCFA to the PACE provider equals the Adjusted Average Per Capita Cost (AAPCC) as calculated by HCFA for HMO reimbursement with adjustment for frailty factors necessary to ensure comparability between PACE participants and the reference population in the Medicare fee-for-service system.

2. The capitation payment is fixed, regardless of changes in the participant's health status.

3. The PACE provider shall accept the capitation payments as payment in full and shall not bill, charge, collect or receive any form of payment from HCFA and the participant (with the exception of the ESRD participants) except as provided in Section VI., D.

4. HCFA procedures for accretions and deletions, payment mechanism, cost finding and risk sharing are included in the contract between the PACE provider and HCFA.

C. Medicaid Payment

1. The monthly capitation payment from Medicaid is negotiated between the PACE provider and the State Medicaid agency and is specified in the contract between them. The Medicaid rate is renegotiated on an annual basis.

2. The capitation payment is fixed, regardless of changes in the participant's health status.

3. The PACE provider shall accept the capitation payments as payment in full and shall not bill, charge, collect or receive any other form of payment from State Medicaid agency and the participant except as provided in Section VI., D.

4. State procedures for enrollment and disenrollment in the state system and capitation payment mechanism as well as any variations to HCFA's cost finding and risk sharing are included in the contract between the PACE provider and the State Medicaid agency.

D. Private Pay Premiums

1. Participant's premium responsibility depends upon his/her eligibility for Medicare and Medicaid (cash grant and share of cost).

a. Medicare Only—premium equal to Medicaid capitation. (This premium is determined on an annual basis.)

b. Medicare and Medicaid with share of cost—premium equal to share of cost requirement.

c. Medicare and Medicaid—no participant premium.

d. Medicaid Only—no participant premium.

2. The private pay premium is fixed, regardless of changes in the participant's health status.

3. The PACE provider shall accept the private pay premium as payment in full and shall not bill, charge, collect or receive any other form of payment from the participants.

4. Participants with private co-payment are to be billed monthly.

5. If participants have long-term care insurance policies that cover PACE services, these benefits can be applied to participants' premium responsibility.

Part VII: Provider Administration

A. Contracting Requirements

1. Subcontracts between the PACE provider and contract providers shall be established for services not delivered directly by the PACE provider.

a. The PACE provider may contract only with qualified or licensed providers, who meet Federal and State requirements as applicable;

b. Contract providers must be accessible to participants, located either within or near the PACE provider's geographic catchment area;

c. The format of subcontracts must be approved by HCFA and the State Medicaid agency;

d. A list of subcontractors must be on file at the State Medicaid agency and updated as it changes; and

e. Copies of signed contracts for inpatient care are included in the contract between the PACE provider, HCFA and the State Medicaid agency.

2. Each subcontract shall contain:

a. Name of subcontractor;

b. Specification of the services provided;

c. Specification of reimbursement rate and payment method;

d. Specification of the terms of the subcontract, including the beginning and ending dates, as well as methods of extension, re-negotiation and termination;

e. Subcontractor agreement to provide services in accordance with the services authorized by the PACE multidisciplinary team;

f. Specification that the subcontract shall be governed by and construed in accordance with all laws, regulations and contractual obligations incumbent upon the PACE provider;

g. Subcontractor agreement to accept the PACE provider's payment as payment in full and not to bill participants, HCFA, the State Medicaid agency or private insurers;

h. Subcontractor's agreement to hold harmless HCFA, the State and PACE participants in the event that the PACE provider cannot or will not pay for services performed by the subcontractor pursuant to the subcontract;

i. Subcontractor's agreement that assignment or delegation of the subcontract is prohibited unless prior written approval is obtained from the PACE provider;

j. Subcontractor's agreement to submit reports as required by the PACE provider; and

k. Subcontractor's agreement to make all books and records, pertaining to the goods and services furnished under the terms of the subcontract, available for inspection, examination or copying by the State Medicaid agency and/or HCFA.

B. Data Collection and Reporting

1. During the trial period, the PACE provider shall meet the following data collection and reporting requirements.

a. The PACE provider is required to collect a standardized set of date which includes the following:

i. Participant-specific intake, assessment and service utilization data, coded according to the guidelines in the PACE Data Collection Manual. The definition of data and the manner in which it is collected may be changed to meet changes in HCFA and State Medicaid agency reporting requirements, in response to requests from PACE providers and others. Any changes made in data collection will incorporate sufficient lead time necessary to minimize transition difficulty. Data uniformity shall be maintained across all PACE providers.

ii. Fiscal data based on cost center accounting structure provided by HCFA and the State Medicaid agency. At the twelfth month, the year-to-date summary will provide the necessary annual data.

b. At a minimum, the provider must maintain complete participant-specific utilization data on-site updated to one month prior to the present. Data shall be transmitted to HCFA or its agent.

c. To ensure the quality of the data, HCFA or its agent, may provide the PACE provider with training in the use of data collection tools and may conduct ongoing monitoring to determine data completeness and reliability. Data collection problems that are identified must be reported to HCFA and the State Medicaid agency. If HCFA and the State Medicaid agency determine that problems require correction, the PACE provider will be required to resolve them.

d. HCFA, or its agent, reserve the right to review and assure the reliability and completeness of data and may obtain all provider data for the purposes of program monitoring.

e. The PACE provider will submit to HCFA and State Medicaid agency, 45 days after the end of each quarter, the following quarterly reports:

i. Quarterly narrative progress report; and

ii. Quarterly program statistical reports—Program Status Report, Sociodemographic Characteristics of Participants, Health and Functional Status of Participants, and Service Utilization Summary. The contents of these reports may be changed to meet changes in

Federal and State reporting requirements or for the purpose of program monitoring.

2. For providers that have completed the trial period, HCFA and its agent will work with PACE providers and their respective State Medicaid agencies to develop a standardized set of data to be collected by PACE providers and a standardized reporting processes. To assure the quality of the data, requirements 1.,c–d described above will apply.

C. Financial Reporting

1. For sites in the trial period, the following financial reports are required:

a. The PACE provider will submit a Budgeted versus Actual Financial Report for the current and year-to-date periods to HCFA, its agent, and the State Medicaid agency.

During the first year of operation, this report will be submitted on a monthly basis 45 days after the end of each month. Thereafter, this report will be submitted on a quarterly basis 45 days after the end of each quarter. HCFA and the State Medicaid agency reserve the right to extend the submission of this report on a monthly basis should provider performance indicate a need for more frequent monitoring.

b. The PACE provider must submit a cumulative cost report in the form and detail prescribed by HCFA. The interim cost report is due 45 days after the end of each provider's fiscal quarter and covers the period from the beginning of the fiscal year through the respective quarter.

c. The PACE provider must submit to HCFA and the State Medicaid agency an independently certified cost report in the form and detail prescribed by HCFA, no later than 180 days after the end of the provider's fiscal year.

d. PACE providers which are separate corporate entities must submit to HCFA and the State Medicaid agency a quarterly balance sheet.

2. For providers that have completed the trial period, HCFA and its agent will work with PACE providers and their respective State Medicaid agencies to develop a standardized financial reporting process.

D. Maintenance of Books and Records

1. The PACE provider must establish policies and procedures for maintaining all books and records necessary to determine whether contractual obligations are met. Books include, but are not limited to:

a. Financial records;

b. Medical records; and

c. Personnel records;

2. Books and records must be made available to HCFA and the State Medicaid agency upon request.

3. Records must be stored so as to be protected against loss, destruction or unauthorized use.

Part VIII: External Oversight

A. General

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care by PACE providers, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of participants and to promote the effective and efficient use of public moneys. External oversight activities will include:

1. Periodic review of the financial status of the PACE provider to ensure its solvency and continuing viability; and

2. A periodic on-site survey, as described below, to determine the quality of care provided by the PACE provider and adherence to requirements defined in the contracts between the PACE provider, HCFA and the State Medicaid agency.

B. National Standards and Surveys

The National PACE Association (NPA) recommends that national standards for PACE be developed and an on-site survey process established for determining the quality of care provided by the PACE provider and the provider's adherence to contract requirements. To facilitate this process, NPA intends to develop model standards for use by HCFA and States. NPA urges HCFA and States to ensure that PACE providers are in accordance with these standards. NPA recommends that the survey process provides for surveys to be conducted at least once every two years by the State or through an accreditation organization or other entity. In addition, the Secretary would have the authority to conduct additional surveys, independent or in conjunction with the State, if there is reason to question the compliance of the PACE provider with any applicable requirements. Additional recommended provisions are:

1. The survey shall consist of an on-site visit which includes review of participant charts, interviews with staff and participants and observation of program operations including multidisciplinary team processes.

2. The survey shall be performed by a team composed of individuals who are experienced in providing care to the frail elderly and are knowledgeable about the PACE service delivery system. At a minimum, the team shall include a physician, nurse, social worker and a peer reviewer. The physician, nurse and social worker shall have experience in community-based care and should have recent clinical experience. The peer reviewer shall be from a PACE provider operating at full risk.

3. Procedures will be established to determine whether corrective action has been taken by the PACE provider to resolve deficiencies identified during the survey.

Part IX: Provider Termination

A. The PACE provider can be terminated for any one of the following four reasons and in each case must comply with HCFA and the State Medicaid agency guidelines for provider termination:

1. Either HCFA and/or the State Medicaid agency determine the provider cannot insure the health and safety of its participants. This determination may result from a medical survey or audit revealing provider deficiencies which HCFA and/or the State determine cannot be corrected.

2. The PACE provider chooses to discontinue providing services. In such event, a minimum of 90 days notice must be given to HCFA, its agent, and the State Medicaid agency regarding the provider's intent. Providers must give participants a minimum of 60 days notice.

3. Either HCFA and/or the State Medicaid agency can terminate the PACE provider's contract in response to large losses for which corrective action is unsuccessful. In response to financial audits which show a loss, the provider must develop a plan which is designed to prevent future losses. If the plan is developed by the PACE provider and is determined to be unacceptable to HCFA and the State Medicaid agency, the provider's contract may be terminated.

4. The provider may be terminated should it deviate from, violate or fail to comply with the contractual agreements of HCFA and the State Medicaid agency.

B. The PACE provider is required to develop a detailed provider termination plan included in which are the following: the process of informing participants, the community, HCFA and State Medicaid agency; and steps that will be taken to reinstate participants' Medicare and Medicaid benefits through the fee-for-service system, transition their care to other providers, and terminate the referral and intake process.

Part X: Medicare and Medicaid Contracts Requirements

A. General

The PACE provider should have formal contracts in place with the responsible federal and state agencies, which incorporate the requirements defining and applicable to PACE providers. These legal requirements would be based upon the PACE Protocol. Absent such formal contracts the PACE Protocol and other requirements, if any, which the responsible agencies deem appropriate, would govern. Critical elements of the formal contract should include, but not be limited to, requirements related to:

1. organization of the PACE provider
2. participant rights
3. eligibility, enrollment and disenrollment policies
4. service definition, coverage and arrangement
5. quality assurance
6. reimbursement
7. PACE provider administration
8. PACE provider termination

[FR Doc. 99–29706 Filed 11–12–99; 10:48 am]

BILLING CODE 4120–03–U

federal register

Wednesday
November 24, 1999

Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Central Air Conditioner and Heat Pumps; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/STD–98–440]

RIN 1904–AA77

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Central Air Conditioners and Heat Pumps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental Advance Notice of Proposed Rulemaking.

SUMMARY: The Department of Energy publishes this Supplemental Advance Notice of Proposed Rulemaking (ANOPR) to consider amending the energy conservation standards for central air conditioners and heat pumps.

The purpose of this Supplemental ANOPR is to provide interested persons with an opportunity to comment on:

First, the product classes that the Department is planning to analyze;

Second, the analytical framework, models (*e.g.,* the Government Regulatory Impact Model (GRIM)), and tools (e.g., a Monte Carlo sampling methodology, and life-cycle cost (LCC) and national energy savings (NES) spreadsheets) that the Department has been using in performing analyses of the impacts of energy conservation standards;

Third, the results of preliminary analyses for the engineering, LCC, payback and NES contained in the Preliminary Technical Support Document (TSD): Energy Efficiency Standards for Consumer Products: Central Air Conditioners and Heat Pumps and summarized in this Supplemental ANOPR; and

Fourth, the candidate energy conservation standard levels that the Department has developed from these analyses.

DATES: Written comments must be received by February 7, 2000. The Department requests 10 copies of the written comments and, if possible, a computer disk. The Office of Building Research and Standards is currently using WordPerfect 8.

A public hearing will be held on December 9, 1999, from 9 am-5 pm. See Section IV of the Supplementary Information for further details.

ADDRESSES: Written comments should be submitted to: U.S. Department of Energy, Attn: Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, ''Energy Efficiency Standards for Consumer Products,'' (Docket No. EE–RM–94–403), EE–431, Forrestal Building, 1000 Independence Avenue, SW, Room 1J–018, Washington, DC 20585, (202) 586–2945.

The public hearing will be held at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, Room 1E–245, Washington, DC 20585.

Copies of the Preliminary TSD: Energy Efficiency Standards for Consumer Products: Central Air Conditioners and Heat Pumps may also be obtained from: U.S. Department of Energy, Office of Building Research and Standards, 1000 Independence Avenue, SW, Rm 1J–018, Washington, D.C. 20585–0121, (202) 586–9127. The Preliminary TSD will also be available through DOE's web site. The Preliminary TSD provides the technical details of the analysis that was conducted in support of the Supplemental ANOPR being issued today.

Public Information: The public may visit the Freedom of Information Reading Room, located at the US Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585 between the hours of 9 am and 4 pm, Monday through Friday, (except Federal holidays). Call (202) 586–3142 for information.

For more information concerning public participation in this rulemaking proceeding, see section IV, ''Public Comment Procedures,'' of this document.

FOR FURTHER INFORMATION CONTACT: Dr. Michael E. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–41, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0854, E-mail: Michael.E.McCabe@ee.doe.gov.

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, Pub. L. 94–163, as amended by the National Energy Conservation Policy Act, Pub. L. Law 95–619, the National Appliance Energy Conservation Act of 1987, Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988, Pub. L. 100–357, and the Energy Policy Act of 1992, Pub. L. 102–486, (EPCA or the Act), created the Energy Conservation Program for Various Consumer Products other than Automobiles. 42 U.S.C. 6291–6309.

The National Appliance Energy Conservation Act of 1987 amended EPCA to impose performance standards for central air conditioners and heat pumps as part of the energy conservation program for consumer products. EPCA, section 325(d), 42 U.S.C. 6295 (d). EPCA also requires the Department to publish final rules thereafter, to determine if these standards should be amended.

Before the Department determines whether to adopt a proposed energy conservation standard it must first solicit comments on the proposed standard. EPCA, section 325 (p), 42 U.S.C. 6295 (p). Any new or amended standard must be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA, section 325(o)(2)(A), 42 U.S.C. 6295 (o)(2)(A). To determine whether economic justification exists the Department must review comments on the proposal and determine that the benefits of the proposed standard exceed its burdens based to the greatest extent practicable, weighing the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy conservation; and

(7) Other factors the Secretary considers relevant.

EPCA, Section 325(2)(B), 42 U.S.C. 6295(2)(B)

B. Background

1. History

The Energy Policy and Conservation Act, as amended (EPCA or Act), requires the Department of Energy (DOE or Department) to consider amending the energy conservation standards for certain major household appliances. In 1992, the Department initiated engineering and LCC studies for central air conditioners and heat pumps based on use of computer simulation models. An ad hoc working group was formed to advise the Department and to provide engineering and test data to use with the computer models. The working group, which included representatives from central air conditioner and heat pump manufacturers, the Air Conditioning & Refrigeration Institute (ARI), Lawrence Berkeley National Laboratory (LBNL), and Oak Ridge National Laboratory (ORNL), also provided production cost data for establishing the cost-effectiveness of the various design options selected for study.

On September 8, 1993, the Department published an ANOPR (58 FR 47326) which discussed the number of product classes and design options, the computer simulation models, and the methodologies which the Department intended to use in its analysis of increased energy efficiency standards for central air conditioners and heat pumps. After the ANOPR was issued, the Department continued its analysis of LCCs, payback periods, and preliminary NES which were shared with representatives from the air-conditioning industry.

In 1995, the Department abandoned the approach of using computer simulation models as a result of concerns expressed by the industry. The concerns included: the cost/performance relations derived from the computer simulations were not consistent with the experience of the industry; the assumptions and procedures were flawed; and the industry expressed doubts over the Department's experience with selection of appropriate design options.

In October, 1995, a moratorium on proposing, issuing, or prescribing energy conservation standards took effect pertaining to standards for central air conditioners and heat pumps, and the dialogue between the air-conditioning industry and the Department, on the analysis performed, was suspended.

2. Process Improvement

During consideration of the fiscal year 1996 appropriations, there was considerable debate about the efficacy of the standards program. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996 included the aforementioned moratorium on proposing or issuing energy conservation appliance standards for the remainder of Fiscal Year 1996. See Pub. L. 104–134. Congress advised DOE to correct the standards-setting process and to bring together stakeholders (such as manufacturers and environmentalists) for assistance. In September 1995, the Department announced a formal effort to consider further improvements to the process used to develop appliance efficiency standards, calling on manufacturers, energy efficiency groups, trade association, state agencies, utilities and other interested parties to provide input to guide the Department. On July 15, 1996, the Department published a Final Rule: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (hereinafter referred to as the Process Rule). 61 FR 36974.

The Process Rule outlines the procedural improvements identified by the interested parties. The process improvement effort included a review of the: (1) Economic models, such as the Manufacturer Analysis Model and Residential Energy Model; (2) analytical tools, such as the use of a Monte Carlo sampling methodology; and (3)

prioritization of future rules. The Process Rule requires the evaluation of uncertainty and variability by doing scenario or probability analysis (as detailed in the Process Rule, 10 CFR part 430, subpart C, appendix A sections 1(f), 4(d)(2), and 10(f)(1)). In addition, an Advisory Committee on Appliance Energy Efficiency Standards, consisting of a representative group of these interested parties, was established to make recommendations to the Secretary regarding the implementation of the Process Rule.

The Process Rule is applicable in this rulemaking to develop new central air conditioner and heat pump standards. In this Supplemental ANOPR, the Department is presenting the framework by which it will develop the standards. The framework reflects improvements and steps detailed in the Process Rule. The rulemaking process is dynamic. If timely new data, models or tools that enhance the development of standards become available, they will be incorporated into the rulemaking. For example the Advisory Committee has made several recommendations and the Department has developed new models which are discussed in this Supplemental ANOPR.

The Department held a workshop on June 30, 1998 to discuss the analytical framework that was being proposed for conducting the central air conditioner and heat pump rulemaking. The analytical framework presented at the workshop described the different analyses (e.g., the LCC, payback and national impact analyses) to be conducted (*See* Table 1), the methods proposed for conducting them, and the relationship among the various analyses.

TABLE 1.—CENTRAL AIR CONDITIONER AND HEAT PUMP ANALYSES UNDER PROCESS RULE

ANOPR	NOPR	Final Rule
Screening Analysis	Revised Pre-ANOPR Analyses (LCC and National Impacts Analyses).	Revise Analyses (LCC and National Impacts Analyses).
Engineering Analysis	Consumer Sub-group Analysis.	
LCC Analysis	Industry Cash Flow Analysis (GRIM).	
Preliminary National Impacts Analysis	Manufacturer Impact Analysis.	
	Utility Impact Analysis.	
	Environmental Analysis.	

A number of concerns were raised at the framework workshop relating to the application of the Process Rule to the central air conditioner and heat pump rulemaking, with particular emphasis on (1) the appropriate approaches for conducting the Engineering Analysis, (2) how to validate manufacturer cost figures submitted by ARI, (3) methods for developing consumer equipment price data, and (4) how non-regulatory issues, e.g., the phase-out of hydro-fluoro-chloro-carbon (HCFC) refrigerants might affect the effective date of any new standards.

In response to the concerns and comments of interested parties at the Framework Workshop, the Department decided to perform the Engineering Analysis based on the efficiency-level approach rather than the design option approach, using cost data submitted by manufacturers in aggregate via their trade association, ARI. The Department also decided to utilize a reverse engineering approach as a ''stand alone'' analysis for developing manufacturer costs and validating the ARI-provided manufacturer's cost data. Both approaches are discussed in detail in the discussion of the Engineering Analysis (II C.).

As part of the information gathering and sharing process, the Department and its contractors met several times with members of the ARI Unitary Equipment Regulatory Committee, presenting the preliminary manufacturer costs developed through the reverse engineering approach and demonstrating the LCC spreadsheet model. During this time period, ARI submitted relative production cost data for the four different product classes of central air conditioners and heat pumps (split system and single package for both air conditioners and heat pumps) for 3-ton capacity systems at various efficiency levels. Efficiency levels are defined differently for air conditioners and for heat pumps. Air conditioner efficiency is defined by the descriptor, Seasonal Energy Efficiency Rating (SEER). Heat pump efficiency is defined by the descriptor, Heating Season Performance Factor (HSPF) while operating during the heating season and by SEER while operating during the cooling season. The cooling season efficiencies provided by ARI ranged from 11 to 14 SEER. The individual manufacturers provided their costs, which were normalized to 10 SEER equipment costs, to ARI. ARI aggregated the individual manufacturers' costs and provided the Department with minimum, maximum and shipment-weighted mean values.

As will be discussed in the Engineering Analysis, the ARI-provided and reverse engineering manufacturer costs overlap considerably, especially at the lower efficiency levels in the split air conditioning class and in the middle efficiency levels of the split heat pump class. For the most part, the range between ARI's minimum and mean manufacturer costs completely encompasses the reverse engineering costs. This agreement is encouraging given the levels of uncertainty and variability involved in estimating representative manufacturer costs under different efficiency baselines across a diverse industry. These areas of convergence provide an excellent indication of the most likely costs of producing equipment utilizing today's technology under new standard levels.

Although the two sets of manufacturer costs do overlap, they disagree in some respects. In particular, there are significant differences in the breadth of the manufacturer cost distributions at each efficiency level. The Department assumes that vigorous competition in the market for minimum-efficiency equipment will compel manufacturers to meet new standards at similar incremental manufacturer costs, and that the market cannot sustain as broad a range of costs as ARI's results may imply. Furthermore, we cannot replicate ARI's maximum manufacturer costs without altering our underlying assumptions beyond what we currently consider justified.

The Department and ARI have worked diligently to identify possible sources of those discrepancies. The Department sincerely appreciates ARI's and its members' dedicated participation in the Engineering Analysis. Their relative manufacturer costs provide a solid

foundation for further analysis, and their frequent review of and input to our validation effort is a valuable addition to our understanding of the production and design issues associated with meeting higher standards. The Department will work with ARI to understand the remaining differences between our two sets of manufacturer costs.

With regard to the LCC, payback, and preliminary national impact analyses, three new spreadsheet tools were developed for this rulemaking in an effort to meet the objectives of the Process Rule. The first spreadsheet calculates LCC and payback. The second one calculates impacts of standards at various levels on shipments. The third calculates the NES and national net present values (NPV) at various standard levels. These spreadsheets and the results of the preliminary analysis were posted on the Department's web site on August 24, 1999. The preliminary results posted on the web consisted of two sets of data: one set based on the manufacturer costs submitted by ARI and the other set based on manufacturer costs developed through reverse engineering. The Department suggested that any errors in the web site materials be immediately brought to our attention for correction, and that any other comments be submitted during the 75 day period following publication of this Supplemental ANOPR.

The Department has reviewed the recommendations made by the Advisory Committee on Appliance Energy Efficiency Standards on April 21, 1998. (Advisory Committee, No. 96) These recommendations relate to using the full range of consumer marginal energy rates (CMER) in the LCC Analysis (replacing the use of national average energy prices), defining a range of energy price futures for each fuel used in the economic analyses and defining a range of primary energy conversion factors and associated emission reductions, based on the generation displaced by energy efficiency standards for each rulemaking. The Department has incorporated the use of consumer marginal energy rates and a range of future energy prices for the analysis that was conducted for this Supplemental ANOPR. The Department plans to incorporate the recommendations on energy conversion factors in future analyses for the Notice of Proposed Rulemaking (NOPR).

Today's Supplemental ANOPR pertains to central air conditioners and heat pumps and utilizes the framework described in Section II. Both written and verbal comments from the June 30, 1998 Framework Workshop are being addressed in this document. The commentor's name and organization are shown in parentheses after each comment. Written comments are further identified by a number assigned to each set of written comments received during the commentary period. Verbal comments are further identified by the page number in the workshop transcript. Written comments and the Workshop transcript are viewable at the Department's Freedom of Information Reading Room described previously.

3. Test Procedure

Section 7(b) of the Process Rule states that necessary modifications to test procedures concerning efficiency standards will be identified and proposed before issuance of an ANOPR. The residential central air conditioner and heat pump test procedure is currently being revised to improve its organization and ease of use, with a proposed rule expected in November, 1999. This revision of the test procedure is not expected to alter the measured efficiencies as determined under the existing test procedure. Therefore, the revised test procedure would not affect development of revised efficiency standards. For these reasons, revisions to the test procedure are not a ''necessary modification'' as that term is used in the Process Rule, but rather a routine update, and hence need not be proposed before issuance of the proposed rule for these standards.

II. Central Air Conditioner and Heat Pump Analyses

This section includes a general introduction to each analysis section and provides a discussion of issues relevant to energy conservation standards for central air conditioners and heat pumps.

The Department received a number of general comments from Energy Market & Policy Analysis (EMPA) regarding the analysis conducted for the rulemaking (EMPA, # 3). Some of these concern the rulemaking procedure, while others refer to the analytic methods, and are as follows: the methodology for evaluating standards is extremely complex and increasingly unrealistic; approaches, models, assumptions, data, and data sources need to be more detailed and should to be put out for public comment before issuance of the ANOPR; and inadequate consideration is given to the impact of standards on ''real consumers'' as EMPA believes that groups on the DOE Advisory Committee do not represent and protect the interests of ''real consumers.''

The Department appreciates the concerns expressed previously. The methods and approaches used for the analyses conducted for this Supplemental ANOPR are well described and have been released on the Department's web site prior to the issuance of this notice. Any questions or comments as to how to clarify the methodologies used in this rulemaking are always welcome and appreciated.

A. Preliminary Market and Technology Assessment

The preliminary market and technology assessment characterizes the relevant product markets and existing technology options including prototype designs.

1. Market Assessment

a. General

When initiating a standards rulemaking, the Department develops information on the present and past industry structure and market characteristics of the product(s) concerned. This activity consists of both quantitative and qualitative efforts to assess the industry and products based on publicly available information. Issues to be addressed include: (1) Manufacturer market share and characteristics; (2) trends in the number of firms; (3) the financial situation of manufacturers; (4) existing non-regulatory efficiency improvement initiatives; and (5) trends in product characteristics and retail markets. The information collected serves as resource material to be used throughout the rulemaking. For instance, historical product shipments and prices are used to help predict future prices and shipments. Market structure data are particularly useful in conducting the competitive impacts analysis.

b. Product Specific

The Department reviewed existing literature and interviewed manufacturers to get an overall picture of the residential central air-conditioning market in the United States. Industry publications and trade journals, government agencies, and trade organizations provided the bulk of the information, including: (1) Manufacturer market share; (2) shipments by capacity and efficiency level; (3) price distribution; (4) market saturation; and (5) distribution trends. The information described is discussed in the sections where it is used in the analysis.

Edison Electric Institute (EEI) commented that contractors should be interviewed when market assessments are being developed (EEI, # 2) while the

Oregon Office of Energy (OOE) requested the Department to gather information on trends in product characteristics and non-regulatory efficiency improvement initiatives, and to interview manufacturers of components (compressors, motor/fan assemblies, heat exchangers) on initiatives to improve system efficiency. (OOE, # 7) The Department relied predominantly upon literature searches and input from equipment manufacturers while developing its market assessment, but also interviewed national contracting organizations, independent contractors and component suppliers. Of course, this market assessment is preliminary, and any additional comments will be taken into consideration when the assessment is revised.

2. Technology Assessment

a. General

Information relating to existing and past technology options and prototype designs are typically used as inputs to determine what technologies manufacturers utilize to attain higher energy efficiency levels. In consultation with interested parties, the Department develops a list of technologies that can and should be considered. Initially, the technologies encompass all those considered to be technologically feasible and serve to establish the maximum technologically feasible design.

b. Product Specific

The Department based its list of technically feasible design options on design options included in a previous ANOPR (58 FR 47326, September 8, 1993). The Department then updated the list through consultation with manufacturers of components and systems, trade publications, and technical papers. Since many options for improving product efficiency are available in existing equipment, product literature and direct examination provided additional information. Further descriptions of the most current technologies are provided in the engineering section of the Preliminary TSD.

OOE asserted that all appropriate component and system technologies must be considered in the technology assessment, and that it should include microchannel heat exchangers and electrohydrodynamic enhancement technologies (OOE, # 7). Additional technologies were considered as set forth in the Technology Screening Analysis (section II.B.3) including such emerging technologies as microchannel heat exchangers, modulating compressors, and advanced variable speed motors and controls. Electrohydrodynamic enhancement technologies were not considered as they have yet to be publicly demonstrated in prototypical central air conditioner and heat pump designs.

3. Preliminary Baseline Shipments Forecast

a. General

The Department develops a preliminary baseline forecast of product shipments that assumes no new standards. This is an initial step in an iterative process. Subsequently, a more comprehensive baseline shipments forecast is prepared using a shipments model, superceding the preliminary forecast.

The baseline shipments forecast is used as an input to the National Benefits Analysis. To perform the National Benefits Analysis, a forecast of shipment-weighted product efficiencies is prepared to the year 2030. To assess the average impact on the affected consumer, a forecast of product shipments by efficiency level was prepared for the year a new standard would come into effect.

b. Product Specific

The Department prepared a baseline shipments forecast for central air conditioners and heat pumps. Data on historical product shipments guided preparation of the preliminary baseline shipments forecast.

The Oregon Office of Energy (OOE) pointed out that non-regulatory energy efficiency programs are on the wane, and that if these programs are to be considered in shipment forecasting, it must be quantifiably demonstrated how they will transform the market (OOE, #7). Information from parties involved in market-based initiatives for increasing the sales of high-efficiency models was reviewed, but provided no quantifiable measure of how these programs impact product efficiencies on a national basis. However, because the baseline forecast assumes an efficiency distribution of 10.7 SEER, based on current sales, the impact of market-based initiatives is implicit in the baseline forecast.

OOE also noted that since central air conditioning is not an essential appliance for most areas of the country, central air conditioning purchase price elasticities will likely be different than those used for forecasting shipments in other product rulemakings (OOE, #7). Since the shipments model used in this rulemaking was prepared specifically for central air conditioners and heat pumps, the Department believes this concern is addressed. The shipments model is further described in the Preliminary National Impacts Analysis discussion in section E.1.b.ii.

B. Screening Analysis

The Screening Analysis reviews various technologies with regard to whether they: (a) Are technologically feasible; (b) are impracticable to manufacture, install and service; (c) have an adverse impact on product utility or product availability; and (d) have adverse impacts on health and safety. The subsequent Engineering Analysis does not consider or incorporate technologies that do not pass these tests, regardless of whether the Engineering Analysis takes a Design Option approach or an Efficiency-level approach. Technologies that pass the Screening Analysis tests may be considered further to determine their potential cost and efficiency impacts. The Screening Analysis also identifies possible product classes and baseline equipment to serve as a basis for further analysis.

1. Product Classes

a. General

Product types are divided into classes using the following criteria: (a) The type of energy used; (b) capacity; and (c) performance-related features that affect consumer utility or efficiency. Different energy efficiency standards are applied to different product classes. In general, classes are defined using information obtained in discussions with appliance manufacturers, trade associations, and other interested parties.

b. Product Specific

As prescribed by the National Appliance Energy Conservation Act (NAECA), central air conditioners and heat pumps are each categorized into split and single package systems, giving four product classes. The analysis performed to date includes only products in these four product classes at a nominal 3 ton capacity. However, there may be justification for establishing additional classes including product types such as:

- Through-the-wall condensing units,
- Ductless split systems,
- High-velocity space-conditioning systems, and
- Vertical packaged, wall mounted.

The Department is also considering establishing new classes defined by the cooling or heating capacity of the equipment.

OOE felt that the addition of more classes may be reasonable. For example, mini-splits and combined space/water

heating systems might be considered as separate classes based on their characteristics and configuration constraints (OOE, #7).

EEI commented that the product classes be expanded to include gas-fired air-conditioning equipment. Gas-fired equipment would then not be included as a design option, but as an additional product class for which baseline models must be developed. (EEI, # 2) Although the Department appreciates EEI's comments, the NAECA definition of central air conditioners subsumes only certain types of electric driven systems. This rulemaking addresses only products covered by that definition, and thus, no consideration will be given here to developing standards for fuel driven technologies.

With regard to the additional product classes listed in this section, the Department is seeking input on whether they need to be established.

2. Baseline Equipment

a. General

The Department defines baseline equipment for each product class as the starting point for analyzing energy efficiency improvements. Baseline equipment are models with the minimum allowable energy efficiency specified by the NAECA. Such baseline equipment are typically ''low-end'' units that contain no premium features, e.g., noise reduction or appearance features.

b. Product Specific

Efficiency is the most important statistic required to establish the baseline model. Current minimum efficiency standards for split and single package system central air conditioners and central air conditioning heat pumps are 10.0 and 9.7 SEER, respectively. The current minima for the heating performance of split and single package central air conditioning heat pump systems are 6.8 and 6.6 HSPF, respectively. The Department used the split system minimum efficiency standards as the baseline efficiency for each of the above classes. If additional classes are created, the Department will apply the appropriate existing standard as the baseline efficiency for that class.

OOE agreed with the Department's intent to use the efficiency of products that just meet the current minimum NAECA requirements as the baseline efficiency. (OOE, #7)

3. Technology Screening

a. General

An initial list of efficiency enhancement options is developed from the technologies identified in the technology assessment. Then the Department, in consultation with interested parties, reviews the list to determine if they are practicable to manufacture, install and service, would adversely affect product utility or product availability, or would have adverse impacts on health and safety. Efficiency enhancement options not eliminated in the screening process are considered further in the Engineering Analysis.

b. Product Specific

Compiling a list of efficiency enhancement options provided an understanding of the technologies available to manufacturers to improve equipment efficiency. This understanding also helped the Department estimate maximum technologically feasible efficiency levels. For split air conditioners, the Department believes, based on a preliminary analysis, that 20 SEER is the highest efficiency level attainable by 2006 on a commercially practicable basis using design and technology options that pass the screening criteria. These include the following: enhanced and oversized heat transfer surfaces; variable or multispeed or variable capacity compressors; high efficiency compressors; electrically-commutated, variable-speed fan or blower motors, and thermostatic or electronic expansion valves. We assumed that the efficiency of compressors, motors, and heat transfer surfaces would improve slightly prior to the effective date of any new rule. The 20 SEER level does not depend on any emerging technologies, because the Department believes that, although those technologies could reduce the cost of the equipment in the SEER 13 to SEER 17 range compared to established technologies, the emerging technologies will not advance the maximum attainable efficiency level.

The analysis of manufacturing costs and prices was based only on technologies and designs available in mass produced products as of 1998. The Department considered the potential cost impact of emerging technologies in a separate analysis described in the Preliminary TSD. The emerging technologies that pass the screening criteria include:

- Microchannel heat exchangers
- Advanced compressors
- Variable speed motor controls

The American Council for an Energy Efficient Economy (ACEEE), OOE, Modine Manufacturing (Modine), and York International (York) all provided comments pertaining to emerging technologies. Both ACEEE and OOE suggested that all advanced or emerging technologies be considered (ACEEE, #5; Steve Nadel, ACEEE, Transcript, pp 80–81; OOE, #7) . ACEEE identified improved compressors and microchannel heat exchangers. ACEEE also stated that emerging technologies could be analyzed in the context of a reverse engineering analysis. Modine stated that PF (microchannel) heat exchangers are a viable technology for improving equipment efficiency, but their acceptance should be driven by market needs rather than through a desire to push the technology into the market (Modine, #1). Bristol Compressors (Bristol) is now bringing to market the Twin-Single (TS) compressor, a reciprocating compressor that reduces system capacity by de-activating one or more pistons under part-load operating conditions. Bristol states that this technology can increase central air conditioner and heat pump efficiency from either 10 to 12 SEER or from 12 to 14 SEER. With a variable-speed indoor blower, the TS can increase system efficiency from 10 to 14 SEER (York, #4).

In contrast, an industry representative contended that emerging technologies would already be in the marketplace if they were feasible and that, in the context of conducting an Engineering Analysis based on the use of the efficiency-level approach, emerging technologies should not be considered until they are shown to radically change the shape of the industry cost curve. (Jim Crawford, The Trane Company (Trane), Transcript, pp 81,87) ARI stated that in developing an aggregate industry cost curve, emerging technologies may or may not be included depending on whether manufacturers submitting data include them in their cost estimates (Ted Leland, ARI, Transcript, pp 85).

The Department has performed a preliminary assessment of the potential impact of these technologies on the manufacturing costs of air-conditioning equipment and is seeking comment on the following: Whether these emerging technologies do in fact pass the screening criteria; the potential impact of these technologies on manufacturing cost, operating cost, and price; whether additional emerging technologies should be considered; and whether the maximum technologically feasible level is commercially practical.

The Department notes that it is not considering fuel-driven technologies, such as gas-fired engine driven heat pumps, absorption heat pumps, and Stirling refrigeration cycles, as design options for central air conditioners and heat pumps. NAECA defines a central air conditioner and heat pump, in part,

as being ''powered by single phase electric current.'' This rulemaking concerns only products that meet the NAECA definition. Thus, fuel-driven technologies are precluded from consideration here.

C. Engineering Analysis

The purpose of the Engineering Analysis is to estimate the energy savings potential from increased equipment efficiency levels and the costs of achieving those levels, compared to the baseline equipment. The increased efficiency levels are associated with increased production costs. The efficiency/cost relations developed in the Engineering Analysis are combined with end-user costs in the LCC Analysis.

1. Energy Savings Potential and Production Costs

a. General

The Engineering Analysis estimates the energy savings potential of the individual or combinations of design options not eliminated in the previous Screening Analysis. The Department, in consultation with stakeholders, uses the most appropriate means available to determine energy consumption, including an overall system approach or engineering modeling. Ranges and uncertainties in performance are established.

The Engineering Analysis involves adding individual or combinations of design options to the baseline equipment. A cost-efficiency relationship is developed to show the manufacturer cost of achieving increased efficiency. The efficiency levels corresponding to various design option combinations are determined from manufacturer data submittals and from DOE engineering calculations.

EPCA requires that, any new or amended standard, ''shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified.'' EPCA, section 325(l)(2)(A), 42 U.S.C. 6295(l)(2)(A). An essential role of the Engineering Analysis consists of identifying the maximum technologically feasible level. The maximum technologically feasible level is one that can be reached by the addition of efficiency improvements and/or design options, both commercially feasible or in working prototypes, to the baseline equipment. The Department believes that the design options must have been physically demonstrated in at least a prototype form to be considered technologically feasible.

Three methodologies can be used to generate the manufacturing costs needed for the Engineering Analysis. These methods include: (1) The design-option approach, reporting the incremental costs of adding specific design options to a baseline model; (2) the efficiency-level approach, reporting relative costs of achieving energy efficiency improvements; and/or (3) the reverse engineering or cost-assessment approach which requires a ''bottoms-up'' manufacturing cost assessment based on a detailed bill of materials for models that operate at particular efficiency levels. The Department considers public comments in determining the best approach for a rulemaking.

If the efficiency-level approach is used, the Department will select appropriate efficiency levels for data collection on the basis of: (1) Energy savings potential identified from engineering models; (2) observation of existing products on the market; and/or (3) information obtained for the technology assessment. Stakeholders will be consulted on the efficiency-level selection.

The use of a design-option approach provides useful information such as the identification of potential technological paths manufacturers could use to achieve increased product energy efficiency. It also allows the use of engineering models to simulate the energy consumption of different design configurations under various user profiles and applications. However, the Department recognizes that the manufacturer cost information derived in the design-option approach does not reflect the variability in design strategies and cost structures that can exist among manufacturers. Therefore, the Department may derive additional manufacturing cost estimates from other approaches developed in consultation with interested parties.

The reverse engineering or cost-assessment approach can be used to supplement the efficiency-level or design option approaches under special circumstances when data is not publically available for proprietary reasons, the product is a prototype and/or the data is not provided by the manufacturers.

b. Product Specific

The Department, in consultation with stakeholders, has used both overall efficiency level and reverse engineering approaches. The efficiency-level analysis relies upon manufacturer cost submittals from ARI while the reverse engineering analysis relies upon manufacturer costs developed by Arthur D. Little, Inc. (ADL) for the Department. The design options selected in the Screening Analysis helped to establish potential efficiency improvements.

Manufacturing cost estimates under the efficiency-level approach were submitted by individual manufacturers to ARI. For purposes of ensuring manufacturer confidentiality, ARI submitted to the Department minimum, maximum, and shipment-weighted averages of incremental manufacturer cost increases associated with various efficiency levels. In the case of the reverse engineering approach, ADL derived manufacturing cost estimates from detailed incremental cost data enabling them to establish costs for labor, purchased parts and material, shipping/packaging, and investment. Both sets of manufacturer costs were input into the Engineering Analysis and cost-efficiency relationships were developed to show the manufacturing costs of achieving various levels of increased efficiency.

As discussed earlier in the section on Process Improvement, attempts were made to reconcile differences between the ARI and the preliminary reverse engineering production cost data. Feedback from the industry resulted in revising the reverse engineering production costs of such components as outdoor cabinet (labor and materials), indoor coil (materials) and refrigerant materials. Packaging and shipping costs were also revised. The Department is continuing consultations with manufacturer representatives regarding other industry suggested issues, including manufacturing production volume, copper and aluminum raw material costs, compressor costs, indoor and outdoor coil costs, and freight costs. For more detail on how the ARI and the reverse engineering costs were developed, and our revisions to the reverse engineering costs, please refer to the Preliminary TSD. As noted earlier, these revisions helped to reconcile some of the differences between the ARI production costs and the reverse engineering production costs, but remaining differences between the two sets of manufacturer cost require further examination.

i. Efficiency-Level Approach

The efficiency-level approach establishes the relationship between manufacturer cost and increased efficiency at predetermined efficiency levels. It has the distinct advantage of being simple and straight forward. Manufacturers typically provide incremental manufacturer cost data for

incremental increases in efficiency. Cost-efficiency curves can be easily constructed to clearly identify at what point manufacturers are incurring significant costs to raise efficiency. Additionally, the efficiency-level approach allows manufacturers the ability to supply detailed cost data without revealing their unique design strategies for achieving increased efficiency levels.

But the simplicity of the efficiency-level approach is also its primary drawback. Namely, since technological details are not provided, it is extremely difficult to verify whether the costs provided for each specific efficiency level are truly representative of the costs for that level. In addition, prototypical designs become difficult to evaluate and maximum technologically feasible designs are then difficult to ascertain. As a result, some other type of analysis is likely needed in order to verify the accuracy of the costs supplied through the efficiency-level approach.

In reply to the Department's request to stakeholders at the 1998 Framework Workshop regarding the most appropriate approach which should be pursued for the Engineering Analysis, some industry members stated their support for the efficiency-level approach (Ted Leland, ARI; David Lewis, Lennox International Inc (Lennox), Transcript, pp 55–56, 61, 76). More specifically, these industry members stated their intention to provide costs under the efficiency-level approach as one cost-efficiency curve that would represent an aggregate of the entire industry, i.e., a smooth curve relating the relative manufacturer cost increases associated with increased efficiency. Industry indicated that the curve would represent the 90th percentile, i.e., the cost efficiency level at which 90% of manufacturers would be able to produce product.

ACEEE and the OOE stated they would be willing to accept the efficiency-level approach only if certain conditions were met (ACEEE, #5, OOE, #7; Steven Nadel, ACEEE, Transcript, pp 65-67; Charlie Stephens, OOE, Transcript, pp 65–67). For example, in addition to providing costs at the 90th percentile, costs at multiple percentiles should be reported. Having the full distribution of costs allows for a more meaningful probability analysis to be conducted. With regard to heat pumps, costs should be collected for achieving different HSPF levels in addition to providing costs at different SEER levels. ACEEE and OOE stated that verification of the costs submitted is extremely important and they suggest that DOE staff members or consultants be permitted to inspect raw data in order to ascertain its reasonableness. OOE suggested that a reverse engineering or design option approach be used to verify the cost data, although they prefer the design option approach. ACEEE also contended that a design approach could be used to verify cost data. ACEEE stated that it is more important to verify costs submitted for high-efficiency equipment (14 to 15 SEER) as current market prices do not reflect mature market costs. Both the Consortium for Energy Efficiency and the Pacific Gas and Electric Company (PG&E) supported ACEEE's conditions for adopting the efficiency-level approach (CEE, #6; PG&E, #8). In addition, PG&E believed that the cost of efficiency upgrades for heat pumps will be similar to air conditioners since their components are nearly identical (PG&E, #8).

On the issue of cost verification, one industry representative contended that if industry provided disaggregated cost data it would allow for the determination of the sources of the data and, thus, result in violation of anti-trust laws. (Jim Crawford, Trane, Transcript, pp 70–72) In any case, he stated that if the reverse engineering approach were used and it validated the aggregated industry cost-efficiency curve the issue of cost verification would be a moot point.

The Department selected two approaches, one of which was the efficiency-level approach, for conducting the Engineering Analysis. Specific efficiency levels were selected by the Department based on consultations with stakeholders. In the case of central air conditioners, efficiency levels were based upon SEER. Efficiency levels for heat pumps were based upon both the cooling season SEER and the heating season HSPF efficiencies.

ARI collected data from individual manufacturers and, rather than providing only costs at the 90th percentile, submitted minimum, maximum, and shipment-weighted mean incremental manufacturer costs for five distinct efficiency levels (11, 12, 13, 14, and 15 SEER). ARI also provided incremental manufacturer costs for heat pumps for the same five SEER levels. Since heat pumps are also rated for their heating performance using the HSPF efficiency descriptor, the Department developed a simple relationship between the two efficiency descriptors for purposes of setting an HSPF standard in addition to an SEER standard. The Department assumed the following set of heating seasonal performance factors corresponding to the above five SEER levels: 7.1, 7.4, 7.7, 8.0, and 8.2 HSPF).

Tables 2 to 5 show the incremental manufacturer costs, also called manufacturer cost multipliers, which ARI submitted for the four primary product classes for systems with cooling capacities of approximately 3 tons (36,000 Btu/hr). The manufacturer cost multipliers are used together with the baseline manufacturer cost (which will be presented in Section II.C.2.b.) to determine the manufacturer costs for each efficiency level. For example, the mean manufacturer cost multiplier for an 11 SEER split system air conditioners from Table 2 is 1.16 and the baseline manufacturer cost for a split system air conditioner is $454. Thus, the mean manufacturer cost for an 11 SEER split system air conditioner is the product of the baseline manufacturing cost ($454) and the cost multiplier (1.16), or $527. While the manufacturer cost multipliers in Tables 2 to 5 included low and high values as well as mean values, because the probability distribution for the cost data at a given standard level are unknown, only the mean values were subsequently used in the LCC Analysis (section II.D).

TABLE 2.—SPLIT SYSTEM AIR CONDITIONERS—ARI MANUFACTURER COST MULTIPLIERS

SEER	Low	Mean	High
10	.....	1.00	.....
11	1.03	1.16	1.30
12	1.09	1.36	1.55
13	1.30	1.63	1.90
14	1.60	2.03	3.00
15	1.81	2.40	3.50

TABLE 3.—SPLIT SYSTEM HEAT PUMPS—ARI MANUFACTURER COST MULTIPLIERS

SEER/HSPF	Low	Mean	High
10/6.8	.....	1.00	.....
11/7.1	1.05	1.10	1.15
12/7.4	1.11	1.24	1.35
13/7.7	1.17	1.44	1.66
14/8.0	1.30	1.64	1.88
15/8.2	1.75	2.09	2.52

TABLE 4.—SINGLE PACKAGE AIR CONDITIONERS—ARI MANUFACTURER COST MULTIPLIERS

SEER	Low	Mean	High
10	.....	1.00	.....
11	1.03	1.19	1.27
12	1.15	1.30	1.40
13	1.40	1.63	1.75
14	1.59	1.87	2.00

TABLE 4.—SINGLE PACKAGE AIR CONDITIONERS—ARI MANUFACTURER COST MULTIPLIERS—Continued

SEER	Low	Mean	High
15	1.89	2.23	2.92

TABLE 5.—SINGLE PACKAGE HEAT PUMPS—ARI MANUFACTURER COST MULTIPLIERS

SEER/HSPF	Low	Mean	High
10/6.8	.....	1.00	.....
11/7.1	1.06	1.14	1.25
12/7.4	1.06	1.28	1.50
13/7.7	1.45	1.60	1.90
14/8.0	1.65	1.75	2.30
15/8.2	1.93	2.13	2.47

In response to EEI's comment that the Engineering Analysis should include the impact of any standard on the EER rating of the equipment (EEI, #2), the Department plans on conducting a Utility Impact Analysis for the Notice of Proposed Rulemaking (NOPR). The Utility Impact Analysis will capture the peak power impacts of an increased SEER standard, which EEI is alluding to in their comment regarding the EER.

ii. Reverse Engineering Analysis

As mentioned in the previous section, a reverse engineering approach was conducted in parallel with the efficiency-level approach to validate the ARI production cost data. The use of a component-based technology-costing (reverse engineering) approach provides useful information including the identification of potential technological paths manufacturers could use to achieve increased product energy efficiency. Under this type of analysis, actual equipment on the market is physically analyzed, *i.e.,* dismantled, component-by-component to determine what technologies and designs manufacturers employ to increase efficiency. Independent costing methods or manufacturer and component supplier data are then used to estimate the costs of the components. This approach has the distinct advantage of using ''real'' market equipment to establish the technologies which manufacturers use as the basis for estimating the cost to reach higher efficiencies.

The primary disadvantage of reverse engineering is the time and effort required to analyze ''real'' equipment. Several models from a diverse range of manufacturers may have to be assessed in order to ensure that an accurate representation of technological paths for increasing efficiency are identified. In addition, since only equipment in the market is analyzed, prototypical designs may not be captured by the analysis, thus making it difficult to establish maximum technologically feasible designs.

The industry contends that a reverse engineering approach could be used to verify the cost data submitted through the efficiency-level approach but DOE must first define the acceptable level of variability between the costs that are developed through each approach. (Jim Crawford, Trane; David Lewis, Lennox, pp 110–113) Industry also maintained that there is wide variation in production costs between manufacturers due to the levels of services that are provided with the purchase of the equipment. OOE stated that reverse engineering could be used to validate the efficiency approach (OOE, #7) while ACEEE stated that reverse engineering has the benefit of analyzing advanced technologies. (Steven Nadel, ACEEE, pp 80–81)

The Department carried out the reverse engineering approach to validate the cost estimates provided by ARI from the efficiency-level approach. The manufacturer costs of 71 equipment models at eight efficiency levels were estimated. Three 3-ton models were torn down: (1) A 10 SEER split system cooling-only condenser, (2) a 10 SEER packaged heat pump, and (3) a 12 SEER split system heat pump condenser. Manufacturer submissions, catalog data, and the ARI Product Attributes Database provided design information on the other 68 models. For split system air conditioners, cost estimates were developed for whole-number efficiency levels ranging from 10 to 17 SEER. For split system heat pumps, cost estimates were developed for whole-number efficiency levels ranging from 10 to 16 SEER. The heating efficiencies corresponding to each of the whole-number SEER levels were: 6.8 HSPF for 10 SEER, 7.1 HSPF for 11 SEER, 7.4 for 12, 7.7 for 13, 8.0 for 14, 8.2 for 15, and 8.4 for 16. A limited set of models were analyzed for single package systems. For single package air conditioners cost estimates were developed for 10, 12, and 13 SEER efficiency levels while for single package heat pumps cost estimates were developed for 10 SEER/6.8 HSPF and 12 SEER/7.4 HSPF efficiency levels.

Tables 6 to 9 show the manufacturer cost multipliers developed by reverse engineering for the four primary product classes. Probability distributions rather than single point-values were used in the LCC analysis. The low and high values shown in the following represent the 10th and 90th percentiles, respectively, of the distributions.

TABLE 6.—SPLIT SYSTEM AIR CONDITIONERS—REVERSE ENGINEERING MANUFACTURER COST MULTIPLIERS

SEER	Low	Average	High
10	0.96	1.00	1.05
11	1.08	1.13	1.18
12	1.20	1.25	1.31
13	1.35	1.42	1.48
14	1.65	1.73	1.81
15	1.87	1.95	2.04
16	1.98	2.07	2.17
17	2.13	2.23	2.33

TABLE 7.—SPLIT SYSTEM HEAT PUMPS—REVERSE ENGINEERING MANUFACTURER COST MULTIPLIERS

SEER/HSPF	Low	Average	High
10/6.8	0.96	1.00	1.05
11/7.1	0.97	1.01	1.06
12/7.4	1.05	1.10	1.15
13/7.7	1.29	1.35	1.41
14/8.0	1.57	1.65	1.72
15/8.2	1.79	1.87	1.96
16/8.4	1.92	2.01	2.10

TABLE 8.—SINGLE PACKAGE AIR CONDITIONERS—REVERSE ENGINEERING MANUFACTURER COST MULTIPLIERS

SEER	Low	Average	High
10	0.96	1.00	1.05
11	.....	.....	.....
12	1.08	1.14	1.19
13	1.33	1.40	1.46

TABLE 9.—SINGLE PACKAGE HEAT PUMPS—REVERSE ENGINEERING MANUFACTURER COST MULTIPLIERS

SEER/HSPF	Low	Average	High
10/6.8	0.96	1.00	1.05
11/7.1	.....	.....	.....
12/7.4	1.11	1.16	1.22

iii. Design Option Approach

Industry representatives contended that the design option approach can only be conducted by industry personnel with years of experience, but the industry is not willing to provide this expertise because of the expense involved. (Jim Crawford, Trane; David Lewis, Lennox; Ted Leland, ARI, Transcript, pp105–106) The industry also stated that DOE should not provide funds for others to carry out this

approach because they lack the necessary expertise.

In contrast, ACEEE and OOE believe that the design option approach has merits (Steven Nadel, ACEEE, Transcript, p 108; OOE, #7). ACEEE stated that it can be useful for evaluating new technologies, while OOE believes it is the approach of choice for conducting the Engineering Analysis, since the impact of any single technology on cost and efficiency is explicitly stated.

The Department used only the efficiency level and reverse engineering approaches to establish the manufacturer costs of achieving increased efficiency levels for the following reasons: (1) Central air conditioners and heat pumps are complex products; (2) a wide variety of options exist to improve their efficiency; (3) these options interact in complex ways; and (4) the industry strongly opposed use of the design option approach and was willing to provide data for the efficiency-level approach.

iv. Outside Regulatory Changes Affecting the Engineering Analysis

There sometimes occur regulatory changes outside of the EPCA efficiency standards process that can affect the manufacture of a product. In some cases, such changes affect the energy efficiency of a product. The Department has attempted to identify all regulatory issues outside the efficiency standards process that would influence the Engineering Analysis.

The central air conditioning and heat pump industry faces the impending phase-out of HCFC–22, the refrigerant used in almost all the equipment currently being installed in the U.S. The phase-out of HCFC–22 begins in the year 2010, and the industry has responded by conducting in-depth analyses of various HCFC–22 alternatives. The most notable effort to date has been the ARI's Alternative Refrigeration Evaluation Program (AREP). Under AREP, several HCFC–22 alternatives were identified, and their effects on equipment capacity, efficiency, and longevity, and other variables were established.

Two primary candidates have emerged from the field of alternatives: R–410A and R–407C. Although R–410A shows promise of being able to significantly raise equipment efficiencies, its high volumetric capacity requires systems to be redesigned to handle the significantly higher discharge pressures. R–407C is a virtual drop-in replacement, but results in an efficiency degradation of 5–10% relative to HCFC–22.

In response to the issue of alternative refrigerants for HCFC–22, industry representatives stated that manufacturing costs that will be submitted will attempt to factor in the impact of switching to R–410A. (Ted Leland, ARI, Transcript, pp 287–288; Jim Crawford, Trane, p 288; David Lewis, Lennox, p 290, p 297) In response to a schedule presented at the 1998 Framework Workshop showing that a new minimum standard would become effective in the year 2005, the industry representatives stated that the effective date of any new efficiency standard should coincide with the phase-out date of HCFC–22 (the year 2010) or be in the 2006 to 2010 time frame. Additionally, they warned that efficiency gains through the use of R–410A are not as great as first believed.

In response to industry's proposal to postpone the effective date of the standard, both ACEEE and OOE stated that DOE should make new standards effective in 2005. (ACEEE, #5; OOE, #7; Steven Nadel, ACEEE, Transcript, p 298; PG&E, #8) In their view, any delay will compromise U.S. commitments to reduce global warming gases. OOE offers two approaches for completing the rulemaking on-schedule: (1) Base the rulemaking analysis on replacement refrigerants or (2) base the analysis on HCFC–22 and use a correction factor to adjust equipment performance based on the use of alternative refrigerants. PG&E adds that an effective date of 2005 will allow any new building standards proposed by the California Energy Commission (CEC) to include the beneficial impact of higher-efficiency air conditioners. PG&E states that if standards are delayed to 2010, then over 500,000 new California dwellings would be significantly less efficient.

The Department has determined that the phase-out date for HCFC–22 is far enough in the future that it will not affect a manufacturer's ability to meet any new efficiency standards, whether using HCFC–22 before the phase-out, or using alternative refrigerants before and after the phase-out. The Department does not plan to delay the effective date of any new standards to coincide with the phase-out date of HCFC–22. The Engineering Analysis has therefore been based on the assumption that equipment will use HCFC–22. However, the Department recognizes that equipment design changes to accommodate alternate refrigerants may alter the manufacturing cost-efficiency relationship developed for HCFC–22 equipment. The Department welcomes input regarding the analysis of equipment designed for alternate refrigerants.

Other non-regulatory issues of concern to the industry include the need to make systems increasingly tighter to prevent refrigerant leaks due to the use of HCFC-based refrigerants (David Lewis, Lennox, Transcript, p 298), and international standardization of test procedures. (Jim Crawford, Trane, Transcript, pp 298–299). The Department has not explicitly addressed these concerns in its current analysis but welcomes any comments as to how to address these issues in the course of the rulemaking.

2. Manufacturing Costs

a. General

In addition to being inputs to the Engineering Analysis, manufacturing costs are used as the means of determining retail prices, and are needed for the manufacturer impact analysis.

b. Product Specific

Two sets of manufacturing costs were prepared. Using an efficiency-level approach, ARI collected data from individual manufacturers and submitted incremental manufacturing cost estimates. The Department also conducted a reverse engineering analysis to determine manufacturing costs. This analysis included an assessment of uncertainty and variability among manufacturers.

Baseline manufacturer costs, *i.e.,* the costs associated with producing equipment with efficiencies of 10 SEER, were also developed through the reverse engineering analysis. Table 10 shows the baseline manufacturer costs developed for the four primary product classes for systems with cooling capacities of approximately 3 tons (36,000 Btu/hr). Note that for split system air conditioners, two costs were developed; one for systems sold without indoor blowers and the another for systems sold with indoor blowers. (A split system air conditioner is usually sold without an indoor blower when the air conditioner's indoor unit is installed in conjunction with a heating furnaces that is equipped with a blower). The uncertainty and variability of the baseline costs are noted in the manufacturer cost multipliers derived in the reverse engineering analysis (Tables 6 to 9) in the rows identified as 10 SEER/6.8 HSPF.

TABLE 10.—BASELINE MANUFACTURER COSTS

Product Class	Without blower	With blower
Split System A/C	$367	$454

TABLE 10.—BASELINE MANUFACTURER COSTS—Continued

Product Class	Without blower	With blower
Split System Heat Pump	.....	615
Single Package A/C	.....	534
Single Package Heat Pump	.....	589

i. Characterizing Uncertainty

Consistent with the Process Rule, DOE places a range around the average manufacturing costs of achieving various efficiency levels. The OOE concurs with DOE's plan for dealing with uncertainty and variability in manufacturer cost estimates. (OOE, #7) The ranges of costs are used to generate retail prices for the consumer LCC Analysis, and are used in the Industry Cash Flow Analysis.

ARI collected data from manufacturers and developed a shipment-weighted mean, along with minimum and maximum cost multipliers for each efficiency level to account for variability and uncertainty. Since the actual distribution of manufacturer costs were not provided to the Department, only the shipment-weighted means were used in the calculation of retail prices and, in turn, the LCCs.

In conducting the reverse engineering approach, the Department developed a range of cost estimates for each efficiency level. For each efficiency level in each product class, the range of cost estimates were approximated by multiplying the mean value by a uniform distribution (from 95% of the mean to 105% of the mean) and a normal distribution (centered on the mean, with a standard deviation of 1.9%). The resulting cost distributions were then used in the calculation of retail prices and, in turn, the LCCs.

ii. Variability in Cost Among Manufacturers

The Department is committed to assessing the differential impacts of standards on different manufacturers. The results are used as inputs for the sub-group analysis of manufacturing impacts, which entails calculating cash flows separately for each class of manufacturer.

In previous analyses for other appliances, manufacturing costs submitted to DOE have demonstrated large variability. In line with the Department's preference, ARI therefore collected cost data disaggregated by manufacturer, although, as discussed earlier, ARI provided to the Department only aggregated shipment-weighted manufacturer costs. Under the efficiency-level approach, this same disaggregated company-specific cost information developed for the Engineering Analysis can be used to perform Government Regulatory Impact Analysis for each manufacturer or manufacturer subgroup. These aggregated data, however, were insufficient to generate distributions of costs by manufacturer. Therefore, only mean values were used in the subsequent LCC Analysis.

iii. Proprietary Design

The Department considers in its analysis all design options that are commercially available or present in a working prototype, including proprietary designs. OOE stated that designs meeting the stated criteria of a proprietary design should be analyzed as a design option, providing the example of the microchannel heat exchanger (OOE, #7). Proprietary designs are considered in the Department's engineering and economic analyses. The Department looked at the potential impact of proprietary heat exchanger and compressor designs plus any proprietary designs that were part of equipment which were analyzed in the course of the reverse engineering analysis.

The Department considered the potential impact of proprietary designs as part of its preliminary assessment of design options. Its initial conclusion is that the inclusion of proprietary designs will not materially affect the results of the Engineering Analysis because equipment can achieve the same efficiencies competitively using non-proprietary designs. The Department intends to continue examining this issue during the Manufacturing Impact Analysis and welcomes input on the appropriateness of considering proprietary designs.

D. Life-Cycle Cost (LCC) and Payback Analysis

In determining economic justification, EPCA directs the Department to consider a number of different factors, including the economic impact of potential standards on consumers. EPCA also establishes a rebuttable presumption that a standard is economically justified if the additional cost of purchasing a product, attributed to the standard, is less than three times the value of the first year energy cost savings. EPCA, section 325(o)(2)(B)(iii), 42 U.S.C. 6295 (o)(2)(B)(iii).

To address these provisions the Department calculates changes in LCCs to the consumers that are likely to result from the proposed standard, as well as two different simple payback periods, i.e., distribution of payback periods, and a payback period calculated for purposes of the rebuttable presumption clause. The effects of standards on individual consumers include changes in operating expenses (usually lower) and changes in total installed cost (usually higher). The net effect is analyzed by calculating the change in LCC as compared to the base case. The base case manufacturing cost is determined in the reverse engineering analysis. The LCC calculation considers installed consumer cost (equipment purchase price plus installation cost), operating expenses (energy, repair, and maintenance costs), appliance lifetime, and discount rate. The LCC Analysis is performed from the perspective of the consumer.

At the ANOPR stage, the Department generates LCC and payback period results as probability distributions using a simulation based on Monte-Carlo methods, in which inputs to the analysis consist of probability distributions rather than single-point values. As a result, the Monte Carlo analysis produces a range of LCC and payback period results rather than single-point values. A distinct advantage of this type of approach is that the percentage of consumers achieving LCC savings or attaining certain payback values due to an increased efficiency standard can be identified in addition to the average LCC savings or average payback for that standard. Because the analysis is being conducted in this manner, the uncertainties associated with the various input variables (as described in the next paragraph) can be expressed as probability distributions. During the post-ANOPR consumer analysis, the Department will evaluate additional parameters, and prepare a comprehensive assessment of the impacts on sub-groups of consumers.

The LCC and one of the payback periods (distribution of payback periods) are calculated using the LCC spreadsheet model developed in Microsoft Excel for Windows 95, combined with Crystal Ball (a commercially available software program), based on probability distributions of input variables. The second payback, the Rebuttable payback based on DOE test procedure assumptions for estimating annual energy consumption, is not calculated using Crystal Ball and input probability distributions, but is instead based on the spreadsheet option allowing single-values for the input variables.

Based on the results of the Engineering and LCC Analyses, DOE selects candidate standard levels for a more detailed analysis. The range of candidate standard levels typically includes: (1) The most energy-efficient combination of design options or most energy-efficient level; (2) the efficiency level with the lowest LCC; and (3) an efficiency level with a payback period of not more than three years. Additionally, candidate standard levels that incorporate noteworthy technologies or fill in large gaps between efficiency levels of other candidate standards levels may be selected.

The payback, for purposes of the rebuttable presumption test, attempts to capture the payback to consumers affected if a new standard is promulgated. It compares the purchase cost and energy use of central air conditioners and heat pumps consumers would buy in the year the standard becomes effective with what they would buy without a new efficiency standard. In some cases, this means comparing the baseline energy efficiency and cost with those associated with the standard level. In other cases, the standard level would also be compared to a higher-efficiency appliance purchased without new standards (but at a lower efficiency than the trial standard level). A weighted average of these payback periods, in the year a new standard level would take effect, is considered the payback for purposes of the rebuttable presumption clause.

In addressing the usefulness of the LCC Analysis, an industry representative asserted that LCCs have no relationship to market dynamics, have no relationship to what the customer will buy, and have no relationship to the cost effectiveness of any efficiency standard. (Jim Crawford, Trane, Transcript, pp 135) But section 325(l)(2)(B)(I)(II) of EPCA requires the Department to consider the savings and costs of standards, and virtually mandates performance of an LCC Analysis.

One commenter during the Framework Workshop stated that tax credits [incentives] for consumer purchases of high efficiency equipment should be included in the LCC Analysis. (Transcript, pp 243) The Department has not considered tax incentives in the LCC Analysis being presented here, because there are no such tax benefits available under Federal law. However, the Department seeks specific information from stakeholders regarding whether the Department should consider LCC analyses with alternative tax incentive scenarios.

1. LCC Spreadsheet Model

a. General

This section describes the LCC spreadsheet model used for analyzing the economic impacts of possible standards on individual consumers. The LCC spreadsheet model is available on the Department's web site for use by interested parties who wish to modify the assumptions in the models and view the results of those changes. The LCC Analysis is conducted using a spreadsheet model developed in Microsoft Excel for Windows 95, combined with Crystal Ball. The Model uses a Monte Carlo simulation to perform the analysis considering uncertainty and variability. The spreadsheet is organized so that ranges (distributions) can be entered for each input variable needed to perform the calculations.

The Department wishes to consider the impacts of varying regional climate, energy prices, and consumer behavior on LCCs and payback periods. Calculations were therefore based on a Monte Carlo uncertainty analysis in which variables are represented by probability distributions of values. With this approach, the Department could express LCCs and payback periods as national means, with ranges that fully account for regional variations in climate, electricity cost, and behavior. The spreadsheet has the capability to sample subsets of households for the analysis of particular sub-populations, e.g., low income households, and will be used for Consumer Sub-Group Impact Analysis prior to issuance of the NOPR.

An industry representative commented that an LCC Analysis based upon uncertain or distributional inputs is suspect and totally unverifiable if the uncertainty of the inputs cannot be clearly defined. (Jim Crawford, Trane, Transcript, pp 252–254) He suggested that a simpler approach be used. Others supported the use of a distributional LCC Analysis, commenting that this approach is better than what has been used in prior rulemakings. (Charles Stephens, OOE; Michael Martin, CEC, Transcript, pp 256) EEI stated that the use of ranges of values for appliance price and life, fuel costs, energy usage, and discount rates follows recommendations provided by the Appliance Standards Advisory Committee. (EEI, #2) OOE asserts that use of a distributional analysis creates potential pitfalls in accounting for regional climatic and energy price variations. Use of traditional methods for screening out design options based upon increased LCC or excessively long payback periods will be more difficult as results for one region may demonstrate that a design option is economically attractive while another region does not. DOE must establish some basis for rejecting or retaining design improvements. (OOE, #7) Although the use of distributional LCC Analysis may be more complex, the Department has decided it is the best approach to use to capture the uncertainty and variability inherent in input variables. In response to OOE's concerns for selecting appropriate standard levels, the Department will keep in mind their concerns when selecting appropriate standard levels for the NOPR.

In order to generate the distributions required for the analysis, the Department used the Energy Information Administration's (EIA's) *Residential Energy Consumption Survey* (RECS). The 1993 RECS is based on a representative sample of 7,111 households from the population of all primary, occupied residential housing units in the United States. Each household is weighted so that the data properly represent the 96.6 million households in the 50 states and the District of Columbia reported in the 1993 RECS.

RECS estimates end-use energy consumption and reports the age of equipment as well as household energy prices. Of the over 7,000 households surveyed in RECS, 2550 households representing 35.6% of the housing population have a central air conditioner while 651 households representing 8.3% of housing population have an electric heat pump. The distribution of LCC and payback results are generated by performing an LCC and payback calculation for each RECS household with a central air conditioner or heat pump. For example, in conducting the LCC Analysis for a 12 SEER standard level for central air conditioners, all RECS households with a central air conditioner have their existing equipment ''replaced'' first with a baseline (i.e.,10 SEER) system. The corresponding LCCs of the baseline systems are then calculated. Then all RECS households with a central air conditioner have their existing equipment ''replaced'' with a 12 SEER system and the LCC of these systems are established. On a household-by-household basis, the payback periods and the LCC differences of the 12 SEER system are determined relative to the economics of the baseline system. The result is a distribution of LCCs and payback periods. Since climatic conditions and consumer behavior affect the energy consumption of a given

piece of equipment, these data implicitly account for regional variations. Similarly, variations in the RECS energy price data represent the range faced by consumers in the U.S.

Both EEI and EMPA warned of problems using the RECS data in a LCC and Payback Analysis. (EEI, #2; EMPA, #3) EEI asserts the following: (1) The age of the RECS data (1993) is too old to be used with efficiency and price data from 1998, (2) only total annualized average electricity and fuel rates rather than summer marginal rates are provided, (3) the stated age of the equipment may be inaccurate if the households surveyed are not original homeowners, and (4) there is no accounting of equipment used in small commercial facilities. EEI also claims that RECS may not reflect regional or national equipment saturations as the 1993 RECS shows that 42% of survey homes have a central air conditioner while an industry publication (ACHR News, June 22, 1998) shows saturations ranging from 55% in the western U.S. to 99% in the southern U.S. EMPA questioned whether the 7,000 to 8,000 households surveyed households in RECS can be representative of the 90 million households in the U.S. They also commented that RECS experts from EIA needed to provide a written statement in support of the way in which DOE plans to use the RECS data in its LCC analyses. In contrast to these comments, OOE states that they are very comfortable with the analysis methodology as it was applied to other products (clothes washers) where RECS data was used to determine annual energy use and equipment age. (OOE, #7)

Although the Department understands the concerns of the EEI and EMPA, the 1993 RECS data is the most recent and appropriate database available for conducting the desired distributional LCC Analysis. DOE plans to conduct updates to the LCC and Payback Period Analysis with the 1997 RECS. Use of this data will address most of the concerns brought up by both EEI and EMPA.

Estimates of the efficiency of equipment currently in use are based upon the age of the equipment as established by RECS and historical shipment-weighted efficiency values. The age of the equipment establishes the year of manufacture which in turn, using the shipment-weighted efficiency data, allows for the determination of the equipment's most probable efficiency. Replacing existing equipment with new equipment results in reductions in energy consumption. These reductions were approximated by multiplying current energy use by the ratio of the efficiencies of existing and new equipment. Using an energy price allowed for the calculation of the operating costs of existing and new replacement equipment, and, in turn, the LCCs and payback periods associated with different efficiency levels of new equipment.

The Department developed LCCs and payback periods based on both sets of manufacturer cost estimates developed in the Engineering Analysis: (1) The ARI cost data developed through the efficiency-level approach, and (2) the cost data developed through the reverse engineering analysis.

A more detailed description of the methodology and contents of the RECS database is contained in the Preliminary TSD.

b. Product Specific

This section discusses the approaches for analyzing the economic impacts on individual consumers from potential new central air conditioner and heat pump standards. An LCC spreadsheet model, described previously in Section II.D.1.a, is used to calculate two of the economic impacts, LCC and payback period, based on input variables that have uncertainty and variability expressed with probability distributions. A third economic impact, Rebuttable Payback Period, is determined without the use of the spreadsheet model. In future analyses, all three of these economic metrics will be compared to baseline efficiencies of appliances sold in the year the new standard would take effect. In this preliminary analysis, only the Rebuttable Payback Period is compared to a distribution of efficiencies forecasted to the year 2006.

i. LCC Analysis

The Department determined values of input variables for central air conditioners and heat pumps, including total installed cost (consisting of both the equipment purchase price and installation price), annual energy use, lifetime, repair costs, and maintenance costs of equipment, as well as average energy prices, marginal energy prices, and discount rate. Table 11 summarizes some of the major assumptions used to calculate the consumer economic impacts of various energy-efficiency levels.

TABLE 11.—ASSUMPTIONS USED IN THE LCC ANALYSIS

Total Installed Cost: Equipment Purchase Price.	Manufacturer cost multiplied by manufacturer markup, distributor markup, dealer markup, and sales tax.
Installation Price	Central air conditioners—$1190; heat pumps—$2035.
Existing Equipment Efficiency	Distribution imputed from RECS database based on equipment age and historical shipment-weighted efficiencies (central air conditioners—5.3 to 15.2 SEER, weighted average of 8.58 SEER; heat pumps—5.3 to 15.2 SEER, weighted average of 8.72 SEER; 4.88 to 9.67 HSPF, weighted average of 6.52 HSPF).
Existing Annual Energy Use	Distribution from RECS database (central air conditioners—174 to 12,929 kWh/yr, weighted average of 2629 kWh/yr; heat pumps—space-cooling equals 0 to 14,771 kWh/yr, weighted average of 2987 kWh/yr; space-heating equals 162 to 29,839 kWh/yr, weighted average of 4658 kWh/yr).
Average Energy Prices	Historical—distribution from RECS database (central air conditioners—2.70 to 16.50 ¢/kWh, weighted average 8.49 ¢/kWh; heat pumps—2.60 to 13.00 ¢/kWh, weighted average 7.86 ¢/kWh); projections—*AEO*—1999.
Marginal Energy Prices	Historical—estimated from RECS database (central air conditioners—0.58 to 19.42 ¢/kWh, weighted average 8.74 ¢/kWh; heat pumps—0.82 to 18.62 ¢/kWh, weighted average 7.99 ¢/kWh); projections—scaled to trends in average energy prices.
Lifetime	Distribution based on empirical data (mean life is 18.4 years).
Discount Rate	Distribution (0% to 19%, weighted average 6.51%)
Repair Costs	For systems with efficiencies of 10 SEER or greater than 12 SEER, one-half equipment price divided by mean lifetime. For systems with efficiencies of 11 or 12 SEER, 1% greater than the 10 SEER repair cost.
Maintenance Costs	Distribution ($0 to $135/year, weighted average $36/year).

Total Installed Cost: The total installed cost consists of the equipment purchase price and the installation price. Markups are used to convert the manufacturer cost to the equipment purchase price. The determination of equipment purchase prices is described in the next section.

Installation Price: The installation price represents all costs required to install the equipment other than the marked-up equipment cost. The installation price includes labor, overhead, and any miscellaneous materials and parts such as linesets. For central air conditioners the installation price used in the analysis used is $1190, and for heat pumps it is $2035. The installation price was determined by subtracting the derived equipment purchase price from the typical total installed cost. The typical total installed cost values were collected from public sources and phone calls to heating ventilating and air conditioning (HVAC) contractors. While the data collected were for split systems, the Department has assumed the installation prices apply to single package systems, although installation price for these systems might be somewhat lower than for the split systems, since only single packages are involved and no line sets are required. The Department is interested in obtaining information on the installation prices for all classes of products.

Annual Energy Use: Currently, the DOE test procedure calculates annual cooling and heating energy consumption based on 1,000 and 2,080 hours of operation, respectively. Although this procedure seems to be widely accepted for comparing the seasonal performance of different units, the procedure overstates equipment energy use compared to RECS estimates. As described above, basing operating and LCC on RECS household data provides a more accurate measure of the savings possible from more-efficient equipment, and accounts for variability in LCCs due to climatic conditions and energy prices.

Variations in energy use for a particular appliance can depend on factors such as climate, type of household, people in household, etc. For purposes of this analysis, annual energy use was based on the annual end-use energy consumption values in RECS. Climatic and consumer behavior are inherent to the RECS energy use data. The Department will perform sensitivity analyses prior to issuance of the NOPR to consider how differences in energy use will affect sub-groups of consumers.

For the RECS households with central air conditioners, the range of annual space-cooling energy consumption is 174 to 12,929 kWh/year with a weighted-average value of 2629 kWh/year. For the RECS households with heat pumps, the range of annual space-cooling energy consumption is 0 to 14,771 kWh/year with a weighted-average value of 2987 kWh/year. The annual space-heating energy consumption for households with heat pumps ranges from 162 to 29,839 kWh/year with a weighted-average value of 4658 kWh/year.

For each RECS household equipped with either a central air conditioner or heat pump, the annual energy use associated with a particular standard level is calculated by taking the annual energy use associated with the existing system and multiplying it by the ratio of the existing system's efficiency to the efficiency of the standard level of interest. To illustrate this approach, this calculation procedure is carried out here based on the weighted-average annual energy use and the weighted-average efficiency from all RECS households equipped with central air conditioners. As presented earlier, for all RECS households with a central air conditioner, the weighted-average annual energy use and the weighted-average efficiency are 2629 kWh/year and 8.58 SEER, respectively. Thus, for the case of a 12 SEER air conditioner, the weighted-average annual energy use is determined according to the following expression:

Weighted-average annual energy use of 12 SEER A/C = 2629 kWh/yr 4 × (8.58 SEER ÷ 12 SEER) = 1880 kWh/yr

Of course, as the efficiency of the standard level being analyzed increases, its corresponding annual energy use decreases proportionally. It should be noted that in the case of establishing the annual space-heating energy use of heat pumps, the ratio of HSPF values are used rather than the SEER values. It must also be emphasized that the above calculation is illustrative only. In order to generate the distribution of LCC and payback results for a particular standard level, each RECS household that is equipped with a central air conditioner or heat pump is analyzed.

Concerning use of RECS data in the economic analysis, EEI stated that, although energy use is dependent on equipment design, weather, and consumer operation, it is also a strong function of house design, landscape, and thermostatic controls, and their impacts should be taken into consideration. (EEI, #2) They also stated that EER ratings, in addition to SEER ratings, ranges of cooling capacity, and the climatic impact on hours of operation, should also have an impact on energy use and should also be considered. With regard to the annual operating hours, EEI stated that a range of values based upon end-use metering studies, load management programs, and other utility or research organization studies should be used. They cited state utility commissions, Internet web sites, and software providers as possible sources for determining variations on energy use.

As stated earlier, the Department believes that the 1993 RECS is the most recent and appropriate data available. In addition to the equipment design, weather, and consumer operation, the RECS annual end-use estimates also consider the household's shell characteristics including any prominent shading. Past RECS data sets have been validated against end-use metering studies in an attempt to better its procedures for estimating end-use energy consumption. Although the Department is comfortable with the use of RECS as its source for establishing annual energy consumption, interested parties are welcome to present any metered end-use data that could verify or substitute for the RECS estimates.

Average Energy Prices: As discussed above, the Department is using RECS household data to establish energy prices. Projections of future energy prices for the LCC Analysis use high, low, and reference case projections of national average electricity prices to residential customers. The current edition of EIA's *Annual Energy Outlook (AEO)* is used as the source of projections for uncertainty in the LCC analysis.

For the RECS households with central air conditioners, the range of average electricity prices in 1993$ is 2.70 to 16.50 ¢/kWh with a weighted-average value of 8.49 ¢/kWh. For the RECS households with heat pumps, the range of average electricity prices is 2.60 to 13.00 ¢/kWh with a weighted-average value of 7.86 ¢/kWh. While average energy prices establish the annual electricity cost of baseline equipment (*i.e.,* split-system air conditioners with efficiencies of 10 SEER and heat pumps with efficiencies of 10 SEER and 6.8 HSPF), marginal energy prices establish savings in electricity costs associated with increased efficiency standards.

Both EEI and EMPA stated that the average energy prices in RECS are outdated and that marginal energy prices should be used in their place in conducting the LCC and Payback Analysis. (EEE, #2; EMPA, #3) Both

pointed to subtracting out the fixed cost portion of the price as an interim step in developing marginal prices. EEI suggested several data sources for developing marginal prices including state utility commissions, Internet web sites such as the PowerRates site, and software providers such as such as EPS solutions and Energy Interactive. EMPA stated that any work to identify marginal energy costs should include a detailed description of the methodology and that any data collection efforts must comply with Paperwork Reduction Act. ACEEE noted how air conditioners are used during peak periods when the cost of supplying electricity is high and that price data should be collected during these periods for use in the economic analyses. (ACEEE, #5)

Regarding future energy prices, several participants at the 1998 Framework Workshop stated that future residential electricity prices will be dependent on the how the electric utility industry is restructured. (Transcript, pp 220–230) EMPA was critical of EIA's forecasts of future energy prices, stating that the forecasts have consistently underestimated rates, and that EIA's forecasting models do not reflect the factors resulting from the deregulation of the electric utility industry. (EMPA, #3)

The Department used the most recent forecasts from the *1999 AEO* to predict the trend in both average and marginal electricity prices by multiplying the average and marginal price for the base year (1998) by the *AEO's* forecasted relative electricity price increases and/or decreases. In addition, LCC and payback spreadsheets can be run with price forecasts from the Gas Research Institute (GRI). The Department believes these forecasts are the most reliable available to predict future energy trends.

Marginal Energy Prices: Marginal energy prices are those prices consumers pay for the last units of energy used. Marginal prices reflect a change in a consumer's bill associated with a change in energy consumed, consequently, marginal energy prices, rather than average energy prices, are appropriate for determining energy cost savings associated with increased efficiency standards. For LCC analyses, the Advisory Committee recommended that DOE use the full range of consumer marginal energy prices instead of national average energy prices. Absent consumer marginal energy price information, the Committee recommended DOE use a range of net energy prices, calculated by removing all fixed charges. The Department agrees the use of marginal energy prices improves the accuracy of the LCC Analysis and has estimated marginal prices for electricity and natural gas.

The Department estimated consumer marginal electricity and natural gas prices directly from household data in the 1993 RECS survey by calculating the slopes of the regression lines of customers' bills vs. energy consumption for these two fuels. Those slopes are equal to the change in bill divided by the change in energy consumption, that is, the marginal prices paid by each household. Since this rulemaking concerns only energy efficiency standards that apply to electrically-driven central air conditioners and heat pumps, only marginal electricity prices are of concern here.

For electricity, the Department calculated separately the slopes of the regression lines for four summer months (June–September) and for the remaining (''winter'') months. The annual marginal price was derived by taking the weighted average of the two seasonal prices, where the weighting was the relative energy consumption of the appliance in each season. For air conditioners/heat pumps, the weighting was based on the regional location and age of each of the households in the RECS sample.

Given restructuring of parts of the energy supply sector, customers may have more than one bill (e.g., one from the distribution company, and one or more from generators or suppliers). To capture complete information, future surveys would best gather energy pricing information directly from customers, rather than from utilities or local distribution companies. Efficient collection of energy pricing information in the future will require changing the current processing of the billing information so as to gather consumption by month and pricing information for each customer from the bills. The pricing information would comprise the applicable rate schedule, including marginal prices, fixed charges, and demand charges for commercial and industrial customers, or time-of-use rates where applicable. The Office of Energy Efficiency and Renewable Energy has expressed the need for these data in discussions with EIA concerning the design of future surveys.

Until a time series of marginal prices is available, the Department will use projected trends in energy prices to derive estimates of consumer marginal energy prices for the economic analysis of proposed standards. An index (scaling factor) was created relative to current prices from the trend in average prices (by fuel and sector) and was applied to the current range of marginal prices. For example, if the trend in average residential electricity prices was a decline by 20 percent over a given period of time, then we assume the marginal price for each household would decline from its initial observed value by 20 percent over that same period.

The Department recognizes that a simple scaling of marginal energy prices may be incorrect in a restructured electric power market. Therefore, the Department may develop a different approach to forecast future marginal energy prices when restructuring becomes more widely implemented.

Given the uncertainty of projections, the Department has made available to stakeholders the ability to conduct a scenario analysis to examine the robustness of different efficiency levels under different energy-price conditions. Each scenario provides a self-consistent projection, integrating energy supply and demand. The scenarios differ from each other in the energy prices that result. The Advisory Committee suggested the use of three scenarios. While many scenarios can be envisioned, the three scenarios specified are sufficient to bound the range of energy prices.

The three scenarios suggested by the Advisory Committee are based on projections in the *1999 AEO.* The Department's most recent reference case, published in the *1999 AEO,* provides a well-defined middle scenario. In addition, DOE can use the scenarios with the highest and lowest energy prices in the sector from the range of scenarios in the *1999 AEO.* The future trend in energy prices assumed in each of the three scenarios is clearly labeled and accessible in each spreadsheet. Also included as a scenario is the GRI energy price forecast for 1998. Stakeholders can easily substitute alternative assumptions in the Department's web site LCC spreadsheets to examine additional scenarios.

For the RECS households with central air conditioners, the range of marginal electricity prices in 1993 dollars is 0.58 to 19.42 ¢/kWh with a weighted-average value of 8.74 ¢/kWh. For the RECS households with heat pumps, the range of marginal electricity prices is 0.82 to 18.62 ¢/kWh with a weighted-average value of 7.99 ¢/kWh.

As discussed previously under the section describing average energy prices, marginal energy prices are used to determine the annual electricity costs associated with energy savings resulting from an increased efficiency standard (i.e., any efficiency above baseline efficiencies).

Lifetime: In choosing a value for lifetimes of central air conditioners and

heat pumps, a variety of sources were reviewed. These studies on lifetimes of central air conditioners and heat pumps indicates that there is a wide range of values for lifetimes. The references are provided in Table 12, with the mean lifetimes given in years.

TABLE 12.—CENTRAL AIR CONDITIONER AND HEAT PUMP MEAN LIFETIMES

Source	In years—	
	Central AC	Heat pump
Appliance Magazine. The Life Expectancy/Replacement Picture, Sept. 1998 [a]	13.0	14
National Association of Home Builders. Housing Facts, Figures, and Trends, 1998 [b]	15.0	15
1995 ASHRAE Applications Handbook [c]	15.0	15
M.E. Bucher et al, American Electric Power Service Corp. 1990. ''Heat Pump Life and Compressor Longevity in Diverse Climates'', ASHRAE Transactions 96(1):1567–1571	.....	[d] 19
K.A. Pientka, Commonwealth Edison Co. 1987. ''Heat Pump Service Life and Compressor Longevity in a Northern Climate'', ASHRAE Transactions 93(1):1087–1101	.....	[d] 15–16
C.C. Hiller, EPRI and N.C. Lovvorn, Alabama Power Co. 1987. ''Heat Pump Compressor Life in Alabama'', ASHRAE Transactions 93(1):1102–1110	.....	[d] 20
J.E. Lewis, Easton Consultants. 1987. ''Survey of Residential Air-to-Air Heat Pump Service Life and Maintenance Issues'', ASHRAE Transactions 93(1):1111–1127	12.1	10.9
MTSC, Inc. Energy Capital in the U.S. Economy, prepared for the Office of Policy, Planning, and Evaluation, U.S. Department of Energy, Nov. 1980 [e]	12.0	12

[a] Based on first-owner use. Central AC min life = 8, max life = 18. Heat Pump min life = 10, max life = 17.
[b] Sources: Air Conditioning and Refrigeration Institute; Air Conditioning, Heating, and Refrigeration News; Air Movement and Control Association; American Gas Association; American Society of Gas Engineers; ASHRAE.
[c] Source for Central A/C: Akalin, M.T. 1978. ''Equipment life and maintenance cost survey'', ASHRAE Transactions 84(2):94–106. Source for Heat Pump: ASHRAE Technical Committee 1.8, 1986.
[d] Median lifetime.
[e] Based on retirement function.

The available sources report mean and median lifetimes ranging from 10.9 to 20 years. The Department's analysis assumed a mean lifetime of 18.4 years, based on a 1990 ASHRAE technical paper that has the most recent and most detailed information on heat pump life available, based on a survey of 2,184 heat pump installations in a seven-state region of the United States. The sources that report shorter average lifetimes are based on data of a lesser quality, and the Department considers those figures are less reliable. For example, in the case of *Appliance Magazine,* the reported lifetime values are based on expert opinion rather than empirical data.

Appliances produced at some future date may have different lifetimes than those in the same class produced in the past. The projections of lifetimes and other parameters used in the analysis should be based on observed empirical trends, as well as expert knowledge of likely changes in the industry, since future changes are not always straight-line projections of past trends. While expert judgement is crucial, however, it must have a strong empirical basis. With this in mind, the Department believes that the probability distribution of equipment lifetime used in the analysis is the most sound, given available evidence of past performance and recent trends. Because none of the data on equipment lifetime indicates a relationship between efficiency and lifetime, the Department assumes that equipment lifetime is independent of efficiency.

EMPA claimed that lifetime should be based on first ownership rather than actual equipment life. (Glenn Schleede, EMPA, Transcript, pp 232; EMPA, #3) They stated that homeowners usually change residences every 7 years. In response to this assertion, it was stated that although the statute requires that LCC be determined it does not specify the exact meaning of lifetime. (Mike Rivest, ADL, Transcript, p 236) Counter to EMPA's claims, OOE stated that energy efficiency benefits are essentially swapped when a homeowner changes residence. (Charlie Stephens, OOE, Transcript, pp 233; OOE, #7) That is, the new homeowner will realize the benefits of the first owner's more efficient equipment. They also add that an equipment lifetime of 15 years seems reasonable for split system air conditioners, but that field data indicates that heat pumps have a shorter life.

The Department believes that equipment life rather than first ownership is the correct measure of lifetime. The Department continues to seek any additional information that may provide better data on actual air conditioner and heat pump life.

Discount Rate: Interested parties submitted several comments recommending values or procedures for determining discount rates. An industry representative suggested that rates of 18 to 20% may be appropriate as consumers are paying off credit card debt at these rates. (Jim Crawford, Trane, Transcript, p 237) He also asserted that practical (i.e., implicit) discount rates (which are derived from analyzing actual consumer behavior) may be on the order of 30%. EEI also believes that credit card interest rates should be used as a basis for establishing discount rates. (EEI, #2) EMPA believes DOE's discount rates (as presented at the 1998 Framework Workshop) are too high and based on faulty assumptions. They stated that discount rates should reflect the true cost of money that consumers would have to spend to purchase more efficient appliances. (EMPA, #3) Industry representatives also stated that questions concerning consumer discount rates should be included on any market surveys for determining retail prices and that DOE needs to take into account any information supplied by the industry's trade association, ARI. (Jim Crawford, Trane, Transcript, p 243; David Lewis, Lennox, Transcript, pp 243–244)

In contrast to these comments, OOE believes that prior discount rates developed by DOE seem reasonable, although there are differences in how consumers purchase air conditioner and heat pump equipment compared to how they purchase other appliances. (OOE, #7) They strongly disagreed that discount rates in excess of 15% might be appropriate. They claim such high rates are based on calculating an

implicit discount rate or market failure factor based on past shipments.

The Department's Process Rule for establishing new or revised energy efficiency standards for consumer products describes how real discount rates are to be established for residential consumers, as follows:

> For residential and commercial consumers, ranges of three different real discount rates will be used. For residential consumers, the mid-range discount rate will represent DOE's approximation of the average financing cost (or opportunity costs of reduced savings) experienced by typical consumers. Sensitivity analyses will be performed using discount rates reflecting the costs more likely to be experienced by residential consumers with little or no savings and credit card financing and consumers with substantial savings.

Based on the Department's guidelines provided in the Process Rule, a distribution of discount rates was derived to reflect the variability in financing methods consumers use in purchasing central air conditioners and heat pumps. The real interest rate associated with financing an appliance purchase is a good indicator of the additional costs incurred by consumers who pay a higher first cost, but enjoy future savings, although it is not the only indicator of such costs. While the method used to derive this distribution relies on a number of uncertain assumptions regarding the financing methods used by consumers, DOE believes that the resulting distribution of discount rates encompasses the full range of discount rates that are appropriate to consider in evaluating the impacts of DOE standards on consumers (i.e., values represented by the mid-range financing cost, consumers with no savings, and consumers with substantial savings), as well as all the discount rates which fall between the high and low extreme values.

The method of purchase used by consumers is assumed to be indicative of the source of the funds and the type of financing used, although DOE is not aware of detailed research into this relationship. Consumers purchase appliances as parts of new homes (mortgages) and as separate retail purchases. Retail purchases are paid by cash, credit cards, or loans. In the case of space-conditioning equipment, the loans are assumed to take the form of second mortgages, as central air conditioner and heat pump purchases often occur when home upgrades are made. Based upon recommendations provided by the ARI, the shares of the different financing mechanisms used for purchasing central air conditioners and heat pumps were assumed to be 30% with a new home (first mortgages), 25% through loans (second mortgages), 10% paid by cash, and 35% by use of credit cards.

In order to derive a full distribution of discount rates, DOE estimated a range of interest rates, based on historical data and judgments of future trends, for different types of consumer savings or financing.

For new housing, the Department based its real mortgage rates on ARI's suggested mean value of 3.0% and assumed a range of 1.6 to 4.4%. Applying an assumed marginal tax rate of 28% (i.e., the maximum marginal rate paid by most U.S. taxpayers) and an assumed inflation rate of 2% results in a mean nominal mortgage rate of 6.94% with a range of 5.0 to 8.89%.

For second mortgages or loans, ARI suggested a mean real interest rate of 8.0%. This rate is more representative of a nominal rate for second mortgages and was used as such. Assuming a tax rate of 28%, then subtracting an assumed inflation rate of 2% (the same rates used to derive the new home real interest rates) we arrive at a mean real interest rate of 3.76%. Nominal minimum and maximum interest rates of 6% and 10% were assumed to arrive at the real interest rate range of 2.32% to 5.20%.

For cash, the minimum rate was assumed to equal 0%. This rate applies to purchasers making cash purchases without withdrawing from savings accounts. Based upon ARI's recommendation, the maximum is taken to be the opportunity cost represented by the interest that could have been earned in a typical mutual fund (assumed to be 6% real). A real mean rate of 3% results.

For credit cards, the Department based its real interest rate on ARI's suggested mean value of 12.5%. Minimum and maximum real rates of 6% and 19% were assumed. It should be noted that the use of these credit card rates reflects an assumption that all consumers who use credit cards do so as a means of long term financing for product purchases, rather than as simply a convenient method of purchase or as a means of short term financing.

Combining the assumed shares of each financing method, the above real interest rates result in a weighted-average (mean) value of 6.51% and a distribution that varies from 0 to 19%. Sensitivity studies show that while the LCC results are sensitive to the value chosen for mean discount rate, the LCC results are not sensitive to the distribution of discount rates.

The Department believes that the above method is a valid basis for establishing a distribution of discount rates over the full range of discount rates relevant to most purchasers of the products covered by this rulemaking, but acknowledges that different assumptions might be made about likely interest, inflation and marginal tax rates, or about consumer financing methods, and that different approaches to identifying valid consumer discount rates might also be valid. For example, it is also possible to base consumer discount rates on the average real rates of return on consumer investment or other measures of the opportunity costs incurred by consumers that purchase the covered products. DOE does not believe, however, that such alternative assumptions or alternative approaches would significantly alter the range of discount rates used by the Department or the conclusions drawn from the life cycle cost analyses conducted using these discount rates.

The Department is seeking any information that would support significant alterations in the range or distribution of the discount rates derived from DOE's analysis. Alternatively, DOE is soliciting comment on the possible use of a standardized distribution of discount rates ranging from approximately 4% to 12%, with a mean of 6%. The use of such a standardized distribution would explicitly recognize the many uncertainties associated with DOE's current analysis and, based on sensitivity analyses already performed by DOE, such a standardized distribution would not significantly alter the conclusions of DOE's life cycle cost analyses.

Repair Costs: The annual repair cost covers the replacement or repair of components which have failed. The Department assumed repair costs for minimum efficiency equipment (10 SEER) and equipment with efficiencies greater than 12 SEER were equal one-half the equipment price divided by the mean equipment lifetime. The Department assumed equipment with efficiencies of 11 and 12 SEER incur a 1% increase in repair cost over the minimum efficiency (10 SEER) level. The rationale for assuming essentially flat repair costs through efficiencies up to and including 12 SEER pertains to the level of technology being used at these system efficiency levels. Through 12 SEER, system technology generally does not incorporate sophisticated electronic components which are believed to incur higher repair costs. Increases in SEER are generally achieved through more efficient single-speed compressors or more efficient and/or larger heat exchanger coils. Systems with

efficiencies beyond 12 SEER start to incorporate modulating blowers or compressors which are generally believed to be more susceptible to failure.

Maintenance Costs: The annual maintenance cost covers such items as checking and maintaining refrigerant charge levels and cleaning heat exchanger coils. Data from Service Experts, an HVAC service company, were used to establish maintenance costs. The maintenance cost ranges from $0 to $135 with a weighted-average value of $36.

EMPA stated that DOE needs to collect and include extended warranty and service costs in LCC calculations. (Glenn Schleede, EMPA, Transcript, p 231; EMPA, #3) EMPA also requested that the assumptions regarding maintenance and repair costs be reevaluated and described in greater detail. An industry representative supported including these costs, and also stated that they will be a function of equipment efficiency. (David Lewis, Lennox, Transcript, p 231) A suggestion was made to include questions on warranty and service costs on any market survey for determining retail prices (Steven Nadel, ACEEE, Transcript, p 232). OOE endorsed the concept of accounting for differences in maintenance, service, and installation costs, provided these incremental costs are attributable only to equipment at different efficiency levels (OOE, #7).

Although the Department included maintenance costs in its LCC calculations, no attempt was made to account for warranty costs. The Department assumed that warranty costs are constant with increased efficiency and, thus, there was no need to explicitly account for warranty costs. The Department welcomes any comments that can provide insight as to how warranty costs should be accounted for in the LCC Analysis.

ii. Equipment Prices

How manufacturing costs and profit margins associated with standards are passed through from manufacturers to consumers has an impact on both consumers and manufacturers. Consumer and manufacturer economics are linked and inversely related. For this reason, equipment purchase prices used for the LCC Analysis need to be reconciled with manufacturer costs.

At the pre-ANOPR stage, a consumer LCC curve, based in part on mean installed consumer costs, is a significant factor in the initial selection of potential standards levels. Total installed costs are needed for a base case, absent new standards, and for all efficiency levels to be considered. As noted earlier, equipment purchase price coupled with the installation price equals the total installed consumer cost.

There was a great deal of discussion at the 1998 Framework Workshop concerning equipment or retail prices, because equipment prices were being viewed as a means to verify industry-supplied manufacturer cost data. Much of the discussion focused on the correlation between manufacturer costs and prices. Some claimed that there is practically a random relationship between manufacturer costs and prices and that prices are based more upon market dynamics rather than improvements in equipment efficiency. (Jim Crawford, Trane, Transcript, pp 90, 139–140) It was also stated that, due to the tremendous variability in city size, dealer groups, dealer size, dealer proximity to warehouses, bulk purchasing, and national account purchasing, the markups involved in converting manufacturer costs to retail prices are highly variable. Also, because some manufacturers use distributors while others do not, markups can vary significantly from manufacturer-to-manufacturer. (David Lewis, Lennox, Transcript, pp 168–170) It was also noted that markups are unlikely to be constant across all efficiencies. (Jim Crawford, Trane, Transcript, pp 154)

In order better to determine equipment prices, participants at the Workshop agreed that it would be appropriate to conduct a market survey. There was discussion as to whether the survey should be administered to contractors or consumers. It was pointed out that contractors may not provide true prices as they may not want to reveal their profit margins while consumers may simply not know the price of only the equipment (i.e., the price exclusive of the labor, materials and profit for installation). (Transcript, pp 170–186) With regard to price data that may be collected from utilities, some of it might be distorted due to demand side management (DSM) incentive programs, more specifically rebate programs. The price collected may not be the actual price of the equipment, but rather, the price after a rebate has been applied. (Steve Rosenstock, EEI, Transcript, pp 190)

In written comments, EEI stated that there is little correlation between manufacturer costs and retail prices, and that market surveys of customers, utilities, and contractors will likely provide the best information on retail prices. (EEI, #2) EMPA claimed that price data collected will likely not reflect conditions in the current market. (EMPA, #3) EMPA also stated that DOE should not shift the responsibility of collecting and providing data to interested parties.

ACEEE noted two possible data sources: a 1996 Xenergy report and Chris Neme at the Vermont Energy Investment Fund in Burlington, VT. (ACEEE, #5) OOE suggested that two methods are needed for deriving prices, each as a cross-check on the results of the other. (OOE, #7) One approach should be a ''mark-up'' of manufacturer costs which yield a range of retail prices. A market survey of equipment prices should be used as the second approach, as opposed to a survey of market experts trying to predict consumers' willingness to pay at various price levels. With regard to current market prices, PG&E believes that split system air conditioning equipment that exceeds 10 SEER are available at competitive prices with 12 SEER systems being readily available. (PG&E, #8)

For the pre-ANOPR Analysis, the Department did not attempt to conduct a comprehensive contractor or consumer survey of equipment prices. The primary reasons were the complexity of and the time needed for a comprehensive survey, and the short time frame allotted by the Department for publishing the Supplemental ANOPR. The Department will consider conducting a survey for any updates to the analyses conducted for the NOPR.

On November 30, 1998, however, the Department issued a **Federal Register** Notice (63 FR 65767) requesting comments on a proposal to survey retail prices for Central Air Conditioners and Heat Pumps. ARI responded to that request by submitting comments. The comments asserted that the proposed survey is woefully inadequate, given the number of variables involved. (ARI, #9) ARI suggested that, at a minimum, data on the following factors should be considered: (1) Three capacity sizes (1.5, 3, and 5 tons), (2) five efficiency levels (10, 11, 12, 13, 14 SEER), and (3) four classes (split and single package air-conditioner/c and heat pump). The survey should be weighted to reflect regional sales markets and a large number of manufacturers should be represented in the survey. In addition, there should be no reason to include questions on the impact of utility rebates, as they are dwindling rapidly.

The Department uses various assumptions about cost pass-through that are reflected in the price forecast approach. The output of this analysis is a table describing retail prices for each possible efficiency level, assuming that each level represents a new minimum efficiency standard. Consistent with the

process rule, and building on the estimates generated by the various assumptions, projected retail prices are described within a range of uncertainty.

Purchase prices of baseline equipment were determined by estimating manufacturing costs and applying appropriate markups along the distribution chain. Markups were determined in two ways: through surveys of distributor (wholesale) and retail prices, and through publicly available financial reports. For about 90% of residential air conditioning equipment, the distribution chain includes manufacturers, distributors (wholesalers), and dealers (contractors). Equipment purchase prices are thus estimated as the product of manufacturing cost, manufacturer markup, distributor markup, dealer markup, and sales tax.

For the determination of markups via financial reports, it was assumed that product markups equal gross margin less pre-tax profit margin (earnings-before-taxes) and outbound freight of 6%, plus 1%. The baseline central air conditioner and heat pump units covered by this analysis typically have lower margins than other products handled by diversified companies. The values for markups given in the next paragraphs may change in future stages of analysis as the underlying data are improved and cross-checked.

Manufacturer Markup: Financial reports from five publicly traded air conditioner manufacturers, representing 75% of the market, were examined for a five-year period (1993–1997). Five-year average markups for the two most dependent on air conditioner sales were 1.18 and 1.17 respectively. The other three companies are more diversified and, as expected, exhibited higher markups—1.25, 1.24, and 1.18 respectively. A central value of 1.18 was chosen for the Price Analysis, with a range of 1.15 to 1.26, based on the lowest and highest markups for the five manufacturers for the five-year period.

Distributor Markup: Five-year average markups for the 500 members of the Air-conditioning and Refrigeration Wholesalers (ARW) were 1.37, the same as for 1997. This value was used for the analysis. However, since margins for after-market parts are substantially higher than margins for baseline equipment, the actual markup on baseline equipment is likely to be lower than the assumed value of 1.37. The markup value may be revised downwards based on future information.

Dealer Markup: Markups were calculated for contractors represented by the Air Conditioning Contractors of America (ACCA) and two contractor consolidators that focus on the residential market. Information used from ACCA covered ''residential and light commercial'' dealers, and was divided into new and retrofit services, with markups of 1.41 and 1.63, respectively. The weighted average markup for ACCA was 1.55 (based on 66 percent of all sales being retrofit sales), close to the markup of 1.54 for one of the contractor consolidators. The markup for the other consolidator was 1.38, but half of its revenues come from plumbing, electrical, and other services that typically have lower margins. A central value of 1.55 was chosen for the Price Analysis, with a range of 1.37 (based on information from ICF Consulting on equipment markups for direct replacement) to 1.63.

Sales Tax: In many cases, local and state sales taxes are applied to equipment purchases. Using 1997 state and local sales tax data and 1994 state unitary shipment data, the Department calculated a distribution of combined sales tax rates. Although the distribution revealed a small percentage of consumers at tax rates of 0% and 10%, the effective distribution was triangular with a mean of 6.7% and a range from 5% to 8%. This corresponds to a mean markup of 1.07 with a range from 1.05 to 1.08.

Overall Markup: Equipment purchase price is determined by multiplying manufacturer cost and overall markup. Mean values and ranges for the overall markup are the products of the mean values and ranges for manufacturer markup, distributor markup, dealer markup and sales tax. The mean overall markup is thus calculated as 2.68, with a range of 2.27 to 3.04.

iii. Payback Analysis (Distribution of Paybacks)

Payback is calculated based on the same inputs used for the LCC Analysis with the difference that the payback values are based on first year savings achieved after the standard takes effect. The output of the analysis is a distribution of payback periods. The mean payback period is also reported. Additional information is available in the LCC spreadsheet which is posted to the Department's web site. The data includes charts of cash flow taking into account the changing annual fuel prices.

iv. Rebuttable Payback

As discussed previously, EPCA established a rebuttable presumption that a standard is economically justified if the additional product purchase cost attributed to the standard is less than three times the value of the first year energy cost savings, which is equivalent to a three year simple payback. The calculation of rebuttable payback is based on single point-values instead of probability distributions used in the LCC analysis. For example, where a probability distribution of electricity prices are used in the distributional Payback Analysis, only the weighted-average value from the probability distribution of electricity prices is used for the determination of the Rebuttable payback.

Other than the use of single point-values, the most notable difference between the two payback analyses is the Rebuttable payback's reliance on the DOE test procedure to determine a central air conditioner's or heat pump's annual energy consumption. The DOE test procedure for central air conditioners and heat pumps in the cooling season uses the following expression to calculate the annual space-cooling energy consumption:

$$\text{Space-Cooling Annual Energy Use} = (\text{Cooling Capacity} \div \text{SEER}) \times \text{Hours}$$

where the Hours equal 1000, the assumed annual operational hours of the space-cooling equipment.

The DOE test procedure for the heating season performance of heat pumps uses the following expression to calculate the annual space-heating energy consumption:

$$\text{Space-Heating Annual Energy Use} = (\text{DHR} \div \text{HSPF}) \times 0.77 \times \text{Hours}$$

where DHR equals the design heating requirement (which for 3-ton cooling capacity heat pumps is typically 35,000 Btu/hr) and Hours equal 2080, the assumed seasonal operational hours of the space-heating equipment.

The annual space-cooling and heating energy consumption calculated based on the previous equations from the DOE test procedure are on the order of 50% greater than the weighted-average values from the 1993 RECS. This means that the payback value calculated from the DOE test procedure equations will be significantly lower than the average payback value calculated from the RECS analysis, for any standard level.

Rebuttable payback periods are first calculated between the new standard level being analyzed and each central air conditioner or heat pump efficiency being sold in the year 2006. The paybacks are then weighted and averaged according to the percentage of each equipment efficiency sold before a new standard is enacted. Rather than being based on probability distributions, single point values are used for the input variables. These values (e.g., operating hours per year) will correspond to those defined in the DOE

test procedure. The result is a single-value of payback and not a probability distribution. The payback is calculated for the expected effective year of the standard (e.g., 2006). Examples and further details are presented in the Preliminary TSD.

Based on the most recently available shipments data from ARI (from 1994), Table 13 shows the markets shares by efficiency level for each of the four product classes being analyzed.

TABLE 13.—EFFICIENCY LEVEL MARKET SHARES

[In percent]

SEER	Split A/C	Split HP	Single package A/C	Single package HP
10	78.7	59.3	82.3	64.2
11	5.4	15.0	9.7	13.6
12	12.0	19.7	6.8	22.2
13	3.6	4.5	1.2	0.0
14	0.1	1.0	0.0	0.0
15	0.2	0.5	0.0	0.0

Because the shipment-weighted efficiencies of unitary air conditioners and heat pumps has remained essentially flat over the four year period from 1994 to 1997, the previous market shares in Table 13 for 1994 are assumed to be applicable for the year 2006. If available, data on a forecasted distribution of equipment efficiencies in the year 2006 will be used to refine these calculations for the NOPR Analysis.

2. Preliminary Results

a. General

Calculation of LCC captures the tradeoff between the increases in purchase price and reductions in operating expenses for increasing efficiencies of appliances. In addition, two other measures of economic impact are calculated: distributions of payback periods and a payback period calculated for purposes of the rebuttable presumption clause. The outputs of the LCC spreadsheet include probability distributions and single-point average values of the impacts for each energy efficiency level compared to the baseline. A distinct advantage of modeling based on probability distributions is that the percentage of consumers achieving LCC savings or attaining certain payback periods due to an increased efficiency standard can be identified. A variety of graphic displays can illustrate the implications of the analysis results. These include: (1) A cumulative probability distribution showing the percentage of U.S. households that would have a net saving by owning a more energy-efficient appliance, and (2) a chart depicting the variation in LCC for each efficiency level considered.

b. Product Specific

The following LCC results show the mean LCCs associated with the standard levels which were analyzed. In addition, the percent of households with reduced LCCs relative to current minimum efficiency equipment (10 SEER) are provided. LCC results are provided based upon the manufacturer cost estimates from the efficiency-level approach (section II C.1.b.i.) and the reverse engineering (section II.C.1.b.ii.). LCC results are presented for nominal 3-ton capacities for the four primary product classes, *i.e.,* split-type air conditioners, split-type heat pumps, single-package air conditioners, and single-package heat pumps (See Tables 14 to 17). Since the values of most inputs are uncertain and are represented by probability distributions of values rather than discrete values, the results presented in the Preliminary TSD (which describes the analytic results in greater detail) are also described by probability distributions.

TABLE 14.—SPLIT-TYPE AIR CONDITIONERS—LCC RESULTS

SEER	Source of manufacturing cost data			
	Industry		Reverse engineering	
	Mean LCC	Percent with lower LCC	Mean LCC	Percent with lower LCC
10	$4,837	.....	$4,828	.....
11	4,827	39	4,786	48
12	4,886	31	4,770	45
13	5,229	12	4,931	27
14	5,659	6	5,246	15
15	6,052	4	5,456	11
16	.....	2	5,533	11
17	.....	.....	5,672	10

TABLE 15.—SPLIT-TYPE HEAT PUMPS—LCC RESULTS

SEER / HSPF	Source of manufacturing cost data			
	Industry		Reverse engineering	
	Mean LCC	Percent with lower LCC	Mean LCC	Percent with lower LLC
10 / 6.8	$10,086	.....	$10,001	.....
11 / 7.1	9,915	74	9,695	99
12 / 7.4	9,852	63	9,533	90
13 / 7.7	10,119	36	9,850	49
14 / 8.0	10,311	28	10,246	27
15 / 8.2	11,079	11	10,534	20
16 / 8.2	.....	.....	10,679	18

TABLE 16.—SINGLE PACKAGE AIR CONDITIONERS—LCC RESULTS

SEER	Source of manufacturing cost data			
	Industry		Reverse engineering	
	Mean LCC	Percent with lower LCC	Mean LCC	Percent with lower LCC
10	$5,341	.....	$5,324	.....
11	5,429	20	.....	
12	5,433	26	5,194	58
13	6,031	5	5,598	17
14	6,362	4	.....	.....
15	6,921	2	.....	.....

TABLE 17.—SINGLE PACKAGE HEAT PUMPS—LCC RESULTS

SEER	Source of manufacturing cost data			
	Industry		Reverse engineering	
	Mean LCC	Percent with lower LCC	Mean LCC	Percent with lower LCC
10 / 6.8	$10,025	.....	$9,912	.....
11 / 7.1	9,906	61	.....	.....
12 / 7.4	9,835	58	9,551	80
13 / 7.7	10,342	22	.....	.....
14 / 8.0	10,425	21	.....	.....
15 / 8.2	11,031	10	.....	.....

Tables 18 to 21 show the median payback periods associated with each standard level. To note, the median value of a distribution has an equal number of payback periods that are greater than and less than the reported value. As with the LCC results, payback periods are provided based upon both the manufacturer cost estimates from the industry and from the reverse engineering analysis. Payback period results are presented for the four primary product classes; split-type air conditioners, split-type heat pumps, single-package air conditioners, and single-package heat pumps.

TABLE 18.—SPLIT-TYPE AIR CONDITIONERS—MEDIAN PAYBACK PERIODS

[In years]

SEER	Source of manufacturing cost data	
	Industry	Reverse engineering
11	13	10
12	15	11
13	41	20
14	80	35
15	137	43
16	.....	46
17	.....	49

TABLE 19.—SPLIT-TYPE HEAT PUMPS—MEDIAN PAYBACK PERIODS

[In years]

	Source of manufacturing cost data	
	Industry	Reverse engineering
11/7.1	6	1
12/7.4	8	3
13/7.7	13	10
14/8.0	17	17
15/8.2	31	21
16/8.4	.....	22

TABLE 20.—SINGLE PACKAGE AIR CONDITIONERS—MEDIAN PAYBACK PERIODS

[In years]

SEER	Source of manufacturing cost data	
	Industry	Reverse engineering
11	20	
12	17	8
13	84	30
14	133	
15	559	

TABLE 21.—SINGLE PACKAGE HEAT PUMPS—MEDIAN PAYBACK PERIODS

[In years]

SEER/HSPF	Source of manufacturing cost data	
	Industry	Reverse engineering
11/7.1	8	
12/7.4	9	5
13/7.7	20	
14/8.0	20	
15/8.2	31	

Tables 22 to 25 show the simple paybacks for purposes of the rebuttable presumption clause. This means test procedure assumptions are followed for central air conditioners and heat pumps.

TABLE 22.—SPLIT-TYPE AIR CONDITIONERS—SIMPLE PAYBACK

[In years]

SEER	Source of manufacturing cost data	
	Industry	Reverse engineering
11	6.2	5.0
12	7.6	5.4
13	13.7	7.8
14	20.9	12.7
15	26.8	14.7
16		14.6
17		15.4

TABLE 23.—SPLIT-TYPE HEAT PUMPS—SIMPLE PAYBACK

[In years]

SEER/HSPF	Source of manufacturing cost data	
	Industry	Reverse engineering
11/7.1	3.2	0.4
12/7.4	4.2	1.8
13/7.7	6.8	5.6
14/8.0	8.0	8.8
15/8.2	13.8	10.5
16/8.4		10.8

TABLE 24.—SINGLE PACKAGE AIR CONDITIONERS—SIMPLE PAYBACK

[In years]

SEER	Source of manufacturing cost data	
	Industry	Reverse engineering
11	9.9	
12	8.5	3.8
13	21.2	11.2
14	25.2	
15	35.8	

TABLE 25.—SINGLE PACKAGE HEAT PUMPS—SIMPLE PAYBACK

[In years]

SEER/HSPF	Source of manufacturing cost data	
	Industry	Reverse engineering
11/7.1	4.3	
12/7.4	4.6	2.7
13/7.7	9.7	
14/8.0	9.2	
15/8.2	13.7	

E. Preliminary National Impacts Analyses

The National Impacts Analysis assesses the net present value (NPV) of total consumer LCC, average consumer payback, NES, and indirect employment impacts. Each of the above are determined for selected standard levels. These calculations are done by the use of a spreadsheet tool called the NES Spreadsheet Model, which has been developed for all the standards rulemakings and tailored to each specific appliance rulemaking. NES spreadsheets for central air conditioners and heat pumps are posted to the Department's web site. A preliminary assessment of the aggregate impacts at the national level has been conducted for this Supplemental ANOPR.

Analyzing impacts of Federal energy-efficiency standards requires a comparison of projected U.S. residential energy consumption without standards (baseline case) and with standards. The baseline case includes the mix of efficiencies of appliances being sold at the time the standard becomes effective. The forecasts contain projections of unit energy consumption of new appliances, annual appliance shipments, and prices of purchased appliances. The differences between the baseline and standards cases represent the energy and cost savings. Depending on the method used for sales projections, the sales under a standards case projection may differ from those of a baseline case projection.

The Department calculated national energy consumption for each year, beginning with the expected effective date of the standards, for the base case and for each candidate standards level using two methods, *i.e.,* simple spreadsheets, and multiplication of shipment forecasts by unit energy savings. Spreadsheets for shipments analysis are posted to the Department's web site. Energy consumption and savings are estimated based on site energy (kWh of electricity), then the electricity consumption and savings are converted to source energy. The differences in annual energy consumption between the base case and standards case were aggregated to arrive at cumulative energy savings through the year 2030.

DOE agrees with the Advisory Committee's recommendation that the assumption of a constant site to source-energy conversion factor should be dropped in favor of a conversion factor that changes from year to year. The conversion factor would be calculated for each year of the analysis based on the generating capacity displaced and the amount of site energy saved (see the following detailed procedure). For future conversion factors, DOE proposes to use the following method:

(1) Start with an integrated projection of electricity supply and demand (*e.g.,* the National Energy Modeling System (NEMS) AEO reference case), and extract the source energy consumption.

(2) Estimate projected energy savings due to possible standards for each year (*e.g.,* using the NES spreadsheet).

(3) Feed these energy savings back to NEMS as a new scenario, specifically a deviation from the reference case, to obtain the corresponding source energy consumption.

(4) Obtain the difference in source energy consumption between this standard level scenario and the reference case.

(5) Divide the source energy savings in Btu, adjusted for class specific transmission and distribution losses, by the site energy savings in kilowatt-hours to provide the time series of conversion factors in Btu per kilowatt-hour.

The resulting conversion factors will change over time, and will account for the displacement of generating sources. Furthermore, the NES spreadsheet models will include a clearly defined column of conversion factors, one for each year of the projection. DOE and stakeholders can examine the effects of alternative assumptions by replacing this column of numbers.

1. National Energy Savings (NES) Spreadsheet Model

a. General

In order to make the analysis more accessible and transparent to all stakeholders, the Department has previously prepared spreadsheet models using Microsoft Excel in Windows 95 for other appliances to forecast energy savings and to demonstrate how improvements in efficiency can be accounted for over time. These models, the NES spreadsheets, are specific applications of a common model structure to each appliance, and a model was tailored to the case of central air conditioners and another for the case of heat pumps. These same NES spreadsheets were also used to forecast net present value (NPV). These spreadsheets are posted to the Department's web site.

The NES spreadsheets are used to calculate the NES, and the national economic costs and savings from new standards. Input quantities can be changed within the spreadsheet. Unlike the LCC Analysis, the NES Spreadsheet does not use probability distributions for inputs or outputs. Both EEI and OOE stated that the NES Analysis should use a range of values rather than single point-values. Specifically, EEI stated that a range of equipment costs should be used to determine NES and net present values while OOE presumes that distributional inputs will be used to depict regional differences. (EEI, #2; OOE, #7) In order to address these concerns, the Department will conduct sensitivity analyses as needed for the NOPR Analysis by running scenarios on the input variables of interest.

One of the more important components of any estimate of the impact of future standards is shipments. Forecasts of shipments for the base case and the standards case need to be obtained as an input to the NES. The Department developed a base case forecast of product shipments in the absence of new standards. For all candidate standards levels, shipment forecasts are needed to calculate the national benefits of standards and to calculate the future cash flows of manufacturers. There are a variety of methods available for projecting shipments. A sophisticated accounting model was used by the Department and run to determine shipment scenarios for each energy efficiency level.

Other quantities in the NES spreadsheet are: energy price projections, including an analysis of consumer marginal electricity rates (*See* Section II.D.1.a); effective date of the standard (start year); discount rate and the year of the NPV (1999); manufacturing cost; total installed cost; baseline energy use; lifetime; and the conversion factor from site to source energy.

An industry representative requested that the impact of existing minimum efficiency standards be calculated in order to determine whether the existing standards are indeed cost-effective. (David Lewis, Lennox International, Transcript, pp 313) The Department has not made any attempt to determine the cost-effectiveness of the existing minimum efficiency standards. The Department believes that such an analysis would not materially contribute to a decision whether to adopt a more stringent standard. Rather, the energy savings and NPV are calculated from the expected date any new standard level would take effect to the year 2030. Both individual year and cumulative data are generated. Output charts and tables provide cumulative energy savings, the cost and savings per year (in a chart), and the cost and NPV due to standards.

b. Product Specific

i. Inputs to NES Analysis

Table 26 summarizes the inputs used in the NES model. The NES model uses the same basic data as the LCC model for energy use and cost of equipment, except that shipment weighted-average values (based on the shipment and energy-efficiency distribution forecasts) are used instead of distributions. As with the LCC Analysis, two sets of results, including forecasts of shipments, energy savings, and net present value (NPV), were calculated based on two different sets of costs (industry data and reverse engineering) associated with increasing efficiency.

TABLE 26.—SUMMARY OF NES MODEL INPUTS

Parameter	Data description
Shipments	Output from Shipment Model.
Total installed Consumer Cost	Average value for the baseline and each standard level. From LCC Analysis.
Repair and Maintenance Costs	Average values for the baseline and each standard level. From LCC Analysis.
Historical Efficiencies	Shipment-weighted efficiency data (SEER) from the Air-Conditioning and Refrigeration Institute for the years 1976–1997.
Future Efficiency Trend	For the years 1998 to the assumed effective date of the new standard (2006), shipment-weighted efficiencies are assumed to remain constant at the shipment-weighed efficiency level in 1997. For years beyond the assumed effective date of the new standard, shipment-weighted efficiencies are assumed to equal the new standard level.
Unit Annual Energy Consumption	Based on the weighted-average annual energy consumption and efficiency from LCC Analysis. To estimate the representative annual energy consumption of a central air conditioner or heat pump for any given year, the ratio of the RECS weighted-average efficiency to the efficiency level in that year is multiplied by the RECS weighted-average annual energy consumption.
Electricity Prices	Based on the weighted-average marginal electricity price determined from RECS93 in the LCC Analysis.
Escalation of Electricity Prices	1999 EIA *AEO* forecasts (to 2020) and extrapolation from 2020 to 2030.
Electricity Site-to-Source Conversion	Conversion varies yearly and is provided by the 1999 Annual Energy Outlook (a time series conversion factor; includes electric generation transmission and distribution losses).
Discount Rate	7% real.
Present Year	Future expenses are discounted to year 1999.

Both EEI and EMPA provided comments on the type of electricity price that should be used in the analysis. EEI warned that energy savings will decrease as a result of dropping energy prices, and that the *1998 AEO* electricity price forecasts do not decline rapidly enough, since factors resulting from deregulation are not accounted for. Both EEI and EMPA stated that marginal rather than average electricity prices should be used in all calculations. (EEI, #2; EMPA, #3) As noted in Table 26 and as discussed earlier in the LCC Analysis (section II D.1.b.i.), the Department used

the most recent forecasts from the *1999 AEO* to predict the trend in both average and marginal electricity prices. In addition, the NES spreadsheets can be run with price forecasts from the GRI. The Department believes these forecasts are the most reliable available to predict future energy trends. With regard to marginal energy prices, the Department is using mean marginal prices to calculate energy savings.

EEI also warned that energy savings from higher SEERs could be lower in hot and humid climatic regions, where EER is a better indicator of equipment performance. (EEI, #2) Although the performance of equipment can vary depending on climatic conditions, the Department believes that SEER will provide the best indicator of annual energy use in all climates. The annual energy consumption values from the 1993 RECS, which the NES spreadsheet uses as the basis for determining the energy savings from higher SEER standards, accounts for regional variations in energy use.

EEI stated that diversity factors must be taken into account when calculating NES, as not all air conditioners are on at the same time. Utility load factors should also be addressed. (Steve Rosenstock, EEI, Transcript, p 272; EEI, #2). Diversity and utility load factors are not accounted for in the determination of NES. Rather, the NES are passed through to the Utility Impact Analysis which will establish the impacts of the savings on utility generation and distribution. The model to be used in the Utility Analysis (NEMS-BRS) accounts for diversity and utility load factors when determining the impacts on the utility industry. NEMS–BRS is a variant of U.S. DOE/EIA's NEMS and is named as such for two reasons: (1) The Utility Analysis to be performed entails some minor code modifications and (2) the model will be run under various policy scenarios that will be variations on DOE/EIA assumptions. The name NEMS-BRS refers to the model to be used for the Utility Analysis (BRS is DOE's Building Research and Standards office). NEMS was used by DOE/EIA to produce the 1999 AEO, and NEMS-BRS is used to provide some key equivalent inputs to the standards analysis.

ii. Shipments Model

The Department chose an accounting model method to prepare shipment scenarios for baseline (10 SEER) and five standard levels (11 through 15 SEER) for central air conditioners and heat pumps. The model tracks the stocks and purchases of each type of central air conditioner and heat pump. Events and consumer decisions influence how the stock and supply of central air conditioner and heat pump systems flow from one category to another. Decisions that are economically influenced are modeled with econometric equations.

OOE supports the use of the accounting method for forecasting shipments, but stated that thorough discussions will be required in order to quantify the impacts of non-regulatory programs and market trends. (OOE, #7) The Department reviewed information from parties involved in market-based initiatives for increasing the sales of high-efficiency models but was unable to determine any quantifiable measure of how these programs impact product efficiencies on a national basis. Thus, the impact of market-based initiatives was not incorporated into the baseline and standard level forecasts.

The model is organized into three classes of elements: Stocks, events, and decisions. Stocks of central air conditioners and heat pumps are divided into *ownership categories*, and units are assigned to age categories. Events are things that happen to stocks independent of economic conditions, i.e., breakdowns requiring repair or replacement. Decisions are consumer reactions to market conditions, e.g., whether to repair or replace equipment, or to buy a house with or without an air conditioner or heat pump. Consumer purchase decisions are categorized by *market segments*. Decision trees are used to describe consumer choices for purchases and repairs. A *logit probability model* simulates consumer purchase decisions that are based on equipment price, operating costs, and income level.

Ownership Categories: Households are first divided into central air conditioner and heat pump markets, then the two markets are further divided into four different ownership categories, including (1) new housing, (2) existing housing with a regular central air conditioner or heat pump (*i.e.*, equipment has not been repaired to extend its life), (3) housing without a central air conditioner or heat pump, and (4) housing with an extended life central air conditioner or heat pump (*i.e.*, equipment repaired to extend its life). The population of central air conditioner and heat pump units in each ownership category are referred to as the *stock of* central air conditioner and heat pump units of that category. Accounting equations relate annual changes in stocks to activities in the various market segments.

Market Segments: Central air conditioner and heat pump purchases are divided into five market segments:

- *Net New Housing Market:* Net increase in the housing stock forces the purchase of new central air conditioner and heat pump systems.
- *Early (Discretionary) Replacement Market:* About 29% of central air conditioner and heat pump owners replace the existing systems before the systems break down because they want an updated model, because of remodeling, or for other miscellaneous reasons.
- *Regular Replacement Market:* Most central air conditioner and heat pump purchases are to replace an existing system that has broken down after completion of its useful life.
- *Extra Repair Market:* Since replacement of central air conditioner and heat pump systems is costly, a few consumers will rebuild or repair a malfunctioning system (thus extending its lifetime) rather than purchasing a new system. Eventually, even extended-life central air conditioner and heat pump systems are replaced.
- *Homes without an air conditioner or heat pump system:* A few households without a central air conditioner or heat pump system will purchase them and become new central air conditioner or heat pump owners.

Events and decisions (e.g., the probability that an existing central air conditioner has a problem and the course of action taken by the consumer) are modeled separately for each market segment.

Logit Probability Model: The logit probability of purchase model is used to estimate the impact of standards-induced price and features changes on consumer decisions. The model accounts for consumer responsiveness to purchase price, operating costs, and income. Coefficients for the responsiveness to these three factors were developed for each of the market segments, based on the results of empirical research on consumer purchase behavior. The probabilities are applied to equations that govern activities in the various market segments.

Table 27 summarizes the various inputs and sources of the central air conditioner and heat pump shipment model.

TABLE 27.—SUMMARY OF SHIPMENT MODEL INPUTS

Parameter	Data description/source
Data for New Housing Starts	Census Bureau data on new housing construction.
Data for Early Replacement Market	1990 ASHRAE technical paper entitled ''Heat Pump Life and Compressor Longevity in Diverse Climates''. In the paper, 29% of consumers in 1987 replaced their equipment for reasons other than unit failure.
Data for Regular Replacement Market	1990 ASHRAE technical paper entitled ''Heat Pump Life and Compressor Longevity in Diverse Climates''. Survival functions for total system life and original compressor life are presented. The compressor survival function was used to establish the probability that a system has problems while the difference between the two survival functions was used to establish the probability of repair vs. replacement.
Data for Extra Repair Market	1990 ASHRAE technical paper entitled ''Heat Pump Life and Compressor Longevity in Diverse Climates''. Total system survival function was used establish the probability of extended or extra repair.
Data for Homes without an air conditioner or heat pump.	March 29, 1993 issue of the Air-Conditioning, Heating and Refrigeration News. In 1992, 14% of central air conditioner and heat pump shipments went to non-owner households.
Elasticities	Purchase Price, Operating cost, and Income elasticities—from The ORNL Engineering-Economic Model of Residential Energy Use, Oak Ridge National Laboratory, 1978.
Source of Household Income	EIA, *1999 AEO.*

This shipments model allows appliance saturations to be expressed as a function of consumer price and operating cost in order to capture the effect of those two variables on future shipments. The Department prepared consumer price and operating cost elasticities to calibrate appliance forecasts to historical shipments. These and other features of the model allow it to provide estimates that are consistent with the recent history of central air conditioner and heat pump shipments, market structure, and consumer preferences.

Drawbacks of this method include: (1) Saturation of units in new and stock households must be forecasted, (2) housing starts must be forecasted (although the AEO does provide readily available forecasts), and (3) retirement of units must be based upon assumptions regarding lifetimes.

Unlike the LCC model, the shipments model does not use probability distributions of values for inputs. While the shipment models uses the same basic input data as the LCC model for energy use and cost of equipment, the model uses shipment weighted-average values instead of probability distributions.

Because NES are dependent on shipments (which, in turn, are dependent on equipment purchase price), the Department prepared two sets of shipments forecasts, one based on manufacturer cost data for increases in efficiency levels and the other based on cost data from the reverse engineering methodology, both of which are presented in the Preliminary TSD.

iii. National Net Present Value

Net present value (NPV) is the sum over time of discounted net savings. The national NPV of each candidate standards level is the difference between the base case national average LCC and the national average LCC in the standards case.

Using the NES model, NPV was calculated from projections of national expenditures for central air conditioners and heat pumps, including total installed consumer cost and operating expenses. Future costs and savings were discounted to the present with a discount factor, which was calculated from the discount rate and the number of years between the present (year to which the sum is being discounted) and the year in which the costs and savings occur.

The inputs for the determination of national NPV were detailed in the discussion of the NES model. Like the NES results, two sets of NPV results were prepared; one based on industry-provided manufacturer costs and the other on the reverse engineering data.

2. Preliminary Results

a. General

The Department calculated the national energy consumption by multiplying the number of central air conditioners and heat pumps (by vintage) by the unit energy consumption (also by vintage). Vintage is the age of the equipment (varying from one to twenty four-years). National annual energy savings is the difference between national energy consumption at the base case (without new standards) and each standards case. Cumulative energy savings are the sum of the annual NES over several time periods (*e.g.,* 2006–2010, 2006–2020, and 2006–2030).

National economic impacts are calculated from the energy savings. The primary metric for measuring national economic impact is NPV. The NPV can be expressed by the following equation:

$$NPV = PVS - PVC$$

Where PVS equals the present value of operating cost savings (including electricity, repair, and maintenance cost savings) and PVC equals the present value of increased equipment costs (including equipment price and installation price). Another way of describing NPV is that it is the difference between the LCCs (for all appliances sold) with and without standards.

In NPV, costs are calculated as the product of (1) the difference in the purchase price between the base case and standards case and (2) the annual sales volume in the standards case. Since costs of the more-efficient equipment purchased in the standards case are higher than those of equipment purchased in the base case, price increases appear as negative values in the NPV.

Monetary savings are typically exhibited as decreases in operating costs associated with the higher energy efficiency of appliances purchased in the standards case compared to the base case. Total operating cost savings is the product of savings per unit and the number of units of each vintage surviving in a particular year. Savings appear as positive values in the NPV.

Net savings each year are calculated as the difference between Total Operating Cost Savings and Total Equipment Costs. The savings are calculated over the life of the appliance, accounting for the differences in yearly energy rates. Future annual costs and savings are discounted to the present time and summed. NPV greater than zero indicates net savings (*i.e.,* that the standard reduces consumer expenditures in the standards case relative to the base case). NPV less than

zero indicates that the standard incurs net costs.

The elements of the NPV can be expressed in another form, as the benefit/cost ratio. The benefit is the savings in decreased operating expenses (including electricity, repair, and maintenance), while the cost is the increase in the purchase price (including equipment and installation price) due to standards relative to the base case. When the NPV is greater than zero, the benefit/cost ratio is greater than one.

b. Product Specific

Tables 28 to 31 show the forecasted NES for the four primary product classes at each of the five efficiency levels analyzed (11 through 15 SEER). The results shown are based on a single shipment weighted average (SWA) cost instead of a cost distribution.

TABLE 28.—SPLIT-TYPE AIR CONDITIONERS: CUMULATIVE NES IMPACTS FROM 2006 TO 2030

[Quads]

SEER	Source of manufacturer cost data	
	Industry	Reverse Engineering
Base Case [1]	24.3	24.3
11	0.7	0.7
12	2.6	2.5
13	4.3	4.1
14	5.8	5.6
15	7.0	6.7

[1] Values for Base Case are the cumulative national energy consumption from 2006 to 2030.

TABLE 29.—SPLIT-TYPE HEAT PUMPS: CUMULATIVE NES IMPACTS FROM 2006 TO 2030

[Quads]

SEER/HSPF	Source of manufacturer cost data	
	Industry	Reverse engineering
Base Case [1]	27.8	27.8
11/7.1	0.1	0.0
12/7.4	1.3	1.1
13/7.7	2.9	2.8
14/8.0	4.3	4.4
15/8.2	5.8	5.6

[1] Values for Base Case are the cumulative national energy consumption from 2006 to 2030.

TABLE 30.—SINGLE PACKAGE AIR CONDITIONERS: CUMULATIVE NES IMPACTS FROM 2006 TO 2030

[Quads]

SEER	Source of manufacturer cost data	
	Industry	Reverse engineering
Base Case [1]	3.8	3.8
11	0.1	
12	0.4	0.4
13	0.7	0.7
14	0.9	
15	1.1	

[1] Values for Base Case are the cumulative national energy consumption from 2006 to 2030.

TABLE 31.—SINGLE PACKAGE HEAT PUMPS: CUMULATIVE NES IMPACTS FROM 2006 TO 2030

[Quads]

SEER/HSPF	Source of manufacturer cost data	
	Industry	Reverse engineering
Base Case [1]	4.7	4.7
11/7.1	0.0	
12/7.4	0.2	0.2
13/7.7	0.5	
14/8.0	0.7	
15/8.2	1.0	

[1] Values for Base Case are the cumulative national energy consumption from 2006 to 2030.

Tables 32 to 35 show the national NPVs for the four primary product classes at each of the five efficiency levels analyzed (11 through 15 SEER).

TABLE 32.—SPLIT-TYPE AIR CONDITIONERS: CUMULATIVE NET PRESENT VALUE IMPACTS FROM 2006 TO 2030

[In billions of 1998 dollars]

SEER	Source of manufacturer cost data	
	Industry	Reverse engineering
11	−0.3	0.1
12	−2.8	−0.1
13	−7.5	−1.8
14	−156	−8.4
15	−22.0	−12.1

TABLE 33.—SPLIT-TYPE HEAT PUMPS: CUMULATIVE NET PRESENT VALUE IMPACTS FROM 2006 TO 2030

[In billions of 1998 dollars]

SEER/HSPF	Source of manufacturer cost data	
	Industry	Reverse engineering
11/7.1	0.0	0.1
12/7.4	−0.6	0.5
13/7.7	−1.6	−1.5
14/8.0	−2.8	−4.3
15/8.2	−8.1	−6.2

TABLE 34.—SINGLE PACKAGE AIR CONDITIONERS: CUMULATIVE NET PRESENT VALUE IMPACTS FROM 2006 TO 2030

[In billions of 1998 dollars]

SEER	Source of manufacturer cost data	
	Industry	Reverse engineering
11	−0.2	
12	−0.3	0.2
13	−1.9	−1.0
14	−2.8	
15	−4.3	

TABLE 35.—SINGLE PACKAGE HEAT PUMPS: CUMULATIVE NET PRESENT VALUE IMPACTS FROM 2006 TO 2030

[In billions of 1998 dollars]

SEER/HSPF	Source of manufacturer cost data	
	Industry	Reverse engineering
11/7.1	0.0	
12/7.4	−0.1	0.1
13/7.7	−0.6	
14/8.0	−0.6	
15/8.2	−1.3	

3. Indirect Employment Impacts

a. General

The July 1996 Process Rule includes employment impacts among the factors to be considered in selecting a proposed standard. The Process Rule states a presumption against any proposed standard level that would cause significant plant closures or losses of domestic employment.

The Department estimates the impacts of standards on employment for appliance manufacturers, relevant service industries, energy suppliers, and the economy in general. Employment impacts are separated into indirect and direct impacts. Direct employment

impacts would result if standards lead to a change in the number of employees at manufacturing plants and related supply and service firms. Direct impacts are estimated in the Manufacturer Sub-Group Analysis (section G.2).

Indirect impacts are impacts on the national economy other than in the manufacturing sector being regulated. Indirect impacts may result from both expenditures shifting among goods (substitution effect), and income changing, which will lead to a change in overall expenditure levels (income effect). Indirect employment impacts from standards are defined as net jobs eliminated or created in the general economy as a consequence of increased spending on the purchase price of appliances and reduced household spending on energy.

New appliance standards are expected to increase the purchase price of appliances (retail price plus sales tax, and installation). The same standards are also expected to decrease energy consumption, and therefore reduce household expenditures for energy. Over time, the increased purchase price is paid back through energy savings. The savings in energy expenditures may be spent on other items. Using an input/output model of the U.S. economy, this analysis seeks to estimate the effects on different sectors, and the net impact on jobs. National impacts will be estimated for major sectors of the U.S. economy in the NOPR. Public and commercially available data sources and software will be utilized to estimate employment impacts. At least three scenarios will be analyzed to bound the range of uncertainty in future energy prices. All methods and documentation will be made available for review.

b. Product Specific

The Department of Energy's Office of Building Technologies and State Programs (BTS) has developed a spreadsheet model (IMBUILD) that could be used to analyze indirect employment impacts. IMBUILD is a special-purpose version of the Impact Analysis for Planning (IMPLAN) national input-output model which specifically estimates the employment and income effects of building energy technologies. IMPLAN was developed originally by the U.S. Forest Service in cooperation with the Federal Emergency Management Agency (FEMA) and the Bureau of Land Management (BLM) to assist the Forest Service in land and resource management planning. IMBUILD is an economic analysis system that focuses on those sectors most relevant to buildings, and characterizes the interconnections among 35 sectors as national input-output matrices. The IMBUILD output includes employment, industry output, and wage income. Changes in expenditures due to appliance standards can be introduced to IMBUILD as perturbations to existing economic flows and the resulting net national impact on jobs by sector can be estimated. Additional detail is provided in the Preliminary TSD.

OOE stated that they are not familiar with this type of analysis and believe that DOE should utilize specialists that may exist at the Department of Commerce or the Department of Labor. (OOE, #7) The Department intends to use IMBUILD in its analysis of indirect employment impacts due to its relatively long history of being used as a tool (in its original form as IMPLAN) for assessing economic impacts. Although neither the Departments of Commerce or Labor were involved in the development of IMPLAN, the model was based on use of the Commerce Department's make-and-use tables, input-output model of the U.S. economy, and price deflators; and use of the Labor Department's schedule of wages. Consequently, DOE believes IMBUILD is a sound method for analyzing indirect employment impacts. IMBUILD, in its original form as IMPLAN, has been used since 1979 by a wide variety of government and private agencies including FEMA and BLM in conducting economic impact analyses.

F. Consumer Analyses

The Consumer Analysis evaluates impacts on any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level.

The Department plans to evaluate variations in regional energy prices, variations in energy use and variations in installation costs that might affect the NPV of a standard to consumer sub-populations. To the extent possible, the Department will obtain estimates of the variability of each input parameter and consider this variability in its calculation of consumer impacts. The analysis is structured to answer questions such as: How many households are better off with standards and by how much? How many households are not better off and by how much? The variability in each input parameter and likely sources of information will be discussed with stakeholders.

Variations in energy use for a particular appliance depend on factors such as climate, type of household, and people in household. Annual energy use can be estimated by a calculation based on an accepted test procedure or it can be measured directly in the field. The Department plans to perform sensitivity analyses to consider how differences in energy use will affect sub-groups of consumers.

The impact on consumer sub-groups will be determined using the LCC spreadsheet model. Details of this model are explained in the LCC section of the Preliminary TSD.

1. Consumer Sub-Group Analysis

a. General

The Department will be sensitive to increases in the purchase price to avoid negative impacts to identifiable population groups, such as consumers of lower income levels. Additionally, the Department will assess the likely impacts of an increased purchase price on product sales and fuel switching.

b. Product Specific

For consumers, one measure of economic impact is the first cost of the product. The Department will analyze first costs to determine their impacts on consumer subgroups. The Department will be especially attentive to the need to avoid negative impacts on population groups such as low-income households. Increased first costs to consumers resulting from standards are especially important for lower-income consumers, since this group is most sensitive to price increases. For lower-income consumers, increases in first costs for a product can preclude the purchase of a new model of that product. As a result, some consumers may retain products past their useful life, or purchase older, used appliances. These older products are generally less efficient, and their efficiency may deteriorate if they are retained beyond their useful life. Increases in first cost can also preclude the purchase and use of a product altogether resulting in a potentially large loss of utility.

OOE commented that with regard to first-cost increases on low-income households, the number of low-income households affected by any new standards should first be determined (OOE, #7). The Department seeks input on identifying the potential impacts of a large first-cost increase on consumers (affordability, financing, and on other financial issues), and on methods and data the Department could use in conducting its analysis. The Department also seeks input on methods the Department might use to assess the likely impacts of first-cost increases on product sales and fuel switching.

2. Consumer Participation

a. General

The Department seeks to inform and involve consumers and consumer representatives in the process of developing standards. This includes notification of consumer representatives during the rulemaking process and where appropriate, seeking direct consumer input.

For all products, consumer input is important for several related but separate analytical tasks. First, consumer preferences should be understood prior to determining product classes in order to preserve product utility. Second, assessing the impact of changes in first cost may require direct consumer participation from affected consumer sub-groups (particularly low-income households). Finally, consumer input is useful to ensure that life-cycle costs are accurately estimated for relevant subgroups of consumers. To assess consumer impacts, the Department usually combines life-cycle cost modeling and direct consumer input.

The advisory committee sub-group on consumer issues has suggested appropriate means of obtaining consumer input, including: (1) Using focus groups, (2) conducting surveys, (3) conducting demonstration projects, (4) conducting marketing analysis, and, (5) researching existing literature from voluntary programs. In seeking this information, the advisory committee sub-group emphasized the need for the Department to obtain information from statistically significant sample sizes of all relevant consumer categories.

b. Product Specific

OOE recommended that the Department first investigate the actual level of consumer input or choice involved in the purchase of these systems before spending any time putting resources into surveying consumers about first cost increases. (OOE, #7) OOE warned that HVAC contractors, rather than consumers, may have greater decision-making power regarding the purchase of systems.

G. Manufacturer Impact Analysis

The Manufacturer Impact Analysis estimates the financial impact of standards on manufacturers and calculates impacts on competition, employment, and manufacturing capacity.

Prior to initiating the detailed Manufacturing Impact Analysis, the Department will prepare an approach document and have it available for review. While the general framework will serve as a guide, the Department intends to tailor the methodology for each rule on the basis of stakeholder comments. The document will outline procedural steps and outline issues for consideration. Three important elements of the approach consist of the preparation of an industry cash flow, the development of a process to consider sub-group cash flow, and the design of an guide to interview manufacturers and others in gathering information.

The policies outlined in the Process Rule required substantial revisions to the analytical framework to be used in performing Manufacturer Impact Analysis for each rulemaking. In the approach document, the Department will describe and obtain comments on the methodology to be used in performing the manufacturer impact analyses. The manufacturer impact analyses will be conducted in three phases. Phase 1 consists of two activities, namely, preparation of an industry characterization and identification of issues. Phase 2 has as its focus the larger industry, and in this phase, the GRIM will be used to perform an Industry Cash Flow Analysis. Phase 3 involves repeating the process described in Phase 2 (the Industry Cash Flow Analysis) but on different sub-groups of manufacturers. Phase 3 also entails determining additional impacts on competition, employment, and manufacturing capacity.

1. Industry Characterization (Phase 1)

a. General

Phase 1 of the Manufacturer Impact Analysis consists of collecting pertinent financial and market information. This activity involves both quantitative and qualitative efforts. Data gathered will include market share, corporate operating ratios, wages, employment, and production cost ratios. These data are incorporated into the Engineering Analysis in the estimation of equipment production costs and distribution markups. Sources of information include reports published by industry groups, trade journals, and the U.S. Bureau of Census, and copies of SEC 10–K filings.

b. Product Specific

The Department collected central air conditioner manufacturer information to support the Engineering Analysis. This included manufacturer market shares, markups along the distribution chain, and typical ratios for labor, materials, and overhead. This information appears throughout the Preliminary TSD that accompanies this Supplemental ANOPR.

2. Industry Cash Flow (Phase 2)

a. General

A change in standards affects the analysis in three distinct ways. Standards at higher levels will require additional investment, will raise production costs, and will affect revenue through higher prices and, possibly, lower quantities sold. The Department will quantify these changes by performing an Industry Cash Flow Analysis using the GRIM. Usually this analysis will use manufacturing costs, shipments forecasts, and price forecasts developed for the other analyses. Financial information, also required as an input to GRIM, will be developed based on publicly available data and confidentially submitted manufacturer information.

The GRIM Analysis uses a number of factors: Annual expected revenues; manufacturer costs such as cost of sales, selling and general administration costs; taxes; and capital expenditures related to depreciation, new standards, and maintenance, to arrive at a series of annual cash flows beginning from before implementation of standards and continuing explicitly for several years after implementation. The measure of industry net present values are calculated by discounting the annual cash flows from the period before implementation of standards to some future point in time. The Preliminary TSD describes the GRIM's operating principles.

b. Product Specific

The Industry Cash Flow Analysis uses average manufacturing costs (with uncertainty) as described in the Engineering Analysis (section II.C.2), shipments forecasts as described in the Preliminary National Impact Analysis (section II.E.1), and price forecasts as described in the LCC and Payback Analysis (section II.D.1.) Financial information, also required as an input to the GRIM, is based on publicly available data and confidentially submitted manufacturer information. The cash flow analysis will be distributed to interested parties prior to the workshop to be held after publication of this Supplemental ANOPR.

In Phase 2, the Department intends to expand the Phase 1 analysis to include a Cash Flow Analysis covering, in aggregate, the firms that manufacture residential central air conditioning equipment. The data gathered in Phase 1 will be augmented with data from additional public and private sources.

These include shipment projections developed for the NES Analysis and interviews with individual manufacturers. The GRIM will estimate the potential effects of new standards on industry cash flow, net present value, capacity, and employment. Scenarios will include both HCFC–22 and hydro-fluoro-carbon (HFC) refrigerants, HFC–410A. Other considerations include imports and exports, uncertainty, and cumulative regulatory burden.

An industry representative stated that his company would be very unlikely to provide proprietary cost data directly to DOE or its contractors. (Jim Crawford, Trane, Transcript, p 134). The Oregon Office of Energy (OOE) warned that an Industry Cash Flow Analysis should be internally consistent with data used in other analyses (OOE, #7). The Department currently is seeking further input from stakeholders on whether additional scenarios are needed, and on the general appropriateness of the data sources and methods.

3. Manufacturer Sub-Group Analysis (Phase 3)

a. General

Assessment of impacts on sub-groups of manufacturers is Phase 3 of the Manufacturing Impact Analysis. Using industry ''average'' cost values is not adequate for assessing the variation in impacts among sub-groups of manufacturers. Smaller manufacturers, niche manufacturers or manufacturers exhibiting a cost structure largely different from industry averages could be more negatively affected. Ideally, the Department would consider the impact on every firm individually. In highly concentrated industries this may be possible. In industries having numerous participants, the Department will use the results of the industry characterization to group manufacturers exhibiting similar characteristics. The financial analysis of the ''prototypical'' firm performed in the Phase 2 industry analysis can serve as a benchmark against which manufacturer sub-groups can be analyzed.

The manufacturing cost data collected for the Engineering Analysis will be used to the extent practical in the sub-group impact analysis. To be useful, however, this data should be disaggregated to reflect the variability in costs between relevant sub-groups of firms.

The Department will conduct detailed interviews with as many manufacturers as is possible to gain insight into the potential impacts of standards. During these interviews, the Department will solicit the information necessary to evaluate cash flows and to assess competitive, employment and capacity impacts. Firm-specific cumulative burden will also be considered.

b. Product Specific

In order to conduct a Manufacturer Sub-Group Analysis, it will be necessary to define representative sub-groups and conduct separate Cash Flow Analysis for each. For example, one option consists of conducting separate cash flows for all manufacturers. Another option, could entail conducting Cash flow Analysis only for those manufacturers which believe their impacts are more severe then industry average.

The Department intends to examine two sub-groups: high-volume manufacturers and low-volume manufacturers. A ''strawman'' GRIM Analysis on each subgroup will be prepared for review prior to the interviews. Information from the interviews will be used to develop revised GRIM sub-group analyses for consideration in the NOPR.

OOE recommended that the analysis use the minimum number of sub-groups required to fully capture different levels of impact on different sizes and type of manufacturers (OOE, #7).

The Department seeks input from stakeholders on whether the defined sub-groups are appropriate, or whether fewer, or additional, subgroups are needed. Comments are also requested regarding the value in grouping manufacturers into sub-groups, compared to conducting individual GRIM Analysis for each manufacturer. Additional commentary is sought regarding which manufacturers should be asked to participate in the interviews, and, more generally, what a well executed sub-group analysis would entail.

4. Interview Process

a. General

The revised rulemaking process provides for greater public input and for improved analytical approaches, with particular emphasis on earlier and more extensive information gathering from interested parties. The proposed three-phase Manufacturer Impact Analysis process will draw on multiple information sources, including structured interviews with manufacturers and a broad cross-section of interested parties. Interviews may be conducted in any and all phases of the analyses as determined in Phase 1.

The interview process has a key role in the manufacturer impact analyses, since it provides an opportunity for manufacturers to privately express their views on important issues. A key characteristic of the interview process is that it is designed to allow confidential information to be considered in the rulemaking process.

The initial industry characterization will collect information from relevant industry and market publications, industry trade organizations, company financial reports, and product literature. This information will aid in the development of detailed and focused questionnaires, as needed, to perform all phases of the manufacturer impact analyses. It is the intention of the Department that the contents of questionnaires and the list of interview participants be publicly vetted prior to initiating the interview process.

The Phase 3 (sub-group analysis) questionnaire will solicit information on the possible impacts of potential efficiency levels on manufacturing costs, product prices, and sales. Evaluation of the possible impacts on direct employment, capital assets, and industry competitiveness will also draw heavily on the information gathered during the interviews. The questionnaires will solicit both qualitative and quantitative information. Supporting information will be requested whenever applicable.

Interviews will be scheduled well in advance in order to provide every opportunity for key individuals to be available for comment. Although a written response to the questionnaire is acceptable, an interactive interview process is preferred because it helps clarify responses and provides the opportunity for additional issues to be identified.

Interview participants will be requested to identify all confidential information provided in writing or orally. Approximately two weeks following the interview, an interview summary will be provided to give participants the opportunity to confirm the accuracy and protect the confidentiality of collected information. All the information transmitted will be considered, when appropriate, in the Department's decision-making process. However, confidential information will not be made available in the public record.

DOE will collate the completed interview questionnaires and prepare a summary of the major issues and outcomes. The Department will seek comment on the outcome of the interview process.

b. Product Specific

The Department completed a round of preliminary interviews at the start of the

Engineering Analysis that focused on design and cost issues. A second round of interviews will be scheduled soon after publication of the Supplemental ANOPR. The intent will be to develop an accurate representation of the impacts of new standards on each subgroup. As noted previously, the Department intends to examine two subgroups: high-volume manufacturers and low-volume manufacturers.

H. Competitive Impact Assessment

a. General

EPCA directs the Department to consider any lessening of competition that is likely to result from standards. It directs the Attorney General to gauge the impacts, if any, of any lessening of competition. The Department will make a determined effort to gather and report firm-specific financial information and impacts. The competitive analysis will focus on assessing the impacts to smaller, yet significant, manufacturers. The assessment will be based on manufacturing cost data and on information collected from interviews with manufacturers, consistent with Phase 3 of the manufacturer impact analyses. The Department of Justice (DOJ) has offered to help in drafting questions to be used in the manufacturer interviews. These questions will pertain to the assessment of the likelihood of increases in market concentration levels and other market conditions that could lead to anti-competitive pricing behavior. The manufacturer interviews will focus on gathering information that would help in assessing asymmetrical cost increases to some manufacturers, increased proportion of fixed costs potentially increasing business risks, and potential barriers to market entry (proprietary technologies, etc.).

b. Product Specific

The Department will consult with DOJ prior to conducting the manufacturer interviews and will share the results of those interviews and subsequent analyses with DOJs according to the rulemaking schedule, and as appropriate.

I. Utility Analysis

The Utility Analysis estimates the effects of proposed standards on electric and gas utilities.

1. Proposed Methodology

a. General

To estimate the effects of proposed standards on electric and gas utilities, the Department intends to use EIA's NEMS. NEMS is a large multi-sectoral partial-equilibrium model of the U.S. energy sector that has been developed over several years by EIA primarily to prepare the *AEO*. NEMS produces a widely recognized baseline forecast for the U.S. through 2020, and is available in the public domain. Outputs of the Utility Analysis will parallel results that appear in the latest *AEO*, with some additions. Typical output includes forecasts of sales and price. The entire Utility Analysis will be conducted as a policy deviation from the latest *AEO* using NEMS–BRS, and the assumptions in place in NEMS will serve as the basic set of assumptions that will be applied to the Utility Analysis. For example, the operating characteristics (energy efficiency, emissions rates, etc.) of future electricity generating plants used in the Utility Impact Analysis will be those used in the latest *AEO*. As discussed earlier, NEMS–BRS is a variant of U.S. DOE/EIA's NEMS and is referred to as such for two reasons: (1) The Utility Analysis to be performed entails some minor code modifications and (2) the model will be run under policy deviations that are variations on DOE/EIA assumptions. The name NEMS–BRS refers to the model that will be used for the Utility Analysis (BRS is DOE's Building Research and Standards office).

Forecasting for the electric utility industry is seriously complicated by the implications of industry restructuring, which is only partially reflected in the latest *AEO* (1999). DOE plans to explore the consequences of a wider restructuring pattern through appropriate scenario analysis using NEMS–BRS.

NEMS offers a sophisticated picture of the effect of appliance standards since its scale allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole. In addition, the scale of NEMS permits analysis of the effects of standards on both the electric and gas utility industries.

b. Product Specific

To analyze the effect of standards, NEMS–BRS will first be run exactly as it would be to produce an *AEO* forecast, then a second run will be conducted with residential energy usage reduced by the amount of energy (gas, oil, and electricity) saved due to appliance standards for central air conditioners and heat pumps. The energy savings input will be obtained from the NES spreadsheet (section II.E.1). Outputs available are the same as those in the original NEMS model, including residential energy prices, generation, and installed capacity (and, in the case of electricity, which primary fuel is used for generation). Other than the difference in energy consumption due to central air conditioner and heat pump standards, input assumptions into NEMS–BRS will follow those used to produce the 1999 *AEO*.

Since the *AEO* 1999 version of NEMS–BRS forecasts only to the year 2020, a method for extrapolating price data to 2030 is required. The method adopted will be the EIA approach to forecasting fuel prices for the Federal Energy Management Programs (FEMP). These are the prices used by FEMP to estimate LCCs of Federal equipment procurement. For petroleum products, the average growth rate for the world oil price over the years 2010 to 2020 is used in combination with the refinery and distribution markups for the year 2020 to determine regional price forecasts. Similarly, natural gas prices are derived from an average growth rate along with regional price margins for the year 2020. Electricity prices are held constant at 2020 levels on the assumption that the transition to a restructured utility industry will have been completed.

In principle, any of the forecasts that appear in the *1999 AEO* could be estimated by NEMS–BRS to take into account the effects of a particular level of central air conditioner and heat pump standards. The Department intends to report the major results on residential sales of fuels, prices of fuels, and generating sources displaced by energy savings. As might be expected, as the total energy use of America is much larger than that possible due to the savings from central air conditioners and heat pumps, there is little expected difference in the forecasted price of energy.

EEI stated that the Utility Analysis should incorporate the impact of any new standard on the equipment's Energy Efficiency Ratio (EER) rating in order to establish the impact on peak loads and power plant operation. The analysis should also be market based, and take into account that several merchant plants are coming on-line and that customers, rather than utility dispatchers, will dictate how power plants are utilized to meet air conditioning loads. (EEI, #2) Since it incorporates representative load shapes for central air conditioners and heat pumps, NEMS–BRS has the capability to determine both the impacts on power plant operation and peak loads that result from central air conditioner and heat pump energy savings. Thus, the type of power plant that will go off-line and the resulting reduction in peak loads can and will be determined.

J. Environmental Analysis

An Environmental Assessment is required pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), regulations of the Council on Environmental Quality (49 CFR parts 1500–1508), the Department regulations for compliance with NEPA (10 CFR part 1021), and the Secretarial Policy on the National Environmental Policy Act (June 1994). The Department will present a discussion of the Draft Environmental Assessment as part of the NOPR. The Department will present the Draft Environmental Assessment in the Technical Support Document for the NOPR. The NOPR will provide an opportunity for comments prior to the final rule.

The Environmental Analysis will track three types of energy-related airborne emissions: sulfur dioxide (SO_2), nitrogen oxides (NO_x) and carbon dioxide (CO_2). The first two have direct consequences for human health, and are major causes of acid precipitation, which can affect humans by reducing the productivity of farms, forests and fisheries, decreasing recreational opportunities and degrading susceptible buildings and monuments. NO_x is also a precursor gas to urban smog and is particularly detrimental to air quality during hot, still weather. CO_2 emissions are believed to contribute to raising the average global temperature via the ''greenhouse effect.'' The long-term consequences of higher temperatures may include perturbed air and ocean currents, perturbed precipitation patterns, changes in the gaseous equilibrium between the atmosphere and the biosphere, and the melting of some of the ice now covering polar lands and oceans, causing a rise in sea level. The source of emissions covered in this analysis is fossil fuel-fired electricity generation.

1. Proposed Methodology

a. General

To perform the Environmental Analysis, the Department intends to use NEMS–BRS, which it also uses for the Utility Impact Analysis described in the previous section. Outputs of the Environmental Analysis will parallel results that appear in the latest *AEO*, with some additions. The Department will conduct entire Environmental Analysis as a policy deviation from the latest *AEO* using NEMS–BRS, and the assumptions in place in NEMS will serve as the basic set of assumptions that will be applied to the Environmental Analysis.

Carbon emissions (which are a physically equivalent indicator of actual emissions of carbon dioxide) are tracked in NEMS–BRS by a detailed carbon module with broad coverage of all sectors and inclusion of interactive effects. NEMS–BRS also includes a module for SO_2 allowance trading and delivers a forecast of SO_2 allowance prices. Accurate simulation of SO_2 trading, however, tends to imply that physical emissions effects will be zero. This fact has caused considerable confusion in the past, and, in prior appliance standards analyses, a simple figure for emission reductions has been reported, with the caveat that emissions trading implies that this reduction will unlikely be realized. On the other hand, there is an SO_2 benefit from conservation in the form of a lower allowance price. If the reduction in allowance price is large enough to be calculable by NEMS–BRS, the Department will report this value.

The results for the Environmental Analysis can be in the form of a complete NEMS–BRS run. In general, NEMS–BRS outputs become the tables of an *AEO*, and these should provide a good idea of the range of results available. Outputs from a NEMS–BRS run include SO_2, NO_X and CO_2 emissions from the power sector and a trading price for SO_2 allowances. The only form of carbon tracked by NEMS–BRS is CO_2, so the carbon discussed in the analysis is only in the form of CO_2 but is reported as elemental carbon to remain consistent with the *1999 AEO*. The conversion factor from carbon to CO_2 is approximately 3.7.

b. Product Specific

The version of NEMS used for appliance standards analysis is called NEMS–BRS, and is based on the *1999 AEO* version with minor modifications. NEMS–BRS is run exactly the same as the original NEMS, except that residential energy usage is reduced by the amount of energy (gas, oil, and electricity) saved due to central air conditioner and heat pump standards. The amount of energy savings is obtained from the NES spreadsheet (Section 8.2). The output of the Environmental Analysis is forecasted physical emissions. The net benefits of a standard will be the difference between emissions estimated by the *AEO* 1999 version of NEMS–BRS and those estimated with a standard in place.

Energy use for central air conditioner and heat pump efficiency levels will be the same as those in the NES spreadsheet. Other input assumptions into NEMS–BRS will follow those used to produce *AEO* 1999. In principle, any of the forecasts that appear in *AEO* 1999 could be estimated by NEMS–BRS to take into account the effects of a particular central air conditioner and heat pump efficiency standard level, but, in the standard reporting, the Department intends to report emissions of SO_2, NO_X and CO_2.

The time horizon of NEMS–BRS is 2020. The Department will extrapolate beyond 2020 using a simple formula (according to the method set out in the Preliminary TSD) to extend the forecast to 2030. The Department will generate alternative price forecasts corresponding to the side cases found in *AEO* 1999 for use by NES and will explore alternatives in a similar fashion with NEMS–BRS runs.

EEI stated the environmental impact results generated from NEMS will be less accurate than they could be, since consumers may switch electricity suppliers and since the impacts from other emissions, such as carbon monoxide and precursor organic compounds, are not being analyzed.(EEI, #2) EMPA also stated that NEMS does not accurately account for recent changes in the electric utility industry. (EMPA, #3) Although NEMS might have some short comings, the Department believes that NEMS–BRS is the most appropriate and accurate model to estimate environmental impacts. Although the Department is comfortable with the use of NEMS–BRS for establishing environmental impacts, interested parties are welcome to present any other models or data that could verify or refute the NEMS estimates.

K. Regulatory Impact Analysis

DOE will be preparing a draft Regulatory Analysis pursuant to E.O. 12866, ''Regulatory Planning and Review,'' which will be subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) 58 FR 51735 (October 4, 1993).

As part of the Regulatory Analysis, the Department will identify and seek to mitigate the overlapping effects on manufacturers of new or revised DOE standards and other regulatory actions affecting the same products. Through manufacturer interviews and literature searches, the Department will compile information on burdens from existing and impending regulations affecting central air conditioners (e.g. HCFC phase out) and other products (e.g. room air conditioners). The Department also seeks input from stakeholders regarding other regulations that should be considered.

III. Proposed Standards Scenarios

Upon reviewing the preliminary LCC and NES results, the Department observes that the efficiency levels analyzed; (generally a 10 to 70 percent improvement over the existing standard), produced a range of impacts at the National level. For example, the NES impacts show a range from 0.81 to 14.11 quads of energy saved over the 2006 to 2030 period. As expected, the higher the efficiency level, the greater the savings.

The national Net Present Value (NPV), which is the discounted sum over future years of the operating cost savings in energy less the increase in first cost of more efficient units, also showed a range of impacts. A positive NPV is a net benefit to the nation. The NPVs based on reverse engineering costs show positive benefits to the Nation for all efficiency levels less than 13 SEER (with the exception of the 12 SEER efficiency level for split system air conditioners), while NPVs based on industry-provided manufacturer costs show negative benefits to the nation for all efficiency levels.

At the consumer level, the LCC and payback analyses results also depend on manufacturer costs. For example, with reverse engineering costs, minimum LCC occurs at 12 SEER for all product classes, and with industry-provided costs, minimum LCC occurs at 12 SEER for heat pumps (both split system and packaged), but there is no minimum LCC for air conditioners. Payback analyses for SEER 12 equipment also show a range of payback times varying from 3 to 15 years, depending on the product class and the manufacturer costs.

The maximum technologically feasible efficiency levels for these products (approximately 20 SEER in 2006) were not explicitly analyzed in this Supplemental ANOPR because the Department assumed that the products could not be economically justified. While the split-system air conditioner with the highest efficiency in the market in 1998 was rated at SEER 18, the most efficient product analyzed in this Supplementary ANOPR was SEER 17. At this efficiency level, all the products had greater LCCs than the baseline and had payback periods that exceeded the mean product lifetime. The Department assumed that products with efficiencies greater than SEER 17 would have greater incremental costs than incremental savings, and that, consequently, efficiency levels greater than SEER 17 could not be economically justified. This assumption will be reexamined prior to issuance of the NOPR, where products at the maximum technologically feasible level will be analyzed.

Based on the analyses performed, the Department observes that, depending on product class, efficiency levels ranging from 11 to 13 SEER would appear to result in the greatest economic benefit to the Nation. The Process Rule requires the Department to specify in the ANOPR candidate standards levels, but not to propose a particular standard. Because the preliminary LCC and NES results show economic benefits to both consumers and to the Nation in the SEER 11 to 13 efficiency range, the Department intends to further consider and conduct analyses for the following candidate standards levels, for each product class, prior to issuance of the NOPR:

- SEER 11
- SEER 12
- SEER 13

In addition, the Department intends to conduct Engineering and LCC analyses specifically for the Maximum Technologically Feasible (approximately SEER 20) level for each product class prior to issuance of the NOPR.

Split System Central Air Conditioners: The minimum mean LCC for split system air conditioners occurs at either 11 or 12 SEER, based on the industry cost data or the reverse engineering manufacturing cost data, respectively. Although the minimum mean LCC occurs at efficiency levels greater than the baseline (10 SEER) in both of the these cases, the percent of the population with LCCs lower than the baseline is less than 50% (39% at 11 SEER, based on industry data, and 45% at 12 SEER, based on reverse engineering data). The median payback periods corresponding to the industry data and reverse engineering LCC minimums, 13 and 11 years, respectively, are both less than the 18.4 year average product lifetime. However, mean payback periods exceed the average product lifetime.

Split System Heat Pumps: The minimum mean LCC for split system heat pumps occurs at 12 SEER for both the industry cost data and the reverse engineering manufacturing cost data, although based on the reverse engineering cost data, the mean LCC corresponding to 13 SEER is also less than that for the baseline. The percent of the split heat pump population at 12 SEER with LCCs lower than the baseline is well above 50% based on both the industry data and reverse engineering cost data (63% based on industry data and 90% based on reverse engineering). The median payback periods corresponding to the industry data and reverse engineering LCC minimums, 8 and 3 years, respectively, are both less than the average 18.4 year product lifetime.

Single Package Air Conditioners: The minimum mean LCC for single package air conditioners occurs at either 10 or 12 SEER, based on the industry cost data or the reverse engineering manufacturing cost data, respectively. The percent of the population at 12 SEER with LCCs lower than the baseline varies significantly depending on which cost data are used; the industry cost data results in a percentage of 26% while the reverse engineering cost data results in a percentage of 58%. The median payback periods corresponding to the industry data at 11 SEER efficiency level and the reverse engineering 12 SEER efficiency level are 20 and 8 years, respectively.

Single Package Heat Pumps: The minimum mean LCC for single package heat pumps occurs at 12 SEER for both the industry cost data and the reverse engineering manufacturing cost data. The percent of the single package heat pump population at 12 SEER with LCCs lower than the baseline is above 50% (58% and 80%, based on industry data and reverse engineering data, respectively). The median payback periods corresponding to the industry data and reverse engineering LCC minimums, 9 and 5 years, respectively, are less than the mean lifetime of the product.

The above observations are based on preliminary LCC and NES results, which will be updated and revised in the NOPR and final rule analyses. The LCC and NES results are considered preliminary because they do not include any results from the manufacturer impact and consumer subgroup analyses, or contain information from a consumer survey. The Department seeks comments on whether standards that meet alternative scenarios would provide energy savings to the Nation comparable to the savings that would be obtained by the highest standards that are technologically feasible and economically justified effective in 2006. Standards that meet the following alternative scenarios, for example, might be presented to the Department for consideration:

- A moderate increase in the efficiency level at an earlier effective date, for example, an effective date three years after the publication of the Final Rule.
- A stringent increase in efficiency level at a later effective date, for

example, an effective date in 2010 coinciding with the HCFC–22 phase out.

• A two-phase approach combining the two scenarios, for example, a lower efficiency level for some product classes effective at an earlier date and a higher efficiency level effective at a later date.

The Department seeks comments on standards under various scenarios, including the candidate standards, for consideration in preparing the analysis on which the Department will base the proposed rule.

IV. Public Comment Procedures

A. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the analysis presented here.

The Department has established a period of 75 days following publication of this notice for persons to comment. All public comments received will be available for review in the Department's Freedom of Information Reading Room. In addition, the following data is available in the Department's Freedom of Information Reading Room:

- Copies of the Preliminary TSD
- Transcripts of the Central Air Conditioning policy Workshop held on June 30, 1998
- Copies of the public comments received by the Department thus far
- Previous **Federal Register** notices relating to this central air conditioner and heat pump rulemaking

A public hearing will be held on December 9, 1999, (9 a.m.—5 p.m.), at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, Room 1E–245, Washington, DC 20585. More detailed information about this hearing will be on the Office of Codes and Standards web site beginning in November. The web site address is as follows: http://www.eren.doe.gov/buildings/codes standards/index.htm.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this notice. Comments will not be accepted by fax or e-mail. Instructions for submitting written comments are set forth at the beginning of this notice and in this section.

Comments should be labeled both on the envelope and on the documents, ''Central Air Conditioners and Heat Pumps Rulemaking (Docket No. EE-RM–94–403),'' and must be received by the date specified at the beginning of this document. The Department requests that ten copies of your comments be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 8. All comments and other relevant information received by the date specified at the beginning of this notice will be considered by the Department in the proposed rule.

All written comments received on this supplemental Advance Notice of Proposed Rulemaking will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and exempt by law from public disclosure, should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to the Department, when evaluating requests to treat information as confidential, include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

C. Issues for Public Comment

The Department is interested in receiving comments and data to improve its preliminary analysis. In particular, the Department is interested in responses to the following questions and/or concerns that were addressed in this notice.

1. Differences between the industry and the reverse engineering cost data:

• Use of the industry and the reverse engineering cost data yield significantly different LCC, payback period, NES, and NPV results. Efforts preceding the publication of this Supplemental ANOPR between the Department and the industry have yet to reveal why differences still persist between the two sets of cost data. Continued efforts and suggestions are needed to resolve the differences between the two cost data sets. These differences are discussed in the Process Improvement section (I B.3.).

2. The incorporation of emerging technologies into the Engineering Analysis:

• The Department has conducted a preliminary analysis of how emerging technologies may impact the manufacturing costs of achieving higher efficiency levels. But due to the uncertainty associated with the future development of these technologies, in particular, microchannel heat exchangers, advanced compressors, and variable speed motor controls, the costs currently projected for their incorporation into air conditioning and heat pump equipment may change significantly.

3. The assessment of the impacts on steady-state efficiency, i.e. EER, due to increases in the SEER:

• Comments submitted by the EEI and the ACEEE call for assessments of how the Energy Efficiency Ratio (EER) of air conditioning and heat pump equipment may be impacted by an increase in the SEER. In particular, they are concerned that a higher efficiency standard based on SEER may lead to a decrease in steady-state efficiency during peak demand because of the prevalence of modulating systems at the higher SEER levels. Up to efficiency levels of 12 SEER, the rate of EER increase is directly proportional to the increase in SEER as manufacturers typically rely on single-speed technology to attain the SEER increase. But as efficiency levels move beyond 12 SEER, manufacturers use an array of technologies that have significantly different impacts on EER. How should the Department quantify the relationship of EER to the higher SEER values?

4. For heat pump systems, the relationship between SEER and HSPF:

• Based on heat pumps in the marketplace, a range of HSPF values are possible for any particular SEER. But recognizing that the HSPF of heat pump equipment generally increases with

SEER, the current analysis assumes a simple relationship between the two efficiency descriptors for purposes of setting an HSPF standard in addition to a SEER standard for heat pumps. Should the Department continue with this simple approach or should another procedure be developed to assess the impact of SEER on HSPF?

5. Additional product classes based on system capacity:

• The current analyses are based on manufacturing cost data developed for nominal 3-ton capacity systems. Although product shipments are predominantly at nominal capacities of 3-tons, the cost of achieving higher efficiency for systems with higher and lower capacities may be different. If data submitted in response to this Supplemental ANOPR reveals significantly different manufacturing cost increases based on system capacity, the Department will analyze whether this results in justifiably lower or higher efficiency levels for equipment of differing capacity.

6. Niche product classes:

• Several manufacturers have asked the Department to establish new classes to protect the viability of certain niche products under higher efficiency standards. These products (ductless split systems, high-velocity/small duct systems, vertical packaged/wall mounted systems, and through-the-wall condensing units) serve niche markets and probably account for less than three percent of the residential unitary market. As such, the efficiency standard established for these products will have little effect on NES and consumer LCC. The Department seeks comments as to whether these products provide a unique utility that cannot be met by other products. One important question is whether the constraints imposed by higher standards would eliminate these products from the marketplace. For this reason the Department is also interested in recommendations as to how to define these new product classes so that these products would continue to be available to satisfy the unique needs for which they are intended.

7. The impact of alternative refrigerants for HCFC–22:

• The current analysis assumes that the phase-out date for HCFC–22 is far enough in the future that it will not affect a manufacturer's ability to meet any new efficiency standards, whether using HCFC–22 before the phase-out, or using alternative refrigerants before and after the phase-out. Through manufacturer interviews and literature searches, the Department plans to compile information on burdens from existing and impending regulations affecting central air conditioners (e.g. HCFC phase out). But should the Department more explicitly account for the impact of the HCFC phase out in the Engineering Analysis? Any analysis in this area will require assessment of the impact on manufacturer cost due to the use of the alternative refrigerant.

8. Data on retail mark-up assumptions:

• Retail mark-up assumptions are based upon the following distribution chain: manufacturer-to-distributor/ wholesaler-to-contractor/dealer. Although this is not the only type of distribution chain currently in existence for central air conditioning and heat pump equipment, it is assumed that the mark-ups reflected by this chain of distribution will reflect the mark-ups resulting from other methods of distribution (*e.g.,* manufacturer directly to dealer). At present the Department does not intend to change the retail mark-up assumptions but will continue to research data sources and seek comment on this issue.

9. Information relating to the determination of price and operating cost elasticities in conducting shipment forecasts:

• In order to determine the effect of an increase in the purchase price and operating cost on shipments, it would be useful to know the elasticities of central air conditioner and heat pump prices and operating costs. Due to the lack of data in this area specific to central air conditioners and heat pumps, the Department is currently using elasticities developed from analyses conducted over twenty years ago. With regard to purchase price, in making estimates of these effects, the Department needs to estimate how price changes resulting from revised energy efficiency standards for central air conditioners and heat pumps will affect the behavior of consumers in their purchasing decisions.

10. Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates:

• The consumer analysis can evaluate impacts on any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level.

11. Information on what non-regulatory alternatives to standards need to be reviewed:

• Under the Process Rule policies, the Department is committed to continually explore non-regulatory alternatives to standards. The table following presents what is being proposed for consideration in this rulemaking. The Department is seeking comments on this approach. This approach is further discussed in the Preliminary TSD.

Alternatives To Be Considered

—No new regulatory action
—Consumer tax credits
—Manufacturer tax credits
—Performance standards
—Rebates
—Voluntary energy efficiency targets
—Early replacement
—Mass government purchases

12. Comments on the candidate standard levels and the alternative standard scenarios.

• The Department has identified candidate standards levels of 11 SEER, 12 SEER and 13 SEER for all product classes. The Department has also provided examples of several alternative scenarios which could have different effective dates and different standards levels but which could provide comparable energy savings.

V. Review Under Executive Order 12866 and Other Provisions

DOE provided to the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget a copy of this document for comment. At the proposal stage for this rulemaking, DOE and OIRA will determine whether this rulemaking is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. 58 FR 51735 (October 4, 1993). Were DOE to propose amendments to the energy conservation standards for central air conditioners and heat pumps, the rulemaking could constitute an economically significant regulatory action and DOE would prepare and submit to OIRA for review the assessment of costs and benefits required by Section 6(a)(3) of Executive Order 12866. Other procedural and analysis requirements in other Executive Orders and statutes also may apply to such future rulemaking action, including the requirements of the regulatory Flexibility Act, 5 U.S. C. 601 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; and the Unfunded Mandates Act of 1995, Pub. L. 104–4; and the National Environmental Policy Act of 1969, 42 U.S. C. 4321 *et seq.*

Today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585 between the hours of 9 and 4, Monday through Friday, telephone (202) 586–3142.

Issued in Washington, DC, on November 8, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–30480 Filed 11–23–99; 8:45 am]

BILLING CODE 6450–01–P

federal register

Wednesday
November 24, 1999

Part IV

Department of Agriculture

Forest Service

36 CFR Part 251

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance With Special Use Authorizations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB36

Land Uses; Special Uses; Recovery of Costs for Processing Special Use Applications and Monitoring Compliance with Special Use Authorizations

AGENCY: Forest Service, USDA.

ACTION: Proposed rule; request for public comment.

SUMMARY: The Forest Service proposes to promulgate regulations for recovering costs associated with processing applications for special use authorizations to use and occupy National Forest System lands and monitoring compliance with these special use authorizations. The provisions of this proposed rule would apply to applications and authorizations for use of National Forest System lands, including situations in which the land use fee may be waived or exempted, such as facilities financed or eligible to be financed with a loan pursuant to the Rural Electrification Act of 1936 and applications and authorizations involving Federal, State, and local government entities. The provisions of this proposed rule would not apply to applications and authorizations for noncommercial group uses and other uses specifically exempted. In addition, the provisions of this proposed rule would not apply to those applications or authorizations for which processing and/or monitoring fees already are being collected by another Federal agency on behalf of the Forest Service. Public comment is invited and will be considered in development of the final rule.

DATES: Comments must be received in writing by January 24, 2000.

ADDRESSES: Send written comments to Director, Lands Staff, 2720, 4th Floor-South, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090. Submit electronic comments (as an ASCII file if possible) to: gtlands4/wo@fs.fed.us. Refer to the **SUPPLEMENTARY INFORMATION:** Section for further information on written comments and electronic filing. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying.

The public may inspect comments received on this proposed rule in the Office of the Director, Lands Staff, 4th Floor-South, Sidney R. Yates Federal Building, 14th Street and Independence Avenue, SW, Washington, D.C., between the hours of 8:30 a.m. and 4:30 p.m. on business days. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1256 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Randy Karstaedt, Lands Staff, (202) 205–1256 or Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, (202) 205–1145.

SUPPLEMENTARY INFORMATION:

1. Electronic Access and Filing
2. Written Comments
3. Interagency Coordination
4. Background
5. Analysis of Proposed Rule
6. Regulatory Requirements

1. Electronic Access and Filing

You may view an electronic version of this proposed rule at the Forest Service Internet home page at: http://www.fs.fed.us/recreation/permits/. You may also comment via the Internet to: gtlands4/wo@fs.fed.us. If you submit comments electronically, please submit them, if possible, as an ASCII text file to minimize computer problems and include your name and return mailing address in your Internet message.

2. Written Comments

Please confine written comments to issues pertinent to the proposed rule and explain the reasons for any recommended changes. Where possible, reference the specific section or paragraph you are addressing. The Forest Service may not include in the administrative record for the proposed rule those comments it receives after the comment period closes (see **DATES**) or comments delivered to an address other than those listed in **ADDRESSES**. All comments, including the names, street addresses, and other contact information about respondents will be available for public review at the above address during regular business hours (8:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Those wishing to inspect comments are encouraged to call ahead, (202) 205–1256, to facilitate access to the building.

3. Interagency Coordination

The United States Department of the Interior, Bureau of Land Management (BLM), recently proposed revisions to its cost recovery procedures, policies, and fees for processing and administering rights-of-way at 43 CFR parts 2800 and 2808 (64 FR 32105, June 15, 1999). To the extent possible, the Forest Service is proposing to adopt procedures, policies, and fee schedules for cost recovery related to special use applications and authorizations consistent with BLM's rule. In addition to considering comments in response to its proposed rule, the Forest Service will consider comments received in response to BLM's proposed rule in developing the final Forest Service rule. Promulgation of consistent cost recovery regulations and adoption of the same fees by the Forest Service and BLM will benefit both agencies and the public, particularly those who need or already hold an authorization to use and occupy Federal lands administered by both agencies.

4. Background

The Forest Service proposes to issue regulations concerning the recovery of costs for processing applications for special use authorizations issued pursuant to 36 CFR part 251, subpart B, and monitoring compliance with these authorizations. Approximately 74,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities, ranging from individual private uses to large-scale commercial facilities, and public services. Examples of authorized land uses include road rights-of-way serving private residences, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, hydroelectric power generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds. The agency receives about 6,000 applications for special use authorizations each year. These applications are subjected to a rigorous decisionmaking process in determining whether to approve or reject them. In 1998, the Forest Service adopted a final rule at 36 CFR part 251, subpart B, streamlining and extensively revising the agency's application process and administration of special use authorizations (63 FR 65949, November 30, 1998).

There are 14 statutes authorizing special uses on National Forest System lands. These authorities, which are listed at 36 CFR 251.53, include statutes of broad application, such as the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976, and the Bankhead-Jones Farm Tenant Act of 1937, as well as statutes focusing on a specific use of Federal lands, such as the National Forest Ski Area Permit Act. The basic authority of the Secretary of Agriculture to regulate the occupancy and use of National

Forest System lands is the Act of June 4, 1897 (16 U.S.C. 551).

Additionally, the Independent Offices Appropriations Act of 1952, as amended (IOAA; 31 U.S.C. 9701), and the Office of Management and Budget (OMB) Circular No. A–25 require holders of authorizations to pay for the use of the Federal land. The Federal Land Policy and Management Act requires holders of rights-of-way authorizations to pay annually, in advance, the fair market value of the use of the Federal land and its resources. The Federal Land Policy and Management Act also provides that fees may be waived, in whole or in part, under specified conditions when equitable and in the public interest.

Requirements of the National Environmental Policy Act, the Wilderness Act of 1964, the Endangered Species Act, the Archaeological Resources Protection Act of 1979, additional requirements of the Federal Land Policy and Management Act of 1976, and Executive Order Nos. 11998 (Floodplains) and 11990 (Wetlands) also bear directly on the issuance of special use authorizations. These directives and statutory authorities require extensive analysis and documentation of the impacts of use and occupancy on a wide array of environmental, cultural, and historical resources. The practical effect of these requirements has been to lengthen the time required and increase the cost associated in processing applications for authorizations for new uses and for existing uses. The time and cost impacts weigh on both the Forest Service and the applicants and holders of authorizations. The significance of these impacts has been a principal factor in the development of this proposed cost recovery rule. These impacts also were a major factor in the previous development of the agency's final rule at 36 CFR part 251, subpart B, streamlining its special uses application process and administration of special use authorizations (63 FR 65949, November 30, 1998).

With limited funds, staffing, and other resources to manage its special uses program, the agency has found it increasingly difficult to provide timely reviews and evaluations of special use applications using appropriated funds. It is also difficult for the agency to ensure authorized facilities are constructed and operated in compliance with existing special use authorizations. The agency has a significant backlog of special use applications to which it has been unable to respond in a manner that satisfies the needs and expectations of special use applicants.

The agency has been able to provide timely responses to those applicants who have voluntarily offered to fund agency costs to review and process their applications for a particular proposed use and occupancy. However, without the appropriate regulatory authority, there is no means of requiring an applicant to pay for the agency's costs of processing applications and monitoring compliance with authorizations.

The IOAA authorizes all agencies of the Federal Government to recover costs associated with providing goods and services that benefit an identifiable recipient. This provision applies to costs incurred by the Forest Service in processing special use applications and monitoring compliance with special use authorizations. Charges imposed under the authority of the IOAA must, among other requirements, be fair and must be based on the costs to the Federal Government and the value of the goods or services to the recipient.

Government-wide direction for implementing the cost recovery provisions of the IOAA is in OMB Circular No. A–25. Section 7 of this circular directs that user charges be instituted through the promulgation of agency regulations. Adoption of this proposed rule would comply with the requirements of OMB Circular No. A–25.

In the past 10 years, the U.S. General Accounting Office (GAO) and the U.S. Department of Agriculture's Office of Inspector General have conducted more than 15 reviews or audits of various aspects of the Forest Service's special uses program. Two of the more recent audits, GAO Report #RCED–96–84 (April 1996) and GAO Report #RCED–97–16 (December 1996), recommended that the Forest Service (1) Operate its special uses program in a more cost-efficient and businesslike manner and (2) Promulgate regulations to allow the agency to exercise existing statutory authorities to recover from applicants and holders the agency's costs to process special use applications and monitor compliance with special use authorizations.

In April 1997, the Forest Service completed a reengineering study of its special uses program. The study identified changes needed to manage the program in a more businesslike and customer-service-oriented manner. The study also cited the need for regulations enabling the agency to exercise its existing cost recovery authorities. Recovery of processing and monitoring costs would provide additional funding for the agency to respond more promptly to special use applications, to monitor compliance with authorizations more effectively, and to satisfy the needs and expectations of applicants and holders.

The Forest Service would use the processing and monitoring fees paid by applicants to fund the time that the agency spends on the decisionmaking process in response to applications for the use and occupancy of National Forest System lands; to prepare and issue special use authorizations in those cases where the agency decides to authorize the proposed use and occupancy; and to monitor compliance with the terms and conditions of special use authorizations.

An applicant would also be assessed a processing fee for agency costs to conduct an environmental analysis and prepare associated documentation as required by the National Environmental Policy Act. These tasks are the applicant's responsibility as provided in 36 CFR 251.54. The processing fee would be commensurate with the agency's time and expense in processing each application, and would include the collection of all data and information needed for the agency to (1) Fully describe the proposed use; (2) Identify and evaluate the environmental effects of the proposed use; and (3) Make a decision in response to the application. Applicants would be encouraged to fulfill these responsibilities from sources other than limited agency personnel and resources to maintain the agency's ability to process applications in as efficient and timely a manner as possible. Application processing tasks completed by the applicant or a third party would reduce the amount of time the Forest Service spends on each case, thereby reducing the processing fee assessed to the applicant.

The proposed rule would require an applicant or holder to pay a processing fee and, where applicable, a monitoring fee. The proposed rule would establish categories to be assigned on a case-by-case basis to the processing of each special use application and to the monitoring of compliance with each authorization. These categories would be based on the estimated number of hours that agency personnel would spend in conducting activities directly related to processing an application and monitoring compliance with an authorization.

Except as specifically exempted, the processing fee provisions of this proposed rule would apply to (1) All special use proposals accepted as applications on or after the effective date of this rule; (2) All special use proposals accepted as applications before the effective date of this rule, but for which the agency has not yet issued an authorization; (3) Existing

authorizations when the holder requests and receives authorization to construct new facilities or reconstruct existing facilities (either through an amendment to an existing authorization or through agency approval, pursuant to a master development plan or operating plan); (4) New authorizations to be processed and issued due to termination of existing authorizations; and (5) New authorizations needed due to a change in ownership or control of facilities under an existing authorization.

Except as specifically exempted, the monitoring fee provisions of this proposed rule would apply to the agency's time needed for monitoring compliance of all authorizations issued on or after the effective date of the final rule. Monitoring is defined in the proposed rule at 36 CFR 251.51 as the actions needed to ensure compliance with special use authorizations during construction or reconstruction of facilities, as well as inspections of facilities and authorized activities to ensure compliance with a special use authorization. As defined in the proposed rule, monitoring would not include routine administrative actions, such as billings or maintenance of case files, and fees would not be assessed in any categories for such actions. For categories B–1 through B–III only, monitoring fees would not be assessed for the time associated with cumulative multi-year annual or periodic on-site inspections.

The cost recovery provisions of this rule would not apply to applications or authorizations issued for noncommercial group uses (36 CFR 251.54). The cost recovery provisions of this rule also would not apply to activities otherwise prohibited by a closure order, except for access to non-Federal land within the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3210(a)). These exemptions are necessary to address legal concerns associated with the exercise of First Amendment rights.

Fees would be assessed for several categories of activities. Category A for ''minimal impact'' processing or ''no monitoring'' and the processing and monitoring categories B–I through B–III would apply to those cases requiring no more than 50 hours of agency time to process or monitor. A one-time flat fee would be assessed for the agency's processing and monitoring fees in each of these categories. Category B–IV would apply to more complex applications and authorizations requiring more than 50 hours of agency time to process or monitor. Category C applies when master agreements are established for processing.

Fees for processing applications in categories A and B–I through B–IV would be based on the full actual costs of applications for authorizations issued under the Mineral Leasing Act and on the full reasonable costs of applications for authorizations issued under other authorities; these processing fees would be determined on a case-by-case basis.

A one-time monitoring fee would be assessed for categories B–I through B–II, based on the time needed for inspections during the construction or reconstruction period, plus the time needed for inspections of authorized facilities and operations during one calendar year. Fees for monitoring category B–IV would be based on the full actual costs for authorizations issued under the Mineral Leasing Act and on the full reasonable costs for authorizations issued under other authorities; these monitoring fees would be determined on a case-by-case basis.

The fees collected to recover costs for processing applications and monitoring compliance with authorizations under the proposed rule would be in addition to land use rental fees assessed and collected based on the fair market value of the rights and privileges granted by each authorization. These fee schedules are set out in the Forest Service directive system in chapter 30 of Forest Service Handbook (FSH) 2709.11, Special Uses Handbook.

Upon acceptance of each special use application, the authorized officer would determine the category for the processing fee or, in the case of a category B–IV proposal, would estimate a case-specific processing fee for that application. This fee would be due before the Forest Service processes an accepted application. If the proposed use is approved by the authorized officer, a monitoring fee for the authorization would be determined using the established monitoring fee rate by category (or estimated on a case-specific basis for category B–IV authorizations). The monitoring fee would be due before or at the same time the authorization is issued.

The agency's experience with its management of more than 74,000 current special use authorizations indicates that the cost to process a special use application for a proposed use or occupancy frequently has no relationship to the cost to monitor the construction and/or implementation of that use or occupancy following issuance of the authorization. Applications that can be time consuming to process may require little to no time (or cost) for the agency to monitor, or vice versa. Therefore, the agency proposes that the processing fee category and amount for each case would be determined independently of the monitoring fee category and amount; that is, the processing fee charged for any given application would not dictate the corresponding monitoring fee category or amount.

The recovery of costs from applicants and holders would give the agency the resources to provide more efficient and timely responses to applications for new uses and to applications for changes or additions to existing authorized uses and occupancies. Similarly, cost recovery also would increase the Forest Service's ability to monitor on-site activities to adequately protect National Forest System lands and resources, in accordance with the terms and conditions of special use authorizations.

This proposed Forest Service cost recovery rule is consistent with the IOAA and a variety of subsequent statutes that authorize the use and occupancy of National Forest System lands. The IOAA provides that Federal agencies should recover the costs they incur in providing a specific benefit or service to identifiable recipients beyond those provided to the general public. The Forest Service's processing of a special use application provides a special benefit and service to applicants for new authorizations and to those proposing modifications to existing authorizations. The service and benefit provided consist of the agency's review and consideration of requests to use and occupy National Forest System lands. Likewise, monitoring, as defined at 36 CFR 251.51 of the proposed rule, provides a special benefit to holders of special use authorizations that is not available to the general public in the form of actions necessary to ensure that the construction or reconstruction of facilities and the authorized activities comply with the terms and conditions of the authorization. This proposed rule would provide the process by which recipients may pay for such Governmental benefits and services.

Upon final adoption, this rule as proposed would not provide the agency with the authority to retain and spend any of the funds collected. The agency's retention and expenditure of the fees that would be assessed and collected pursuant to this proposed rule would need to be authorized by Congress. The Forest Service proposes to seek such authority in conjunction with final adoption of this proposed rule. Doing so would maximize agency responsiveness to applicants and holders by making the funds deposited by them available for the agency to use in processing their

applications and monitoring their authorizations.

Authority

Laws or administrative directives which authorize cost recovery by the Forest Service include:

1. Independent Offices Appropriations Act of 1952 (IOAA), as amended (31 U.S.C. 9701). This act provides that each Federal agency may charge for goods and services the agency provides to identifiable recipients. Such charges must be fair and must be based on the costs to the Federal Government and the value of the specific goods or services provided to the recipient.

2. Office of Management and Budget (OMB; formerly Bureau of the Budget) Circular No. A–25, as revised July 15, 1993. This circular provides Federal agencies with specific direction for implementing the cost recovery provisions in Title V of the IOAA. Section 4a specifies that the circular covers all Federal activities that convey special benefits to recipients beyond those accruing to the general public.

3. Mineral Leasing Act of 1920, as amended (30 U.S.C. 185(l)). The 1973 amendment to section 28 of this act authorizes oil and gas pipeline uses; requires that an applicant for a right-of-way or permit reimburse the Federal Government for administrative and other costs incurred in processing the application; and requires that a holder of a right-of-way or permit reimburse those administrative and other costs incurred by the Federal Government in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on the right-of-way.

The legislative history of the 1973 amendment to the Mineral Leasing Act states that the reimbursement is in addition to rent charged for the land use. Under the Mineral Leasing Act, Federal agencies are entitled to recover actual costs; for example, the costs of preparing environmental impact statements, including environmental analyses and biological evaluations for Endangered Species Act compliance.

4. Federal Land Policy and Management Act of 1976 (FLPMA; 43 U.S.C. 1764(g)). Section 504 of FLPMA provides for reimbursement of costs in addition to the collection of a land use fee. The act authorizes agencies to promulgate regulations or, prior to promulgation of such regulations, to require as a condition of a right-of-way that an applicant or a holder reimburse the Federal Government for all ''reasonable'' administrative and other costs incurred in processing an application for a right-of-way in monitoring authorizations. Factors that must be considered in establishing such reasonable costs under FLPMA include actual costs, the monetary value of the rights and privileges sought, that portion of the cost incurred for the benefit of the general public interest, the public service provided, the efficiency of the government processing involved, and other relevant factors. The act also provides a concise statement of Congressional intent concerning cost recovery generally.

Public Law 98–300 (1984) amended section 504 of FLPMA (43 U.S.C. 1764(g)) to exempt certain Rural Electrification Act-financed facilities from Federal land use fees, but notably retains the authority of agencies to require reimbursement of reasonable administrative and other costs related to processing applications and monitoring authorizations for such facilities.

5. National Historic Preservation Act of 1966 (NHPA; (16 U.S.C. 470(h–2)). Section 110(g) of this act provides that Federal agencies may require prospective licensees and permittees to pay for the Federal Government's costs of preservation activities as a condition of issuance of a license or permit.

Comparison of Forest Service and BLM Proposed Cost Recovery Rules and Fees

The cost recovery provisions and fees in this proposed Forest Service rule are consistent with those proposed by BLM, but there are differences:

1. The Forest Service addresses only cost recovery in its proposed rule at the previously reserved 36 CFR 251.58, whereas the proposed BLM rule (64 FR 321055, June 15, 1999) not only addresses revisions to its existing cost recovery regulations, but also proposes extensive revisions unrelated to processing and monitoring fees and includes reorganization and recoding of BLM's rules on rights-of-way at 43 CFR parts 2800 and 2880.

2. The Forest Service is proposing a processing fee category A for ''minimal impact'' and a monitoring fee category A for ''no monitoring'' to include low impact activities and uses in areas already approved or designated for that use in forest plans. Many of these activities and uses are recreational (such as fishing tournaments and bicycling races). The BLM rule does not include these categories; the BLM rule addresses only rights-of-way and does not apply to recreation activities. The Forest Service proposes a fee of $75 for processing an application in the minimal impact processing fee category A and no monitoring fee.

3. The Forest Service and BLM both propose to assign applications and authorizations to fee categories for processing and monitoring based on the time and other costs the agencies incur. Whereas the Forest Service would assign the monitoring fee category to an authorization separately from the processing fee category for the application, BLM would automatically assign the fee category for monitoring based on the processing fee category.

4. The Forest Service would issue the cost recovery fee schedules in the agency's directive system in Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, chapter 30 (which can be accessed electronically via the Internet at the agency's directives home page: http://www.fs.fed.us/im/directives/). BLM is setting out its fee schedule in the preamble to its proposed and final rules and proposes to make the fee schedule available at BLM offices and on its home page at http://www.blm.gov.

The BLM sets out separate proposed fee schedules for applications and authorizations under the Mineral Leasing Act and those under the Federal Land Policy and Management Act because of the differences in the legal standard for calculating cost recovery fees under these two authorities. The Forest Service has adopted the same approach as BLM in setting out its proposed cost recovery fee schedules. For further information on these cost differences, see the description in the preceding Authority section.

The Forest Service has added letters in naming its proposed fee categories to accommodate the addition of category A for the minimal impact processing fee (up to and including 8 hours) and no monitoring fee, and to incorporate the existing BLM processing and monitoring fee categories I through IV as Forest Service categories B–I through B–IV. Category B–I would require more than 8 and up to and including 24 hours of agency time for processing or up to and including 24 hours of agency time for monitoring; category B–II would require more than 24 hours and up to and including 36 hours; category B–III would require more than 36 hours and up to and including 50 hours; and category B–IV would require more than 50 hours. The Forest Service proposed category C involves the use of master agreements which would apply only to fees for processing applications, not to monitoring the authorization. The Forest Service proposed categories A and C would not apply to applications and authorizations under the Mineral Leasing Act. The following tables summarize the fee schedules and categories proposed by the Forest Service and BLM:

PROPOSED FEE SCHEDULES FOR APPLICATIONS AND AUTHORIZATIONS

[Except those authorized under the Mineral Leasing Act]

Category		Processing	Processing Fee		Monitoring	Monitoring Fee	
FS	BLM	Hours	FS	BLM	Hours	FS	BLM
A	.....	≤8	75 (minimal impact).	.....	0	0 (no monitoring)	
B–I	I	>8 & ≤24	$230	$230	≤24	$80	$80.
B–II	II	>24 & ≤36	390	390	>24 & ≤36	130	130
B–III ...	III	>36 & ≤50	750	750	>36 & ≤50	230	230
B–IV ..	IV	>50	Full reasonable cost as required determined on a case-by-case basis.	Full reasonable costs as required.	>50	Full reasonable costs as required costs as required determined on a case-by-case basis.	Full reasonable costs as required.
C*	Master Agreement.	Full reasonable costs as required determined on a case-by-case basis.	As negotiated	.....	As negotiated..		

*Master agreement for processing fees only.

PROPOSED FEE SCHEDULE FOR MINERAL LEASING ACT APPLICATIONS AND AUTHORIZATIONS

Category*		Processing Hours	Processing Fee		Monitoring Hours	Monitoring Fee	
FS	BLM		FS	BLM		FS	BLM
B–I	I	>8 & ≤24	$200	$200	≤24	$70	$70
B–II	II	>24 & ≤36	290	290	>24 & ≤36	100	100
B–III ...	III	>36 & ≤50	750	750	>36 & ≤50	330	330
B–IV ..	IV	>50	Full actual costs determined on a case-by-case basis.	Full actual costs	>50	Full actual costs determined a case-by-on costs.	Full actual costs.
	Master Agreement.	.....	.....	As negotiated	.....	As negotiated..	

*Note that the Forest Service does not have a category A (minimal impact/no monitoring) or a category C (master agreement) for Mineral Leasing Act applications and authorizations.

5. Analysis of Proposed Rule

A section-by-section explanation of the proposed cost recovery rule follows.

Proposed § 251.51 Definitions. This section would be revised to add a definition of monitoring that ensures consistency in the identification of activities subject to a monitoring fee and in the determination of monitoring fee categories and amounts.

Proposed § 251.58 Cost Recovery. This section is currently reserved under the heading ''Cost Reimbursement.'' Regulations would be promulgated to implement requirements in the various applicable laws and OMB Circular No. A–25 directing Federal agencies to recover costs for services provided to identifiable recipients beyond those accruing to the general public. This section would deal specifically with the recovery of costs involved in processing applications for special uses and in monitoring compliance with special use authorizations.

The proposed rule generally would not apply to agency costs associated with administration of outstanding rights in Federal lands that may be exercised without a special use authorization. An example would be use of public highways that predate the establishment of a National Forest. The proposed rule may apply to an outstanding right when the holder of that right is otherwise required by law or regulation to secure an authorization or approval from the Forest Service.

Paragraph (a) of the proposed rule would direct the agency to recover its processing costs for special use applications and monitoring costs for authorized special uses by assessing fees separate from any fees charged for use and occupancy of National Forest System lands.

Paragraph (b) would apply the cost recovery requirements to the processing of applications and monitoring of special use authorizations pursuant to 36 CFR part 251, subpart B.

Paragraphs (b)(1) through (b)(3) would specify situations that would prompt assessment of processing fees pursuant to this rule. Examples include, but are not limited to, cases where a new or amended authorization is needed to approve substantial changes to an existing use.

Paragraph (b)(4) specifies that monitoring fees would be applicable only to special use authorizations issued on or after the date of the adoption of this rule.

Paragraphs (c) through (c)(6)(iii) would address proposed processing fees to recover agency costs. Some of the agency's processing costs, as indicated in paragraph (c)(1), would include the agency's formal acknowledgment of receipt and initial review of an application, case file set-up, computer data entry coding, environmental reviews and analyses, meetings with the

applicant, and preparation of a special use authorization. These costs would be specific to a project and would not include the cost of agency services or benefits that are for the benefit of the general public. Paragraphs (c)(1)(i) to (c)(1)(ii)(B) would set out the requirements for determining processing fees based on actual costs for applications under the Mineral Leasing Act or reasonable costs for applications under other authorities.

Paragraphs (c)(2) through (c)(6)(iii) would provide for a schedule of six processing fee categories, based on the complexity of the proposed use and the agency time needed for processing applications.

A one-time, nonrefundable fee would be assessed for processing applications in categories A through B–III. For applications other than those submitted for authorizations issued under the Mineral Leasing Act, a minimal impact category A, requiring up to 8 hours to process (paragraph (c)(2)(i)), would be established at a rate of $75. The Forest Service has determined that it costs at least $75 to process any special use application. The agency does not anticipate a need for a minimal impact category for Mineral Leasing Act applications.

Categories B–I through B–IV would be defined using criteria comparable to those proposed by BLM (64 FR 32105, June 15, 1999). The proposed schedule fee rates for categories B–I through B–III (paragraphs (c)(2)(ii)–(iv)) would be identical to those proposed by BLM and are based on cost data that BLM has collected to support those rates in each category. The Forest Service proposes to adopt those rates and categories because (1) its costs of processing special use applications on National Forest System lands are comparable to BLM's costs of processing applications for rights-of-way on BLM-administered public lands, and (2) the public is better served by maintaining consistency in special uses and rights-of-way administration between the Forest Service and BLM.

Under category B–IV (paragraph (c)(2)(v)), a processing fee specific to each project is proposed to recover the full reasonable costs (for non-Mineral Leasing Act applications) or the full actual costs (for Mineral Leasing Act applications) that are associated with conducting agency studies, lengthy environmental analyses, and other actions that cumulatively require more than 50 hours of agency time to complete.

For applications under authorities other than the Mineral Leasing Act, the Forest Service and the applicant could enter into master agreements (category C) to recover processing costs associated with a particular application, a group of applications, or similar applications filed by the same applicant within a specified geographic area (paragraphs (c)(2)(vi)(A)–(E)). Each application covered by a master agreement would be assigned its own processing fee category and rate. Master agreements may be considered an efficient alternative to case-specific estimates of processing time, particularly when an applicant or holder routinely submits proposals or has several authorizations within a defined area or administrative unit. The agency does not anticipate a need for master agreements for processing Mineral Leasing Act applications because they seldom, if ever, are submitted as a group or relate to other applications.

Processing fees in category B–IV or processing fees submitted pursuant to a master agreement could be assessed and collected in periodic installments. The authorized officer would estimate the processing fees for category B–IV applications on a case-specific basis and would reconcile the fees based on the full reasonable costs for non-Mineral Leasing Act applications or on the full actual costs for Mineral Leasing Act applications. Upon the agency's completion of all processing tasks for a category B–IV application, any remaining balance of the processing fees would be either refunded to the applicant or credited towards monitoring fee assessments. When the estimated processing fee in category B–IV is lower than the agency's costs for processing an application, the applicant would be obligated to pay the difference between the estimated costs and the agency's full actual or reasonable costs. For all categories, an applicant's payment of a processing fee would neither ensure nor imply agency approval of the proposed use or occupancy. The applicant would be liable for the agency's processing costs regardless of whether the application is subsequently denied by the agency or withdrawn by the applicant.

Establishment of a processing fee is expected to encourage prospective applicants to discuss their proposed use and occupancy with the Forest Service prior to submitting an application. The agency anticipates that this fee may also provide an incentive for proponents to better design their applications to meet the agency's resource management concerns and objectives. The agency would not duplicate processing activities to be conducted by the applicant. Applicants would be strongly encouraged to conduct as many of the necessary processing steps as possible (such as collecting data; performing studies; completing resource surveys, evaluations, and assessments; and conducting and documenting environmental analyses). Having the applicant conduct these steps would minimize the time the Forest Service needs to process an application and would reduce the application's impact on limited Forest Service resources. The applicant also would minimize the application processing fee charged by the Forest Service and, in many cases, would expedite the Forest Service's processing of the application.

Paragraphs (c)(3) through (c)(3)(ii) would address how processing costs would be assessed when two or more applicants apply and compete for one use. Included are separate provisions for assessing processing fees when the competitive interest in a particular use or occupancy is (1) unsolicited by the Forest Service or (2) solicited by the Forest Service.

Paragraphs (c)(4) through (c)(4)(ii) would describe how and when the authorized officer would determine an appropriate processing fee for each accepted application, notify and bill applicants, and revise fees.

Paragraphs (c)(5) through (c)(5)(ii) would provide direction for the payment of processing fees and would provide that the agency would not initiate processing an application until receipt of full payment of the prescribed processing fee.

Paragraphs (c)(6) through (c)(6)(iii) would specify that processing fees in categories A and B–I through B–III are nonrefundable and would describe under what conditions the processing fee for category B–IV would be refunded to an applicant.

Paragraphs (d) through (d)(4)(ii) would provide for recovering those costs the Forest Service incurs in monitoring compliance with special use authorizations during construction or reconstruction of facilities, plus those costs incurred during on-site inspections of authorized facilities and operations to ensure compliance with a special use authorization.

Paragraphs (d)(1) through (d)(1)(ii) would describe the basis for monitoring fees. A one-time, nonrefundable fee would be assessed for monitoring compliance with authorizations in categories B–I through B–III. The authorized officer would estimate the monitoring fee under category B–IV on a case-by-case basis and would reconcile the fee based on full reasonable costs for monitoring non-Mineral Leasing Act authorizations or full actual costs for monitoring Mineral Leasing Act authorizations.

Paragraphs (d)(2) through (d)(2)(v) would provide for a schedule of five monitoring fee categories, based on the complexity of the activity to be monitored. Except for authorizations issued under the Mineral Leasing Act, a category A would be established for authorizations that require no monitoring and for which no monitoring fee would be charged. The agency does not anticipate a need for a no monitoring category for Mineral Leasing Act authorizations. Categories B–I through B–IV would be defined using criteria comparable to those proposed by BLM (64 FR 32105, June 15, 1999) and are based on cost data that BLM has collected to support its monitoring fee rates.

Paragraph (d)(3)(i) would allow the holder to pay the monitoring fee in installments based on estimates of the total fee and with the approval of the authorized officer. When the estimated monitoring fee in category B–IV is lower than the agency's costs incurred in monitoring an authorization, the holder of the special use authorization would pay the difference.

Paragraphs (d)(4) through (d)(4)(ii) would specify that monitoring fees in categories B–I through B–III are nonrefundable and would describe under what conditions the monitoring fee for category B–IV would be refunded to an authorization holder.

Paragraphs (e) through (e)(3) would provide applicants and holders with a process for disputing or requesting a reduction in the established processing or monitoring fees.

Paragraphs (f) through (f)(2) would identify the circumstances under which the authorized officer may waive all or part of a processing or monitoring fee. Waiving all or any part of a fee pursuant to these criteria would be discretionary on the part of the authorized officer and would not be an entitlement of the applicant or holder.

Paragraph (f)(1)(i) would provide for waiving fees for a local, State, or Federal governmental entity that waives similar fees for the Forest Service.

Paragraph (f)(1)(ii) would allow the authorized officer to waive part of the processing fee when a major portion of the costs results from issues not related to the actual project being proposed. For example, an application is submitted for an outfitter-guide use in a geographic area where numerous similar outfitter-guide uses have already been authorized. The new application prompts the need for the Forest Service to conduct an analysis of the capability of the land and its resources to accommodate particular types of uses related to the proposed use, and to examine allocations of commercial versus noncommercial uses within the subject area. Although the analysis is triggered by the new application, the purpose of the analysis is only minimally attributable to the applicant's proposed use and occupancy. Thus, it is inappropriate to assess that applicant the total cost of such an analysis.

Paragraph (f)(1)(iii) would provide for a waiver or partial waiver of processing or monitoring fees when a proposed project is intended to prevent or mitigate damage to real property or to mitigate hazards to public health and safety resulting from an act of God, an act of war, or negligence of the United States. For example, a storm destroys a culvert crossing of a forest development road that provides access to a parcel of private land. The landowner has an easement for the operation and maintenance of the landowner's proportionate use of the road. The landowner offers to replace the culvert and mitigate the associated damages that have resulted from the storm, and the work requires the landowner to obtain a special use authorization for occupancy and use of National Forest System lands outside the right-of-way limits of the roadway. The fee for processing an application for this work may be waived by the authorized officer because of the public and/or agency benefits to be realized by the proposed use (that is, mitigating damages to National Forest System lands and resources by repairing the culvert crossing and adjacent lands to standards established by the Forest Service).

Paragraph (f)(1)(iv) would provide for a waiver or partial waiver of processing or monitoring fees when a proposed activity is necessary to move a facility or improvement to a new location to comply with public health and safety or environmental requirements that were not in effect at the time the authorization was issued. For example, the discovery of habitat critical to threatened or endangered species requires an authorized officer to relocate a recreation residence to another lot. The authorized officer may waive the fee to process the holder's application for relocation of the residence to another lot.

Paragraph (f)(1)(v) would provide for a waiver or partial waiver where an improvement or facility must be relocated because the land is needed by a Federal agency or federally funded project for an alternative public purpose. For example, the Forest Service decides to construct a recreational facility in a location occupied by an authorized use, such as a private access road. The new recreational facility requires relocation of a segment of the access road to preclude user conflicts between the landowner and the recreating public. The road relocation requires a new or amended special use authorization. Processing fees associated with the landowner's application for the authorization may be waived by the authorized officer.

Paragraphs (f)(1)(vi) through (f)(1)(vi)(B) would provide for waiving fees for processing an application or monitoring an authorization on behalf of a nonprofit organization, corporation, or association that is not controlled by or a subsidiary of a profit-making enterprise when studies undertaken in processing the application have a public benefit or the proposed facility or project would provide a free service to the public or to a USDA program.

Paragraph (f)(2) would require that requests for waivers be in writing and include an analysis of the applicability of the waiver criteria.

Paragraph (g) would exempt from processing and monitoring fees those applications and authorizations for noncommercial group uses and for activities otherwise prohibited by a closure order, except for access to non-Federal lands within the boundaries of the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)).

Paragraph (h) would provide that decisions to assess a processing or monitoring fee or to determine the fee category or amount are not appealable. Paragraph (h) also would provide that a decision in response to a request for a reduction in a processing or monitoring fee is not subject to administrative appeal.

Paragraph (i)(1) would provide that the proposed schedules for processing and monitoring fees applicable to most special use applications and authorizations would be set out in the Forest Service directive system. This paragraph would specify further that the agency will keep fee schedules current with annual adjustments of fee rates in each cost category using the Implicit Price Deflator-Gross Domestic Product (IPD-GDP) index and will round up changes in the rates to the nearest dollar. Paragraphs (i)(2)(i) and (i)(2)(ii) would require the agency to review the fee rates on the 5-year anniversary of the adoption of the final rule.

6. Regulatory Requirements

Environmental Impact

This proposed rule would establish administrative fee categories and

procedures for processing special use applications and monitoring special use authorizations on National Forest System lands. Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this proposed rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final rule.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This proposed rule would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This proposed rule would not interfere with any action taken or planned by another agency, nor would it raise new legal or policy issues. Finally, this proposed action would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this proposed rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Moreover, this proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this proposed action would not have a significant economic impact on a substantial number of small entities as defined by the act because it would not impose record-keeping requirements on them; it would not affect their competitive position in relation to large entities; and it would not affect their cash flow, liquidity, or ability to remain in the market. In addition, the Forest Service is proposing a flat fee of $75 for processing an application in the minimal impact processing fee category A and no monitoring fee. Most small entity application requests would fall within this flat fee category.

Federalism

The agency has considered this proposed rule under the requirements of Executive Order 13132, Federalism, and has made a preliminary assessment that the rule conforms with the federalism principles set out in this Executive Order; would not impose any compliance costs on the States; and 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. Moreover, the cost recovery processing and monitoring fees set out in this proposed rule may be waived for local and State government entities that waive similar fees they might otherwise assess the Forest Service. Based on comments received on this proposed rule, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting a final rule.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the proposed rule does not pose the risk of a taking of constitutionally protected private property.

Civil Justice Reform Act

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule were adopted, (1) all State and local laws and regulations that are in conflict with this proposed rule or that would impede its full implementation would be preempted; (2) no retroactive effect would be given to this proposed rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this proposed rule on State, local, and tribal governments and the private sector. This proposed rule would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any record-keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. The information collection being requested as a result of this action has been approved by the Office of Management and Budget (OMB) (Number 0596–0082). Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, the Forest Service proposes to amend 36 CFR part 251 as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for part 251, subpart B, continues to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. Amend § 251.51 by adding a definition for ''monitoring'' in alphabetical sequence to read as follows:

§ 251.51 Definitions.

* * * * *

Monitoring—Actions needed to ensure compliance with special use authorizations during construction or reconstruction. Monitoring also includes on-site inspections of facilities and authorized activities to ensure compliance with a special use authorization. Monitoring does not include routine administrative actions, such as billings or maintenance of case files.

* * * * *

3. Revise the heading for § 251.58 and add new text to the formerly reserved § 251.58 to read as follows:

§ 251.58 Cost recovery.

(a) *Assessment of fees to recover agency processing and monitoring costs.* The Forest Service shall assess fees to recover the agency's processing costs for special use applications and monitoring costs for authorized special uses. These fees are separate from any fees charged for the use and occupancy of National Forest System lands. Fee rates for recovery of processing costs are determined according to categories established for the hours of work required to process applications as set out in paragraph (c)(2) of this section.

Separate categories for recovery of monitoring costs are set out in paragraph (d)(2) of this section. As provided in paragraph (i) of this section, processing and monitoring fee rates are revised annually, set out in the Forest Service directive system, and reviewed every 5 years.

(b) *Special use applications and authorizations subject to cost recovery requirements.* Except as exempted in paragraph (g) of this section, the cost recovery requirements of this section apply in the following situations to the processing of applications and monitoring of special use authorizations issued pursuant to this subpart B.

(1) *Applications for use and occupancy that require a new special use authorization.* Fees for processing an application for a new special use authorization shall be assessed for any application that has been formally accepted by the agency on or after [the effective date of the final rule] and any application that was accepted by the agency before [the effective date of the final rule], but for which an authorization has not yet been issued, regardless of whether the application was unsolicited or solicited by the Forest Service.

(2) *Changes to existing authorizations.* Processing fees apply to proposals by holders that would require an application to amend an authorization, operating plan, or master development plan.

(3) *Applications for new authorizations prompted by termination of an existing authorization or by a change in ownership or control of the authorized improvements.* Applicants or holders proposing a new authorization prompted by termination of an existing authorization or by a change in ownership or control of the holder of the authorized improvements shall submit the information needed for the authorized officer to determine the appropriate processing and monitoring fee.

(4) *Monitoring of authorizations issued on or after [the effective date of the final rule].*

(c) *Processing fee requirements.* A processing fee is required for each application for a special use authorization as identified in paragraphs (b)(1) through (b)(3) of this section. Processing fees do not include costs incurred by the applicant in providing information, data, and documentation necessary for the authorized officer to make a decision on the proposed use or occupancy, pursuant to the provisions at § 251.54.

(1) *Basis of processing fees.* The processing fee categories A and B–I through B–IV set out in paragraphs (c)(2)(i) through (c)(2)(v) of this section are based upon the amount of time that the Forest Service spends reviewing the application, conducting environmental analyses of the effects of the proposed use, reviewing any applicant-generated environmental documents and studies, conducting site visits, evaluating an applicant's technical and financial qualifications, making a decision on whether to issue the authorization, and preparing documentation of analyses, decisions, and authorizations for each application. Different processing fee schedules are set out in the agency's directive system (paragraph (i) of this section) for applications submitted under the Mineral Leasing Act (based on recovery of actual costs) and applications submitted under other authorities (based on recovery of reasonable costs). The amount of time required for processing an application and thus the processing fee depend on the complexity of the project; the amount of information that the authorized officer needs to make a decision in response to the proposed use or occupancy; and the degree to which the applicant is willing to provide this information to the agency. Processing work conducted by the applicant or a third party minimizes the time the Forest Service needs to process the application and thus reduces the processing fee. The total processing time is the total time estimated for all Forest Service personnel involved in processing an application and is estimated on a case-by-case basis to determine the fee category. A one-time, nonrefundable fee shall be assessed for processing applications in categories A and B–I through B–III. The processing fee under category B–IV set out in paragraph (c)(2)(vi) shall be established on a case-specific basis, based on the authorized officer's estimate of the agency's processing costs. Differences between the estimated processing costs and the agency's final processing costs are reconciled when the processing of the applications is complete.

(i) *Use of actual costs in determining fees for processing applications under the Mineral Leasing Act.* For applications submitted under authority of the Mineral Leasing Act (30 U.S.C. 185(l)), the authorized officer reconciles the difference between the processing fee estimated for the category B–IV application and the agency's full actual costs incurred in processing the application.

(ii) *Use of reasonable costs in determining fees for processing applications under other authorities.* For applications submitted under other authorities, the authorized officer reconciles the differences between the processing fee estimated for the category B–IV application and the agency's full reasonable costs incurred in processing the application. The applicant:

(A) May submit a written analysis of actual costs, the monetary value of the rights and privileges sought, that portion of the cost incurred for the benefit of the general public interest, the public service provided, the efficiency of the government processing involved, and other relevant factors as applied to the full reasonable costs associated with processing the application, or

(B) May agree in writing to waive consideration of reasonable costs and pay all actual costs incurred in processing the application.

(2) *Processing fee categories.*—(i) *Category A: Minimal impact.* The Forest Service has available, or the applicant provides, the information necessary to process the application in compliance with the National Environmental Policy Act and other applicable statutes. Total estimated processing time for an application in this fee category does not exceed 8 hours for agency personnel to review the application, to decide on whether to issue an authorization for the proposed use or occupancy, and to prepare and issue the authorization.

(ii) *Category B–I: More than 8 and up to and including 24 hours.* The total estimated time in this category is more than 8 and up to and including 24 hours for Forest Service personnel to process an application.

(iii) *Category B–II: More than 24 and up to and including 36 hours.* The total estimated time in this category is more than 24 and up to and including 36 hours for Forest Service personnel to process an application.

(iv) *Category B–III: More than 36 and up to and including 50 hours.* The total estimated time in this category is more than 36 and up to and including 50 hours for Forest Service personnel to process an application.

(v) *Category B–IV: More than 50 hours.* In this category more than 50 hours are needed for Forest Service personnel to process an application. The authorized officer shall determine the issues to be addressed and shall develop preliminary work and financial plans for estimating recoverable costs.

(vi) *Category C: Master agreements.* The Forest Service and the applicant may enter into master agreements for the agency to recover processing costs associated with a particular application, a group of applications, or similar applications filed by the same applicant within a specified geographic area. A master agreement shall include:

(A) An initial cost estimate;

(B) A description of the method for periodic billing, payment, and auditing;

(C) A description of the geographical area covered by the agreement;

(D) A work plan and provisions for updating; and

(E) Specific conditions for terminating the agreement.

(3) *Competitive interest.* The authorized officer shall determine if a competitive interest exists when a proposal is submitted to use or occupy National Forest System lands.

(i) In situations where there are two or more unsolicited competitive proposals, each applicant must pay processing fees as required under this section. Processing costs that are associated with more than one application (such as the costs of printing an environmental impact statement that generally relates to all of the applications) must be paid in equal shares or on a prorated basis, as deemed appropriate by the authorized officer, but may not exceed the full actual costs of processing applications submitted under the Mineral Leasing Act or the full reasonable costs of processing applications submitted under other authorities.

(ii) When the Forest Service solicits applications for the use and occupancy of National Forest System lands through a request for proposal, a prospectus, or similar solicitation, the agency is responsible for the costs of environmental analyses and reviews conducted before the solicitation is issued. The Forest Service shall collect a fee from each party requesting a copy of the solicitation package to cover the agency's costs for printing and mailing. The selected applicant is required to pay a processing fee that covers the Forest Service's costs to review and evaluate the selected applicant's proposal, including establishing a case file; recording data; and conducting financial reviews, additional environmental analysis, and preauthorization meetings with the applicant.

(4) *Billing and revision of processing fees.*—(i) Billing. When the Forest Service accepts a special use application, the authorized officer shall provide written notice to the applicant that the application has been formally accepted and shall include a bill for the estimated amount of the processing fee, based on one of the processing fee categories A, B–I through B–IV, or C (paragraphs (c)(2)(i) through (vi)).

(ii) *Revision of processing fees.* In processing an application, if the authorized officer discovers previously undisclosed information that necessitates a change in the processing fee, the authorized officer shall revise the processing fee based on that information before continuing with consideration of the application. Written notice of the authorized officer's processing fee determination shall be provided to the applicant, along with a bill for that fee amount.

(5) *Payment of processing fees.*—(i) Payment of the processing fee shall be due within 30 days of the bill issued pursuant to paragraph (c)(4) of this section. The processing fee must be paid before the Forest Service can initiate or, in the case of a revised fee, continue with processing an application. Payment of the processing fee by the applicant does not obligate the Forest Service to authorize the applicant's proposed use or occupancy.

(ii) When the estimated processing fee in category B–IV is lower than the full actual costs of processing an application submitted under the Mineral Leasing Act or lower than the full reasonable costs of processing an application submitted under other authorities, the applicant shall pay the difference between the estimated and the full actual or reasonable processing costs.

(6) *Refunds of processing fees.* (i) Processing fees in categories A and B–I through B–III are nonrefundable.

(ii) For category B–IV applications, an applicant whose application is denied or withdrawn in writing is responsible for costs incurred by the Forest Service in processing the application up to and including the date the agency denies the application or receives written notice of the applicant's withdrawal. When an applicant withdraws a category B–IV application, the applicant also is responsible for any costs subsequently incurred by the Forest Service in terminating consideration of the application.

(iii) If the payment of any category B–IV processing fee exceeds the full actual costs of processing an application submitted under the Mineral Leasing Act or the full reasonable costs of processing an application submitted under other authorities, the authorized officer shall either refund the excess payment to the applicant or, at the applicant's request, shall credit it towards monitoring fees due.

(d) *Monitoring fee requirements.* The monitoring fee for an authorization shall be assessed independently of any fee assessed for processing the application for that authorization, pursuant to paragraph (c) of this section. Payment of the monitoring fee is due upon issuance of the authorization.

(1) *Basis for monitoring fees.* Monitoring is defined at § 251.51. For monitoring fee categories B–I through B–III, authorization holders are assessed monitoring fees based on the estimated time needed for agency monitoring to ensure compliance with special use authorizations during the construction or reconstruction of facilities, plus the estimated time needed to perform on-site inspections of authorized facilities and/or operations during one calendar year. The basis for determining the appropriate monitoring fee category B–I through B–IV does not include the time spent preparing billings, maintaining case files, or performing other routine administrative actions; for categories B–1 through B–III, estimates also do not include the time expended in cumulative multi-year annual or periodic on-site inspections. Monitoring fee categories are set out in paragraphs (d)(2)(i) through (d)(2)(v) of this section. A one-time, nonrefundable fee shall be assessed for monitoring compliance with authorizations in categories B–I through B–III. The monitoring fee under category B–IV set out in paragraph (d)(2)(v) shall be established on a case-specific basis, based on the authorized officer's estimate of the agency's monitoring costs. Differences between the estimated monitoring costs and the agency's final costs shall be reconciled when monitoring of the authorization has been completed.

(i) *Use of actual costs in determining fees for monitoring authorizations issued under the Mineral Leasing Act.* For authorizations issued under the Mineral Leasing Act (30 U.S.C. 185 (l)), the authorized officer reconciles the difference between the monitoring fee estimated for the category B–IV and the agency's full actual costs incurred in monitoring the authorization.

(ii) *Use of reasonable costs in determining fees for monitoring authorizations issued under other authorities.* For authorizations issued under authorities other than the Mineral Leasing Act, the authorized officer reconciles the difference between the monitoring fee estimated for the category B–IV authorization and the agency's full reasonable costs incurred in monitoring the authorization. The applicant:

(A) May submit a written analysis of actual costs, the monetary value of the rights or privileges sought, that portion of the cost incurred for the benefit of the general public interest, the public service provided, the efficiency of the government processing involved, and other relevant factors as applied to the full reasonable costs associated with monitoring the authorization, or

(B) May agree in writing to waive consideration of reasonable costs and

pay all actual costs incurred in monitoring the authorization.

(2) *Monitoring fee categories.* The monitoring fee categories are:

(i) *Category A: No monitoring.* This category applies to authorizations for use and occupancy that have low or no impacts on National Forest System lands and resources and for which the agency has no identifiable need or intention to conduct a site visit for resource protection purposes. No monitoring fee shall be assessed in this category.

(ii) *Category B–I: Up to and including 24 hours.* Up to and including 24 hours are estimated for Forest Service personnel to monitor compliance with a special use authorization.

(iii) *Category B–II: More than 24 and up to and including 36 hours.* More than 24 and up to and including 36 hours are estimated for Forest Service personnel to monitor compliance with a special use authorization.

(iv) *Category B–III: More than 36 and up to and including 50 hours.* More than 36 and up to and including 50 hours are estimated for Forest Service personnel to monitor compliance with a special use authorization.

(v) *Category B–IV: More than 50 hours.* More than 50 hours are needed for Forest Service personnel to monitor compliance with a special use authorization.

(3) *Billing and payment of monitoring fees.* (i) The authorized officer shall estimate the monitoring costs and shall notify the holder of the required fee. The monitoring fees in categories B–I through B–III must be paid in full before or at the same time the authorization is issued. For authorizations in category B–IV, the estimated monitoring fees must be paid in full before or at the same time the authorization is issued, unless the authorized officer and the applicant or holder agree in writing to periodic payments.

(ii) When the estimated monitoring fee for an authorization in category B–IV is lower than the full actual costs of monitoring compliance with an authorization issued under the Mineral Leasing Act or lower than the full reasonable costs of monitoring compliance with an authorization issued under other authorities, the holder shall pay the difference in the next periodic payment or the authorized officer shall bill the holder for the difference between the estimated and the full actual or reasonable monitoring. Payment shall be due within 30 days of receipt of the bill.

(4) *Refunds of monitoring fees.* (i) Monitoring fees in categories B–I through B–III are nonrefundable.

(ii) If the holder's payment of any category B–IV estimated monitoring fee exceeds the full actual costs of monitoring an authorization issued under the Mineral Leasing Act or the full reasonable costs of monitoring an authorization under other authorities, the authorized officer either shall adjust the next periodic payment to reflect the overpayment or shall refund the excess payment to the holder.

(e) *Applicant and holder disputes concerning processing or monitoring fee assessments; requests for changes in fee categories or amounts.* (1) If an applicant or holder disagrees with the processing or monitoring fee category assigned by the authorized officer or, in the case of category B–IV applications or authorizations, with the estimated dollar amount of the processing or monitoring fee, the applicant or holder may submit a written request to the authorized officer for either a change in the fee rate or, in category B–IV cases, the estimated fee amount.

(2) In the case of a disputed processing fee, such a request suspends the Forest Service's processing of the application, pending the following:

(i) Consideration of the request by the authorized officer,

(ii) Determination by the authorized officer of an appropriate processing fee, and

(iii) The applicant's advance payment of the fee.

(3) In the case of a disputed monitoring fee, a request to change the fee suspends the authorization for which the disputed fee is charged.

(f) *Waivers of processing and monitoring fees.* (1) All or part of a processing or monitoring fee may be waived, at the sole discretion of the authorized officer, when one or more of the following criteria are met:

(i) The applicant is a local, State, or Federal governmental entity that waives similar fees that the Forest Service might otherwise be assessed for services provided by the applicant;

(ii) A major portion of the processing costs results from issues not related to the project being proposed;

(iii) The proposal consists of a project intended to prevent or mitigate damage to real property, or to mitigate hazards or dangers to public health and safety resulting from an act of God, an act of war, or negligence of the United States.

(iv) The proposal involves moving a facility or improvement to a location outside the authorized area to comply with public health, public safety, and environmental protection laws and regulations that were not in effect at the time the authorization was issued.

(v) The application is for a new authorization to relocate facilities or improvements that must be moved because the land is needed by a Federal agency or federally funded project for an alternative public purpose.

(vi) The applicant is a nonprofit organization, corporation, or association that is not controlled by or a subsidiary of a profit-making enterprise, and:

(A) The studies undertaken in connection with processing the application have a public benefit or

(B) The proposed facility or project will provide a free service to the public or a program of the Secretary of Agriculture.

(2) An applicant's or holder's request for a full or partial waiver of a processing or monitoring fee must be in writing and must include an analysis that demonstrates how one or more of the criteria in paragraph (f)(1) of this section apply.

(g) *Exemptions from processing and monitoring fees.* No processing or monitoring fees shall be charged when the application or authorization is for a noncommercial group use as defined in § 251.51 or for activities otherwise prohibited by a closure order, except for access to non-Federal lands within the boundaries of the National Forest System granted pursuant to section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210(a)).

(h) *Appeal of decisions.* (1) A decision to assess a processing or monitoring fee to determine the fee category or amount is not subject to administrative appeal.

(2) A decision by an authorized officer in response to a request for a reduction in a processing or monitoring fee likewise is not subject to administrative appeal.

(i) *Processing and monitoring fee schedules.* (1) The Forest Service shall maintain schedules for processing and monitoring fees in the directive system (36 CFR 200.4). These schedules shall be updated annually by adjusting the rates using the annual rate of change, second quarter to second quarter, in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) index. The Forest Service shall round up changes in the rates to the nearest dollar.

(2) Upon the 5-year anniversary of the effective date of this section [Effective Date of the Final Rule], the Forest Service shall review these rates:

(i) To determine whether they are commensurate with the actual or reasonable costs incurred by the agency in conducting the processing and monitoring activities covered by this section; and

(ii) To assess consistency with processing and monitoring fee schedules established by the United States Department of the Interior, Bureau of Land Management.

Dated: November 15, 1999.

Hilda Diaz-Soltero,

Associate Chief, Forest Service.

[FR Doc. 99–30587 Filed 11–23–99; 8:45 am]

BILLING CODE 3410–11–P

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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.

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H.R. 609/P.L. 106–96

To amend the Export Apple and Pear Act to limit the applicability of the Act to apples. (Nov. 12, 1999; 113 Stat. 1321)

H.R. 915/P.L. 106–97

To authorize a cost of living adjustment in the pay of administrative law judges. (Nov. 12, 1999; 113 Stat. 1322)

H.R. 974/P.L. 106–98

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H.R. 2303/P.L. 106–99

History of the House Awareness and Preservation Act (Nov. 12, 1999; 113 Stat. 1330)

H.R. 3122/P.L. 106–100

To permit the enrollment in the House of Representatives Child Care Center of children of Federal employees who are not employees of the legislative branch. (Nov. 12, 1999; 113 Stat. 1332)

H.J. Res. 54/P.L. 106–101

Granting the consent of Congress to the Missouri-Nebraska Boundary Compact. (Nov. 12, 1999; 113 Stat. 1333)

S. 900/P.L. 106–102

Gramm-Leach-Bliley Act (Nov. 12, 1999; 113 Stat. 1338)

H.R. 348/P.L. 106–103

To authorize the construction of a monument to honor those who have served the Nation's civil defense and emergency management programs. (Nov. 13, 1999; 113 Stat. 1482)

H.R. 3061/P.L. 106–104

To amend the Immigration and Nationality Act to extend for an additional 2 years the period for admission of an alien as a nonimmigrant under section 101(a)(15)(S) of such Act, and to authorize appropriations for the refugee assistance program under chapter 2 of title IV of the Immigration and Nationality Act. (Nov. 13, 1999; 113 Stat. 1483)

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